

RECOMMENDATION:

To give delegated authority to the Director of Planning & Place to issue the draft letter attached in Annex B.

1.0 BACKGROUND

- 1.1 Eastern Quarry Ltd (EQL) are strategic master developer and landowner of Eastern Quarry. EQL provide serviced plots for plot developers, one of which is Redrow Homes. Redrow Homes are developing homes on a series of parcels in the southern part of Alkerden Village between the Fastrack route and Castle Hill Lake. EDC Planning Committee has already approved reserved matters for two parcels totalling 318 homes and officers are in pre-application discussions on the third phase; there are four Redrow phases in total in this area.
- 1.2 Eastern Quarry is being developed under the outline planning permission reference EDC/17/0048 (see below) and a s106 agreement was signed by interested parties at that time. The s106 contains a substantial number of obligations for developers to comply with either through financial payment or on-site delivery of infrastructure. The s106 agreement binds landowners but obligations are not passed down to individual homeowners when a plot is sold.
- 1.3 Infrastructure across Eastern Quarry has been largely funded by a loan facility that EQL entered into with Homes England (HE) in 2018. Income received from the sale of serviced parcels to plot developers is paid into an account where HE is a co-signatory alongside EQL. Any funds in this account have to be used for the delivery of infrastructure and s106 obligations.

2.0 SUBMISSION

- 2.1 A letter has been received from EQL concerning certain obligations in the s106, the letter can be found attached to this report in Annex A. The obligations relate to the provision of site wide infrastructure but the letter is seeking consideration of how these obligations will be enforcement against a certain Parcel of land in Alkerden South, this parcel of land is edged red on the map attached to the letter. The Parcel is the next part of Alkerden South to be sold to Redrow Homes.
- 2.2 The obligations referenced in the letter relate to the provision of the following infrastructure:
 - Schedule 5 paragraph 2.1 (practical completion of 2x community pitches) and paragraph 2.6 (construction of dual use sports hall as part of secondary school)
 - Schedule 7 paragraph 3.3 (schools first fit out), paragraph 3.3A (schools final fit out) and paragraph 5.2A (lifelong learning centre delivery)
 - Schedule 8 paragraph 3.1 (provision of comparison goods floorspace)
 - Schedule 9 paragraph 12 (all Fastrack provisions)
- 2.3 The letter is seeking confirmation from EDC that, subject to evidence being provided that the land sale receipt has been paid into the stated bank account, EDC will not be minded to enforce the stated positive obligations above in relation to the particular

Parcel. The land sale is subject to two payments of £6,778,940, one upon completion of the sale, and the second 12 months later. EQL have advised that the initial payment will be used to commence construction of the temporary Secondary School which is required to be open by September 2025 and will provide 4 forms of entry for Year 7 pupils, along with two community pitches.

2.0 RELEVANT PLANNING HISTORY

- 2.1 EDC/17/0048 Application for variation of conditions 3 & 4 attached to planning permission reference no. 12/01451/EQVAR for a mixed use development of up to 6,250 dwellings & up to 231,000 square metres of non-residential floorspace with associated infrastructure and open space; to allow for the substitution of approved parameter plans and documents under condition 3 and revised strategies under condition 4. Approved Subject to Conditions, 28 March 2018.

3.0 PUBLICITY AND CONSULTATION

- 3.1. No publicity or consultation is required to be undertaken when considering this submission.

4.0 PLANNING APPRAISAL

- 4.1 Paragraph 59 of the National Planning Policy Framework (NPPF) advises that enforcement action is discretionary and that local planning authorities should act in a proportionate manner. As such EDC is able to decide this request.
- 4.2 As stated in the submission letter, receipts from land sales have to be invested back into the site to deliver infrastructure or s106 obligations. This aligns with our understanding of the agreement that EQL has entered into with Homes England. This is logical but also provides the local planning authority with comfort that the income from the sale of land cannot be used for other purposes or be invested outside of the site. EDC and KCC as Education Authority are keen to see the delivery of the temporary Secondary School accommodation and two community pitches. Whilst it is acknowledged that the income from the land sale could be used for other infrastructure on site, it is helpful to understand the intended use for the funds. It is also understandable that a plot developer purchasing land wishes to be free from obligations on site wide matters once the purchase has been made.
- 4.3 It is important to consider the scale of the applicable Parcel and the number and nature of obligations referenced. The submission letter states that the Parcel has the capacity to deliver 272 homes. EDC has been in pre-application discussions on some of the land and based on what we have seen to date there is no reason to query the applicant's assumption on site capacity. This should be seen in the content of the remaining Parcels of land which total over 3,200 homes. As such if EDC were to agree with this request there would be substantial remaining development land on which to enforce the planning obligations and so there is limited risk that the infrastructure would not be delivered as a result of this decision. There are also a significant number of developer obligations contained within the S106 and this correspondence, whilst relating to the higher valued items, relates to a small number of clauses. The remainder of the obligations within the s106 agreement would still be enforceable against the Parcel.
- 4.4 S106 agreements have both 'negative' restrictions and 'positive' obligations. This submission letter relates to 'positive' obligations, i.e. that a developer should deliver

something or make a payment. Negative restrictions are also contained in the s106 and these place caps on occupation triggers, for example that a certain number of dwellings cannot be occupied until a s106 obligation has been complied with. As such this request does not seek relief from the agreed occupation triggers, which will remain enforceable, and so existing provisions will ensure the timely provision of infrastructure on site.

- 4.5 In order to support the ongoing delivery of the site and considering the limited risk associated with this decision, it is recommended that the letter in Annex B is issued.

5.0 HUMAN RIGHTS

- 5.1 The submission has been considered in the light of the Human Rights Act 1998 and it is considered that the analysis of the issues in this case, as set out in this report and recommendation, is compatible with the Act.

6.0 PUBLIC SECTOR EQUALITY DUTY

- 6.1 In determining this submission, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to –

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

- 6.2 It is considered the application proposals would comply with objectives of the Duty.

7.0 RECOMMENDATION

- 7.1 It is recommended that Planning Committee give delegated authority to the Director of Planning & Place to issue the draft letter in Annex B.