

HAVANT BOROUGH COUNCIL

Meeting

Date

CABINET

Wed 20 March 2019

CIVIC PLAZA CAR PARK REDEVELOPMENT PROJECT

(Business Case)

Head of Regeneration (South)

FOR DECISION

Portfolio: Cabinet Lead for Finance and Regeneration Cllr T Pike

Director: Simon Jenkins

Key Decision: Yes

1.0 Purpose of Report

- To update Cabinet on the progress being made in achieving the resolution made by Cabinet on 24 October 2018 for the redevelopment of the Civic Plaza Car Park.

2.0 Recommendations

Cabinet agrees:

- 2.1 To agree the contents of the high-level business case parameters set out at section 5 of this report
- 2.2 To instruct the Director for Regeneration and Place and the Head of Regeneration(S) in consultation with the Cabinet Lead for Finance and Regeneration and managed through the Regeneration Programme governance structure, to proceed with the procurement of a Development Partner and the drafting/negotiation of a Development Agreement for the redevelopment of the Civic Plaza car park.

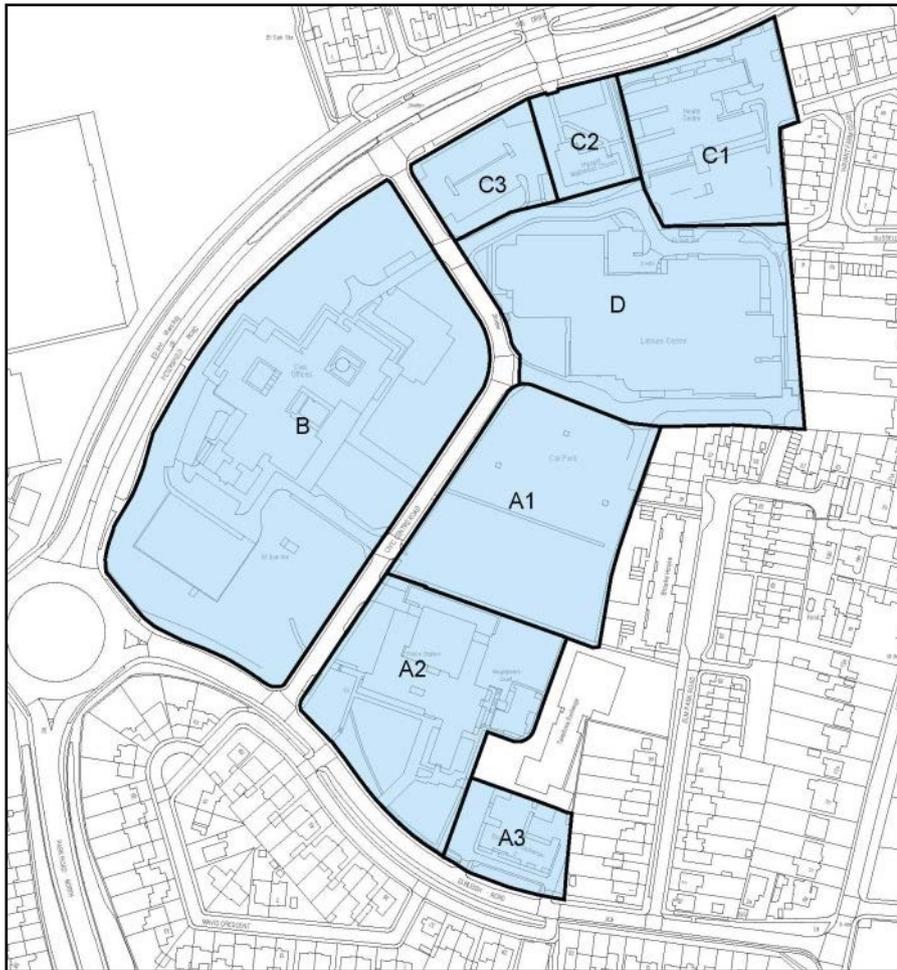
That the draft Development Agreement be brought back to Cabinet for approval prior to completion.

