
Subject:	AYLESHAM – EIGHTH DEED OF VARIATION
Date:	5 December 2019
Decision to be Taken By:	Councillor Trevor Bartlett, Leader of The Council
Report of:	Dave Robinson, Growth and Business Development Manager
Portfolio Holder:	Councillor Trevor Bartlett, Leader of the Council
Decision Type:	Executive Non-Key Decision
Classification:	Unrestricted

Authority:	Section 9E(2)(a) Local Government Act 2000
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Purpose of the report:	To seek approval for the early transfer of 15 plots within Phase 2 of the Aylesham Development to Ward Homes.
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Recommendation:	To approve the request for the transfer of 15 plots to Ward Homes, and to delegate responsibility to the Growth and Business Development Manager, in consultation with the Chief Executive, to conclude the transfer agreement.
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1. Summary

Cabinet approved the terms of the Eighth Deed of Variation (DoV) to the Aylesham Development Agreement at its meeting on 1 July 2019 (Decision CAB 29). This decision delegated responsibility for concluding the agreement to the Growth and Business Development Manager in consultation with the Chief Executive. Ward Homes have requested an early transfer of 15 plots within Phase 2 to enable upcoming sales to be completed. This decision is not covered by the current delegation.

2. Introduction and Background

- 2.1 The Council and the Aylesham Developers have been in negotiations to finalise the Eighth Deed of Variation. These negotiations are complex and require detailed analysis of values and costs to ensure the Council obtains best value for its land. The Council has also been seeking assurances on certain quality aspects of the development. It is anticipated that these negotiations will be concluded in the next few weeks.
- 2.2 Ward Homes, having completed all of their phase 1 units earlier in the year, moved on to begin the construction of Phase 2. They accepted that this build-out was 'at risk' until the DoV was agreed.
- 2.3 Ward Homes have now completed and exchanged contracts on 15 of these units whose buyers are hoping to be moving in either before Christmas or later in January.
- 2.4 Ward Homes cannot conclude any sale without the Council transferring the land and they have asked the Council to approve the plot transfers in advance of agreeing the DoV.

2.5 The Council is under no obligation to agree, but to do so would be relatively low risk and an act of goodwill, enabling the buyers to occupy their new homes as planned.

2.6 The Council expects this request to be a one-off given the anticipated timescale for concluding the DoV.

3. **Identification of Options**

3.1 Approve the request to transfer 15 Plots.

3.2 Refuse the request to transfer 15 plots.

4. **Evaluation of Options**

4.1 By approving the request, the new buyers will be able to move into their new homes, some in time for Christmas. There is little risk to agreeing this and it does not negatively impact on current negotiations.

4.2 By refusing the request, Ward Homes will need to postpone the sales. This is no fault of the Council and is a reputational issue for them. However, any negative publicity around postponements does impact on potential future sales which does not benefit the Council nor the developers.

4.3 The preferred option is to approve the request.

5. **Resource Implications**

5.1 The sale of the 15 plots will result in a capital receipt of £55,000. This is the proportionate residual value after infrastructure costs and Section 106 payments have been deducted.

6. **Corporate Implications**

6.1 Comment from the Section 151 Officer: The Head of Finance and Housing has been consulted and has no further comments to add.

6.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

6.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.

6.3 Other Officers (as appropriate): None.

7. **Appendices**

Appendix 1 – Draft Deed

Contact Officer: Dave Robinson, Growth and Business Development Manager - ext 2121

Dated

2019

EIGHTH SUPPLEMENTAL AGREEMENT

relating to

**Development Agreement dated 3 April 2007 (as amended)
AYLESHAM VILLAGE EXPANSION
AYLESHAM
KENT**

DOVER DISTRICT COUNCIL

and

WARD HOMES LIMITED & HILLREED HOMES LIMITED

and

DAVID WILSON HOMES LIMITED

REF: GMM/HI50300.000001/18566364.1

EIGHTH SUPPLEMENTAL AGREEMENT

DATE

2019

PARTIES:

- (1) **DOVER DISTRICT COUNCIL** of Whitecliff's Business Park, Dover, Kent CT16 3PJ ("Dover");
- (2) **WARD HOMES LIMITED** (company registration number 329622) whose registered office is at Wilson Bowden House, Leicester Road, Ibstock, Leicester LE67 6WB ("Ward") and **HILLREED HOMES LIMITED** (company registration number 01203345) whose registered office is at Persimmon House, Fulford, York, YO19 4FE ("Hillreed"); and
- (3) **DAVID WILSON HOMES LIMITED** (company registration number 00830271) whose registered office is at Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("Ward's Guarantor").
- (4) **PERSIMMON HOMES LIMITED** (Company Registration Number 04108747) whose registered office is at Persimmon House, Fulford, York, YO19 4FE (the "**Hillreed's Guarantor**")

