
Re: 137226 & 137227 Great Jackson Street

From [REDACTED]

Date Thu 21/05/2026 14:24

To Lucy Harrison [REDACTED]

Cc Jennifer Atkinson [REDACTED]

 1 attachment (129 KB)

Clawback review letter - 231025.docx;

Hi Lucy

See attached the Savills advice to the Council from October 2025, in response to the original letter from JLL (on behalf of the applicant) which responded to the Council's standard s106 agreements for BTR schemes containing clauses in relation to clawback and the requirement to provide a 'clawback valuation' in the event the tenure changes from BTR to open market sale at any stage up to 15 years after the completion of the development.

As we understand, there is no existing Council or national planning policy setting out the required minimum term for the clawback period, but the Council has generally adopted 15 years in the majority of its s106 agreements.

As stated in the Savill's letter, *'the purpose of the clawback is to protect the Council against the deferment of affordable housing that would otherwise have been provided had the scheme been delivered for private sale. Where a scheme has demonstrated that it is not viable, even in a private sale scenario, then it would be a legitimate argument that the clawback serves no purpose as the current affordable housing policy allows for a viability test to remove the requirement and the late stage viability test provides a check point for any significant changes in market conditions between the submission of the viability and the completion of the development'*.

Savills also suggest in their letter *'it is not common for BTR schemes to be broken up and sold on the open market as decisions to invest in the sector are usually long term, at least 10 years and in many cases they can be held for longer periods'*.

To add to the above, our understanding is that while the NPPF recognises Build to Rent (BTR) as a distinct asset class and sets the principle for BTR as a stable, long-term tenure and supports the use of planning obligations (via s106) to secure that tenure (or affordable rent in particular), it does not explicitly prescribe a time period for clawback covenants.

The National Planning Practice Guidance (PPG) – Build to Rent Guidance suggests that when securing affordable rent units within a BTR scheme through a s106 agreement, the agreement should address covenant and clawback provisions to ensure the LPA is compensated for the loss of affordable rented units if the covenant is broken. As no affordable rent units are being secured within the s106 agreements for the above schemes, the covenant in this instance is to *'protect the Council against the deferment of affordable housing'* if there is a future change from BTR to private sales, subject to private sale being of greater value than BTR at a future calculation date, in which case compensation would be payable.

To add, the PPG also states '*Planning authorities should recognise that build to rent operators will want sufficient flexibility to respond to changing market conditions and onerous exit clauses may impede development. However, the sale of homes from a build to rent development should not result in the loss of affordable housing without alternative provision being made*'.

Based on the letter from Savills, the above policy basis and the independent planning stage viability tests for both BTR and private sales concluding the schemes are unable to make a contribution towards affordable housing, we are comfortable with the clawback period of 10 years.

Regards

[REDACTED]

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From: Lucy Harrison [REDACTED]
Sent: 18 May 2026 3:27 PM
To: [REDACTED]
Cc: Jennifer Atkinson [REDACTED]
Subject: 137226 & 137227 Great Jackson Street

Hi [REDACTED]

Further to your conversation with Jen last week, please would you confirm that you are ok with the reduction in the clawback period to 10 years in this instance.

Many thanks

Lucy

Lucy Harrison
Senior Planner
Development Management Central Core
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NB My days of work are Monday, Tuesday, Wednesday and Thursday

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