2.0 **Executive Summary**

- 3.1 The Civic Campus Car Park Redevelopment project was approved by Cabinet as the first project in phase 1 of the Council's Regeneration Programme on 24 October 2018. The legal funding agreement securing the grant was signed on 25 January 2019 by the Chief Finance Officer on the advice of the Council's Solicitor.
- 3.2 Specialist legal advice has been commissioned by appointing Womble Bond Dickinson (WBD) as advisor to the Council. They have made significant progress in taking the project forward.
- 3.3 This report sets out the legal and procurement advice provided by WBD relating to the selection of a development partner and the most advantageous structure for a Development Agreement. It describes work undertaken to date and the next steps up to the point that the project will be brought back to Cabinet for approval of the terms of the Development Agreement and the appointment of the Development Partner. This is currently anticipated to be around October 2019 (timetable at Table A).

Background

- 3.1 The background to the project was set out in the report to cabinet of 24 October 2018. The proposal and scope of the funding agreement is to build a minimum of 121 homes on Site A1 (See Plan A below); retain enough car parking to serve the whole site, build at PACE and use Modern Methods of Construction (MMC). The grant of is based on a Benefit Cost Ratio study carried out by Carter Jonas on behalf of Homes England. The grant is to close a. The grant calculation also assumes that there is no affordable housing. The legal agreement securing the grant sets out a challenging timetable for the delivery of the project and was signed on 25 January 2019.
- 3.2 WBD has drafted an options appraisal included at Appendix A.



Plan A

Parcel	Site Area (ha)	Landowner	Facility
A1	0.98	Havant Borough Council	Public surface car park (405 spaces)
A2	0.96	Havant Police station/ The Secretary of State for Communities and Local Government of HM Courts Service Estates	Her Majesty's Court Service and Hampshire Probation Service
A3	0.25	Department of Work and Pensions	Job Centre
B	2.54	Havant Borough Council	The Plaza and staff surface car park
C1	0.64	Havant Health Centre	NHS clinic and associated surface car park
C2	0.22	Methodist Church	Methodist Church
C3	0.28	Havant Borough Council	Public surface car park (90 spaces)
D	1.45	Havant Borough Council	Leisure Centre

- 3.3 WBD have set out a strategy for the delivery of the project including the procurement of a development partner. WBD have worked with HBC officers to produce Official Journal of the European Union (OJEU) compliant procurement documentation and draft a Heads of Terms for a Development Agreement. If there's a no deal Brexit then a replacement UK specific e-notification procurement service will be made available.
- 3.4 In order to comply with the grant milestones in the HE Funding Agreement the Council was required to undertake site investigations on plots A1 and C3 (as shown on Plan B) before the end of the Financial Year 18/19. This work has been procured and work started on 11 March 2019 drilling five 20m boreholes and six 1.8m hand-dug trial holes to establish the condition and developability of the site. The site investigations and the WBD costs are funded from the HE grant.

4.0 High Level Business Case Parameters

- 4.1 The Strategic Objectives for the development of the Civic Plaza Car park site are:
1. Delivery of housing in Havant Town Centre in line with Policy KP1 of the Local Plan
 2. Development that stimulates regeneration in line with the Regeneration Strategy
 3. Making best and most efficient use of, and generating a financial return from Council property assets
 4. A development that can tie in with the wider masterplan for the Civic Campus
- 4.2 The specific Project Objectives relating to this development are:
1. delivery of at least 121 residential apartments
 2. new homes to meet the needs of local people and attract a new demographic to Havant
 3. retention/re-provision of the current level of car parking (495) plus extra (assume minimum of 525 spaces)
 4. inclusion of MMC
 5. Delivery at PACE
 6. A high-quality architectural scheme that raises standards and builds positive perceptions of Havant Town Centre
 7. Improvements to public realm and creation of pedestrian priority space along Civic Centre Road to complete the Plaza
 8. Ensuring compliance with State Aid legislation in relation to the utilisation of the HE grant
 9. Avoiding any issues relating to Right to Buy of the completed development
- 4.3 The projected Benefits/Outcomes of this development are:

1. Improved market and community perceptions of Havant Town Centre
2. Capital receipt to the Council to invest in other regeneration projects

