

Development Partnership Agreement dated 28 April 2014 made between The Mayor and Burgesses of the London Borough of Southwark (1) and Notting Hill Housing Trust (2) relating to the sale and development of the Aylesbury Estate, Southwark (“DPA”)

Table of redactions

General principles

The redactions have been considered in light of the Environmental Information Regulations (EIR) 2004. The reason for this is that the development envisaged by the Development Partnership Agreement (DPA) is of sufficient scale that it is like to affect the state of the landscape as an element of the environment thereby falling within subparagraph (c) of the definition of “environmental information” in Regulation 2 (1) EIR. There is a general right to environmental information. However, Regulation 12 contains exceptions to that general right and the redactions to the DPA have been considered in light of Regulation 12 (5) (e) – the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest and Regulation 12 (3) – personal data. The exceptions apply only if in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 12 (2) provides a presumption in favour of disclosure.

The redactions to the DPA have been further considered in the light of the decision of the Information Commissioner’s (ICO) of 25 April 2016 (Reference: FS50589692). The ICO’s decision related to information held by the council and submitted to it as supporting documentation as part of a planning application and to be assessed by the council as part of its statutory function as Local Planning Authority, whereas the DPA is a commercial contract governing development and land transactions for which the council is legally authorised but is not performing a statutory function role. The information to which the ICO’s decision related comprised a high level summary of viability information submitted in support of a planning application, whereas the DPA contains specific financial details for which disclosure would have significantly more impact due the level of information contained therein. The DPA governs financial arrangements regarding the redevelopment and transfer of land that has not yet taken place. Disclosing the financial details of a future land transaction would be prejudicial to the respective parties’ positions prior to the event and in any commercial negotiations relating to other land purchases and developments prior to that time.

Ref	Page/clause	Redaction	Reason
1	P1, clause 1.1	Definition of “additional Payments”	No longer redacted
2	P10,	Limited selections of text within the definition of “Developer’s Priority Return”	Those elements of the definition that set out the amount of the developer’s priority return have been redacted to protect the commercial interests of the parties. Disclosure of this confidential and sensitive information would be detrimental to Notting Hill Housing Trust’s

			<p>(NHHT) legitimate economic interests. It would prejudice NHHT's ability to compete in the commercial market for other projects of a similar nature to this one. This would, or would be likely to, cause NHHT significant commercial disadvantage and material financial loss.</p> <p>The council considers, therefore, that this information should be redacted as its disclosure would, or would be likely to prejudice the interests of the NHHT. In the circumstances, the public interest in maintaining the exception outweighs the public interest in disclosing the information.</p>
3	P11	Definition of Development Longstop Date	<p>This date (and other dates) have been redacted to protect the commercial interests of the parties. The dates and contractual time periods within the DPA are withheld to ensure that the council is able to continue to incentivise the timely redevelopment of its land in negotiating and procuring the redevelopment of its land in future; disclosure would prejudice this negotiating position.</p> <p>In addition, while the time frames for completion of the project are known, specific time periods under the DPA relating to individual events have been redacted to avoid these becoming bargaining positions for third parties, prejudicing the council's negotiating position (and NHHT's economic interests) and ability to seek to acquire all third party interests by private treaty.</p> <p>It is considered that the public interest in maintaining the exception outweighs the public interest in disclosing the information.</p>
4	P32-33	Definition of "Rights of Light Report"	<p>Part of the definition has been redacted to avoid prejudicing negotiations that may need to be entered into in order to compensate affected parties in the event they have rights to light and these rights are affected.</p> <p>The council considers, therefore, that this information should be redacted as its disclosure would, or would be likely to prejudice the commercial interests of the council and those of NHHT and the public interest in maintaining the exception outweighs the public interest in disclosing the information.</p>
5	P33	Definition of "Sales incentives"	No longer redacted
6	P35	Definition of "start date"	See point 3 above
7	P80	Schedule 2	See point 3 above
8	P85 et seq	Schedule 4	<p>The financial provisions' schedule has been selectively redacted to remove sensitive and confidential pricing information to protect the commercial interests of the parties. The schedule contains detailed provisions relating to NHHT's financial model which underpins the DPA.</p> <p>The model is bespoke to this transaction and as such has the characteristics of a "trade secret" as identified in the Tribunal Case of London Borough of Southwark and The Information Commissioner and others (EA/2013/0162). This information is considered to be confidential in its entirety and its publication would enable other developers</p>