RECITALS

- (i) The parties are finalising certain amendments to the Principal Agreement to reflect a desire to develop the next Phase of development at the Property.
- (ii) Ward has requested that Dover transfer the Second Phase Advance Land (Ward) (as defined below) to Ward to facilitate plot sales pending final agreement on the amendments and variations required to the Principal Agreement.
- (iii) Dover is under no obligation to enter into the transfer of the Second Phase Advance Land (Ward) but recognises that it is in the parties' interests to find a sensible commercial means of progressing matters.
- (iv) Dover has agreed to transfer the Second Phase Advance Land (Ward) on the terms of this Supplemental Agreement.
- (v) The parties to this Supplemental Agreement consent to the transfer of the Second Phase Advance Land (Ward).

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this agreement the following words and expressions have the meaning set opposite them:

Principal Agreement	A development agreement dated 3 April 2007 relating to the development of the Property made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor as varied by the First Supplemental Agreement and as further varied by the Second Supplemental Agreement the Third Supplemental Agreement the Fourth Supplemental Agreement the Fifth Supplemental Agreement the Sixth Supplemental Agreement and the Seventh Supplemental.
First Supplemental Agreement	An agreement dated 11 June 2007 made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor.
Fourth Supplemental Agreement	An agreement dated 29 th October 2013 made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor.
Fifth Supplemental Agreement	An agreement dated 16 th June 2014 made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor.
Property	Land at Aylesham, Kent as defined in clause 1.1 of the Principal Contract as the "Site".
Second Supplemental Agreement	An agreement dated 26 July 2007 made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor.
Second Phase Advance Land (Ward)	The land shown edged red on the plan annexed to this Supplemental Agreement.
Seventh Supplemental Agreement	An agreement dated 28 March 2017 made between (1) Dover (2) the Lead Developer (3) Ward's Guarantor and (4) Persimmon's Guarantor.
Sixth Supplemental Agreement	An agreement dated 21 st December 2016 made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor.
Eighth Supplemental Agreement	This agreement.

Third Supplemental Agreement

An agreement dated 5 November 2012 made between (1) Dover (2) the Lead Developer and (3) Ward's Guarantor.

2.2 Interpretation

2.2.1 This agreement is supplemental to the Principal Agreement.

2.2.2 Clause and paragraph headings in and the front cover of this agreement are for reference purposes only and shall not be taken into account in the construction or interpretation of this agreement.

2.2.3 The parties to this agreement are the same parties as under the Principal Agreement and have agreed to amend the Principal Agreement as set out this agreement.

3 VARIATION OF PRINCIPAL AGREEMENT AND ACKNOWLEDGEMENT

The Principal Agreement shall henceforth take effect and be read and construed as if the provisions set out below are acknowledged and agreed by the parties to the Principal Agreement:

- 3.1 Ward will pay to Dover on the date of this Supplemental Agreement the sum of **£55,522.58** being an interim payment for the early transfer of the Second Phase Advance Land (Ward).
- 3.2 Dover and Ward will enter into the transfer of the Second Phase Advance Land (Ward) in the form annexed to this Supplemental Agreement.
- 3.3 The interim payment of **£55,522.58** will be deducted from the Ward's land payment for the next Phase on completion of the next Supplemental Agreement.
- 3.4 The parties to this Supplemental Agreement acknowledge and agree that the transfer of the Second Phase Advance Land (Ward) does not constitute any waiver by Dover (express or implied) of any breach of the terms of the Principal Agreement which remain in full force and effect notwithstanding the terms of this Supplemental Agreement.
- 3.5 The parties further acknowledge and agree that the transfer of the Second Phase Advance Land (Ward) is without prejudice to any breach of the Principal Agreement by the parties to it and that Dover fully reserves its position and ability to pursue any such breach notwithstanding the terms of this Supplemental Agreement.

4 **AGREEMENTS AND DECLARATIONS**

All the terms of the Principal Agreement are incorporated in this agreement and remain in full force and effect except as varied by clause 3.

5 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this agreement do not intend that any term of this agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

EXECUTED as a deed by the parties to this agreement

The Common Seal of **DOVER DISTRICT COUNCIL** was hereunto affixed in the presence of:

Authorised Chief Officer

Common seal of company

EXECUTED as a DEED by
[]
and []
as attorneys for
WARD HOMES LIMITED
pursuant to a Power of Attorney
dated []

Signature

Attorney

Signature

Attorney

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