5.0 Procurement Parameters

- 5.1 The Homes England (HE) Grant Funding means that the Council will not need to carry any of the upfront costs of bringing this project forward. This grant funding represents a significant investment and vote of confidence in Havant by central Government.
- 5.2 If the project is not progressed in accordance with the milestones set out in the Funding Agreement, HE have the provision to claw back any funds they have contributed. This includes any funds already spent or committed by the Council.
- 5.3 Procurement Approach – WBD have recommended following the OJEU Competitive Dialogue process. This will allow developers with different schemes to be objectively compared based on robust assessment criteria. WBD will be supporting the Council in taking this forward. The cost of this will be met through the HE grant.
- 5.4 WBD have recommended within their Options Appraisal (Appendix 1) that the Development Agreements seeks to deliver a capital receipt for the long building lease (125 years) of the car park, whilst retaining control of all car parking, this is the simplest and most risk-free option set out by WBD.
- 5.5 Appendix 1 contains full details of all the options considered by WBD, these have been discussed with the Council officers and the conclusion is that Option 1 is the most advantageous to the Council.
- 5.6 The level of car parking provision is important to the Council as we need to ensure that it continues to meet the needs of the Leisure Centre, the Civic Offices and the new residential units. The car parking for the office use is primarily a 9am -5pm weekdays, whilst the residential need is 5pm – 9am and weekends. It will therefore be a stipulation in the Development Agreement that the Council retains control of all the new parking provision within development

6.0 Risk

- 6.1 Value of the site is less than anticipated – a straight capital receipt is the most risk-free option.

- 6.2 HE grant milestones not achieved resulting in the grant funding being lost/clawed back – A Development Agreement that binds the development partner to deliver the housing will be the simplest solution with the greatest chance of meeting the HE requirements

7.0 Conclusion

- 7.1 At this stage, on advice from WBD, it is suggested that the most favourable development option would be:
1. Utilising the OJEU Competitive Dialogue process to select a Development Partner
 2. Negotiating and entering into a Development Agreement that binds the Development Partner to progress the development of the site in line with the Council's aspirations around design quality, numbers and tenure and Homes England's requirements within the agreed timeframe.
 3. The Council grants a long lease (125 years) of the site in exchange for a capital receipt and ground rent (with potential for an overage provision)
 4. That the Council does not opt to reinvest the capital receipt into the development by means of a JV company or any other mechanism
 5. Ensuring that control of the car parking returns to the Council as part of the Development Agreement (by means of a sub-lease or exclusion).
- 7.2 The above criteria will ensure the optimum assured capital receipt with minimum risk to the Council.
- 7.3 This option will also provide ongoing revenue stream for the Council through the ground rent associated with the lease and parking revenue. Additionally, it will provide a capital receipt at an early stage that can be invested in other projects within the Regeneration Programme reducing the need for borrowing which would have a revenue impact.
- 7.4 The proposed route is the most straightforward gives the Council the best chance of delivering the development in line with the HE grant funding milestones.

8.0 Additional Budgetary Implications

- 8.1 There are no additional budgetary implications as any funding not covered by the Homes England Grant will come from existing approved budgets

9.0 Background and relationship to the Corporate Strategy and Directorate Business Plan/s

- 9.1 Fully integrated with the Opportunity Havant Regeneration Strategy for the Borough 2018-2036 (adopted 7 November 2018). The current Corporate Strategy 2017-2022 (approved July 2017) and is fully aligned with the existing and emerging Local Plans.

10.0 Options considered and reasons for the recommendation

- 10.1 Without the Homes England Accelerated Construction fund Grant development of the site is not viable. None delivery of the project would undermine the housing target within the Local Plan.,
- 10.2 This Project also offer the opportunity to change the reputation of Havant in terms of delivering a quality development.
- 10.3 The realisation of a capital receipt would be lost which could undermine the delivery of future projects.
- 10.4 The option of setting up a JV company in order to be able to reinvest the capital receipt from the disposal of the carries risks including the under-performance of the development and the potential for delay that would risk the HE grant. In this initial regeneration project the option is not recommended.

11.0 Resource Implications

- 11.1 **Human Resources Implications:** This project will require a dedicated project manager and a project delivery team. The posts are within the regeneration budget, additionally it is expected that some of this cost could be recouped through the HE grant.
- 11.2 **Other Resource Implication:** It is important that staff within the Council get involved in the regeneration programme. Every member of staff impacts on the regeneration of the borough.
- 11.3 There is likely to be a need for external specialist advice on issues such as valuations, technical construction issues etc. This will be procured in accordance with the Council's procurement rules and the cost will be recouped from the HE Grant.