			to benefit from its contents. Disclosure of this part of the DPA would cause sufficient harm to NHHT's interest that would outweigh any public interest in its disclosure. The council's own economic interests are also a factor, as they are intimately connected with the success of this project as a whole. The economic interests of both parties are a factor in the success of the project which is a consideration in the public interest balance. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.
9	P119 para 1.13	Development costs	No longer redacted
10	P122 para 5.1.4	Management fee	The amount of the management fee has been redacted to protect the commercial interests of the parties. Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial disadvantage or material financial loss. It is considered that the public interest in maintaining the exception outweighs the public interest in disclosing this information.
11	P123 para 7.1.2	Sales and lettings costs	The amount of the maximum cap on sales incentives and PX costs has been redacted as this is commercially sensitive and could affect the ability of NHHT to compete in the market. Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial disadvantage or material financial loss. The council considers, therefore, that this information should redacted as its disclosure would, or would be likely to, prejudice the commercial interests of NHHT. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.
12	P123 para 7.1.5	Agency fees	The amount of the agency fees has been redacted to protect the commercial interests of the parties. Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to cause NHHT significant commercial disadvantage or material financial loss. The council considers, therefore, that this information should redacted as its disclosure would, or would be likely to, prejudice the commercial interests of NHHT. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.
13	P124 para 9.2.1	Other development costs	The rate of the finance charges where the development cash flow is 100% debt funded has been redacted for reasons of commercial confidentiality. Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial

			<p>disadvantage or material financial loss.</p> <p>The council considers, therefore, that this information should be redacted, as its disclosure would, or would be likely to prejudice the commercial interests of NHHT. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.</p>
14	P129-130	Definition of "Residual Land Value"	<p>The method for calculating residual land value has been redacted to protect the commercial interests of the parties.</p> <p>The viability calculations in general link to the financial model which as described above is considered to be confidential as being a "trade secret".</p> <p>Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial disadvantage or material financial loss.</p> <p>The council considers, therefore, that this information should be redacted as its disclosure would, or would be likely to, prejudice the commercial interests of the council and those of NHHT. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.</p>
15	P135 para 4.8.6 and 4.8.7	Time periods relating to viability calculations	See 3 above
16	P149 para 149	Percentage chance of success on appeal in the event of planning refusal – Hybrid planning application	No longer redacted
17	P155 para 5.1.2 and 5.1.3	Percentage chance of success on appeal in the event of planning refusal – plot planning application	No longer redacted
18	P156 para 5.2.2	Percentage chance of success on planning appeal	No longer redacted
19	P156 para 1.1	Definition of onerous condition	No longer redacted
20	P162 para 3.11 and 3.11.4	Amount of CPO indemnity	<p>Disclosure of this information would prejudice the council's ability to negotiate with third parties, undermining its negotiating position in seeking to acquire all interests within the development area through private treaty negotiation and avoiding the need to rely on compulsory purchase powers. Furthermore, disclosure of this information could prejudice the council's case at any Upper Tribunal (Lands Chamber) hearing in the event of unresolved compensation claims. This would, or would be likely to, cause the council significant commercial disadvantage or material financial loss.</p> <p>Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial</p>

			disadvantage or material financial loss. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.
21	P166 para 6.4	Amount of management fee to be released on completion of warranty	This item is considered to be commercially confidential. Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial disadvantage or material financial loss. The council considers, therefore, that this information should be redacted as its disclosure would, or would be likely to, prejudice the commercial interests of NHHT. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.
22	P173 para 1.5.6.4	Amount of payment	The redaction is of the payment to be made for subplot leases and is commercially confidential. Disclosure of this information would prejudice the council's ability to meet its statutory duty to ensure best consideration for its land, setting a precedent which undermines its negotiating position in procuring development partners for future redevelopment of its land. This would, or would be likely to, cause the council significant commercial disadvantage or material financial loss. Disclosure of this information would prejudice NHHT's ability to compete in the commercial market for projects of a similar size and nature. This would, or would be likely to, cause NHHT significant commercial disadvantage or material financial loss. The council considers, therefore, that this information should be redacted as its disclosure would, or would be likely to, prejudice the commercial interests of the council and those of NHHT. The public interest in disclosing this information is outweighed by the public interest in maintaining the exception.
23	P222 part 2	Agreed commercially sensitive information	No longer redacted

Appendices:

24	BP1, P12	Definition of developers priority return	See 2 above
25	BP1, P22	Definition of Premium	See 8 above
26	BP4, P15 para 4.2.3.17	Developer financial assumptions of leaseholder values	See 20 above
27	BP4, P25 para 4.5.3.5	Management fee percentage	See 10 above
28	BP9, P10 9.3.3.12	Minimum wage level commitments	No longer redacted
29	BP9, P20	Annual salary	Publication of annual salaries relating to such a small

		details of staff posts	number of positions would or could be identifiable and would result in disclosure of information relating to the financial affairs of those individuals.
30	BP14, P7-10 section 14.4	Details of developer incentive financial mechanisms	See 8 above