12.0 Legal Implications

- 12.1 Legal and procurement advice for this project has been provided from Womble, Bond & Dickinson (WBD) who are specialist legal practitioners in this field and have a track record of working with Homes England on similar projects. WBD will be producing the procurement materials and advising on the selection process. They will also be drafting and negotiating the Heads of Terms and the final Development Agreement. The cost of this will be

recouped from the HE grant. This approach will reduce the resource burden on the Council and also place the liability for the advice onto WBD.

13.0 Risks

- 13.1 The increased risks involved in the Council taking a more interventionist position in the regeneration of the borough must be balanced with not being involved which could undermine the future prosperity of the borough. Certainly, development carries risks in terms of high build costs and a reliance on the wider market to achieve expected sales values. With the right expertise and development partner arrangement these risks can be minimised.
- 13.2 A reliance on the market has not delivered any change in the borough, we have seen the same sorts of housing development occur. The Council's Local Plan relies on a change in housing delivery to achieve the 1,500 new homes in the regeneration areas through high density developments rather than the traditional 2-3 bed family homes. Demonstrating that the Council is supporting and leading the regeneration within the Borough is powerful evidence that will be essential in achieving a sound local plan.
- 13.3 Specific project risks include not being able to adequately re-provide the car parking during construction or on completion which could lead to interruption to the operations of the leisure centre and Council Offices.
- 13.4 Other risks include:
- Disruption during construction;
 - failure to secure a development partner;
 - failure to secure a sufficient capital receipt in exchange for the long building lease for the site;
 - failure to meet Homes England's milestones resulting in loss of the grant funding.

14.0 Consultation

- 10.1 This site is identified as a potential housing site in the emerging Local Plan, which is subject to a full public consultation programme. The Local Plan is at a relatively high level and therefore when detailed proposals emerge for the project then additional consultation will be planned. When any planning application is submitted that is subject to statutory public consultation.
- 10.2 Consultations with local councillors will be central to this project as members are the representatives of the communities. The

approved (Cabinet Decision 13 February 2019) governance structure provides for member Scrutiny throughout the whole project lifecycle.

15.0 Communication

- 15.1 Communication is crucial for the delivery of this project. This will need to be integrated into the communications and marketing team's work programme to provide support, using the normal council media methods and increasingly social media to access the full demographic of the borough.
- 15.2 A high-level Timeline for the Civic Plaza Redevelopment Project is shown below. This will be monitored through the Regeneration governance arrangements set out in the Regeneration Strategy.

16.0 Next Steps

- 16.1 Subject to cabinet agreement the OJEU notice will be placed, and the tender will be advertised as soon as possible in order to maintain the challenging HE deadlines. The detailed process and timetable for an OJEU compliant procurement process is set out at Table A.
- 16.2 The procurement will follow the OJEU Competitive Dialogue process including thorough financial due diligence on bidders
- 16.3 Once a preferred bidder has been selected and a Development Agreement has been drafted and negotiated a report will be brought to Cabinet seeking approval for the development terms and successful bidder prior to the agreement being signed.

Appendices:

Appendix 1 – Options Appraisal from Womble Bond Dickinson

Background Papers:

[Havant Corporate Strategy 2017 -2022](#)

[Havant Local Plan](#)

Opportunity Havant Regeneration Strategy 2018 - 2036

Agreed and signed off by:

Monitoring Officer: 14 March 2019

S151 Officer: 18 March 2019

Director: 15 March 2019

Portfolio Holder: 15 March 2019

Contact Officer: Andrew Biltcliffe

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APPENDIX 1 - HAVANT BOROUGH COUNCIL
DEVELOPMENT OF HAVANT CIVIC CENTRE CAR PARK AND ASSOCIATED LAND
OPTIONS APPRAISAL

Note: Under each of the following options it is assumed that the Council will retain ownership of and all income from the car parks constructed/remaining on the Site(s). We've also assumed that the Council will retain the freehold of the entire site.

Note 2: We have ignored for the purpose of the options the Homes England grant funding which may be paid to the developer to carry out infrastructure and/or re-providing car parking.

No.	<u>Option</u>	<u>Advantages</u>	<u>Disadvantages</u>
1.	<p>Land transfer</p> <p>The Council grants a long lease of the Site(s) to the developer with the developer paying a capital receipt for the land with no provisions allowing for the Council to share profit in the development if the market rents or sales achieved by the developer are better than anticipated. Such an arrangement would give the Council no ongoing interest in the Sites(s); other than in its capacity as landlord. It would not receive any income other than (potentially) a ground rent.</p>	<p>Maximises capital receipt for the Council.</p> <p>Council retains long term interest through grant of a long lease.</p> <p>Straightforward procurement process in terms of legal documentation.</p>	<p>No ongoing income for the Council from the scheme. If the project is very successful and rents exceed projections, the Council will not benefit.</p> <p>Although it will still be landlord, the Council's ability to affect the operations of the units (given its interests across the wider sites) will be limited.</p>
2.	<p>Land transfer with overage mechanism</p> <p>The Council puts in place the same contractual structure as in 0 with a capital receipt for the land but with appropriate income sharing or overage provisions to enable the Council to share in any enhanced capital or income receipt. The structure would depend on the extent to which the housing units are to be rented out (which would lend itself to income sharing through a geared rent) or sold (which would lend itself to overage on the sales receipts).</p>	<p>Capital receipt should still be significant (though not as great as in 1.)</p> <p>Council retains long term interest through grant of a long lease.</p> <p>Reasonably straightforward procurement process in terms of legal documentation, though negotiation of overage provisions will add a layer of</p>	<p>Although it will still be landlord, the Council's ability to affect the operations of the units (given its interests across the wider sites) will be limited.</p> <p>Overage mechanisms can be challenging to apply successfully – the nature of the scheme and split between sales and rental properties will be a factor here in determining how easy it will be for the</p>

		<p>complexity.</p> <p>If project performs better than anticipated, Council should benefit from the application of the overage mechanism by securing additional income/capital receipt without investing in the project itself (other than through a reduced capital receipt).</p>	<p>Council to benefit. Overage/geared rents are often a fertile breeding ground for disputes particularly if the project changes in the future in a way that wasn't anticipated.</p>
<p>3.</p>	<p>Contractual or corporate joint venture with Council as stakeholder</p> <p>This splits into two sub-options:</p> <p>3.1 The Council provides in the development agreement for a contractual joint venture. This might be by way of funding some or all of the development in return for a profit share or a fixed return.</p> <p>3.2 The Council provides for the development vehicle to be a corporate joint venture (either a limited company or LLP) between the Council and the developer. The Council could act as an equal investor in the JV entity along with the developer, or could take a minority stake in the entity.</p> <p>In either option, the Council would benefit from any ongoing profits made by the joint venture vehicle (but, equally, would be at risk if the joint venture did not achieve the profits anticipated).</p> <p>In either scenario, the Council would still grant a lease to the developer/JV (as applicable) for a capital receipt. The capital receipt could be used by the Council as its initial funding investment.</p>	<p>Council has long term interest in the project and will have greater influence in the management of the development going forward. This might be particularly beneficial when considered alongside the Council's broader ambitions for the Civic Centre Plaza more widely.</p> <p>As an investor in the project, Council will accrue income from the development if it performs in line with the financial model (financial model will determine when and how much).</p> <p>If project performs better than anticipated, the Council will benefit further financially.</p> <p>As a shareholder/member of the development vehicle, it will be easier for the Council to benefit from strong performance of the development than under the overage mechanism</p>	<p>Initial capital receipt will be less than under other options as it will inevitably be offset by cost of Council investment. In fact Council may have to provide additional capital funding (either debt or equity).</p> <p>More complex procurement process and more extensive negotiation of legal documentation is likely.</p> <p>Council will need to consider whether it invests in an LLP or corporate vehicle and will need to consider vires in that context (not a major issue in practice).</p> <p>If project performs worse than anticipated in the model, Council will suffer financially and may have to make additional investment.</p> <p>Under a contractual JV the Council could have unlimited liability if the development fails.</p> <p>Under a corporate JV may have adverse</p>

		described in 2. A contractual JV would also provide the same success-linked return.	tax consequences.
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