

BRIDGEND COUNTY BOROUGH COUNCIL

JOINT REPORT OF THE S151 OFFICER AND THE CORPORATE DIRECTOR - COMMUNITIES

REPORT TO COUNCIL

20 DECEMBER 2017

PORTHCAWL REGENERATION SCHEME

1. Purpose of Report

The purpose of this report is to:

- a. To obtain approval from Council for a revised capital programme for 2017-18 to 2026-2027
- b. Advise Members that a report was submitted to Cabinet on 19th December 2017 which:
 - (i) updated Cabinet on the Porthcawl Regeneration Scheme;
 - (ii) advised that a proposal has been received from the Evans' families, to sell to the Council their leasehold interest in Phase 1 – land at Salt Lake Car Park;
 - (iii) presented the terms of this proposal, and set out the consequential impact on the remainder of the Porthcawl Regeneration Scheme;
 - (iv) advised members of the 'due diligence' that has been undertaken to date, and the further measures which will be put in place to protect the public interest; recommended that the offer be accepted.

At its meeting on 19th December 2017, Cabinet authorized the Corporate Director - Communities, in consultation with the S151 Officer and the Monitoring Officer to:

(a) Acquire the Evans' families head lease and sub lease interests in Salt Lake Car Park Porthcawl, at the price of £3,330,000 and terms set out in **Appendix 1** of this report;

(b) Vary the existing Owners Agreement dated 11th March 2011 between the Council and the Evans families, on the terms outlined in paragraph 4.11 of the report.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 This project directly meets the Council's Corporate Priorities "Smarter Use of Resources" and "Supporting a Successful Economy".

3. Background

- 3.1 In 2006 the owners of development land in Porthcawl agreed to work jointly, by bringing together the freehold and leasehold interests which overlay substantial land holdings within the town. The aim was to bring forward the land for sale, providing the owners with sale receipts to be split on a pre-agreed basis subject to minimum prices being achieved; and to deliver a clear planning context for disposal of sites for third party development.

- 3.2 In November 2007, the Porthcawl Regeneration Supplementary Planning Guidance (SPG) was adopted by the Council. This provided for new homes within the overall area plus major retail and leisure developments, community provision, new road systems, land set aside for health provision, and other areas of public amenity, including new sea defences along Eastern Promenade and the Sandy Bay frontage.
- 3.3 The overall development area was divided into two phases of which:
- Phase One included Hillsborough car park, The Green and Salt Lake car park
 - Phase Two comprised the Coney Beach Amusement Park and the former Sandy Bay caravan park.
- 3.4 The Owners Agreement (OA) was signed in early 2011. This was a 20 year Agreement between Bridgend County Borough Council (Public Sector Owner) and the Evans Families (Private Sector Owners). The underlying principle of this was to dispose of land and that all net proceeds would be split in a 60:40 proportion in the Council's favour (subject to minimum prices being obtained). The owners are mutually obliged to promote and bring forward development land for sale within the 20 year period.
- 3.5 The Phase One site disposal, as contained within the owners' agreement, was subject to a total minimum price being achieved of £12.5 million. This figure was considered achievable at the time, due to the aggressive expansion strategies of the major supermarket chains, requiring a high land take to accommodate 'superstores', and the accompanying parking requirement. It was agreed that Phase One, incorporating retail, community, leisure and housing uses would be the earlier phase for disposal. The Phase Two site (which is predominantly residential) would follow on at a later date.
- 3.6 Members should note that before development could take place in Phase 1, major infrastructure works would be required, and this remains the case. The works involve roads being upgraded/reconstructed, closed or reconfigured together with new drainage systems and utility systems, along with flood defence works.

4. Current Situation/Proposal

Disposal History

- 4.1 Although the alignment of ownerships and delivery of a strong planning framework have been very positive aspects of this scheme, the developer demand has proved more difficult. This is primarily because of the very volatile and still changing market conditions over the last nine years, during which time both the retail and housing markets have undergone significant changes. Sales of sites for large scale food stores had for a long period of time been the main stimulus to kick start many successful regeneration schemes. The fundamental shift which has taken place within the food sales sector means that demand of this nature, at the scale previously seen, has all but disappeared. The consequence is that the development of the site as envisaged in the SPG is unlikely to attract developer interest, and the minimum price as set out in the OA, is currently unlikely to be achieved.

- 4.2 In 2014, following the failure of the sale of the site to Morrisons (and bids for sale of the site in 2010 to Tesco / Chelverton), various offers were made to acquire the Council's interest. These were turned down as there was no market exposure (in terms of securing best consideration) and the nature of the offer did not meet either the minimum price requirement or the regeneration objectives of the Council.
- 4.3 In 2015 the parties then agreed to review the development proposals in light of the large scale food retailers retreat from the market. A new Master Plan was commissioned to support the existing Supplementary Planning Guidance. However, the owners could not agree the final makeup of the overall development proposals.
- 4.4 In summer 2016 discussions on the Master Plan foundered and the Evans' subsequently proposed that the Council consider purchasing their leasehold interest within phase 1.

Necessary Expenditure

- 4.5 Within the terms of the OA the Council agreed to fund "necessary expenditure" such as planning costs, in order to enable the development scheme to proceed. This was on the basis that it would be reimbursed from the capital receipts generated from land sales. No receipts have yet been generated. Within the terms of the Owners Agreement the Evans' are required to reimburse the Council on the 5th anniversary of the expenditure, commencing on the date of the Owners Agreement. No payment has yet been received as this and related commercial matters have yet to be agreed.

Acquisition of the Evans' Interest:

- 4.6 The Council owns the freehold interest in 17.16 acres within the phase 1 area of the Harbourside Regeneration, which includes Hillsborough Place Car Park, The Green and Salt Lake Car Park. The Evans' own the long leasehold interest in Salt Lake Car Park which has an area of 9.5 acres and expires in 2033.
- 4.7 Over the summer of 2017, the pros and cons of acquiring the Evans' leasehold interest has been considered. It was concluded that provided that this could be done on terms favourable to the Council, there was merit in this option as it would enable regeneration of the site to proceed. The alternative of not proceeding was also an option. However, under the current arrangement, it was considered that in all likelihood it would take a number of years for anything to happen on the Phase 1 site with the consequential impact on the Council's ambition to develop Porthcawl as a premier tourism destination and also a failure to deliver a significant amount of allocated housing approved in the LDP.
- 4.8 A preliminary valuation was undertaken by independent property agents Alder King, to establish the price range within which the authority could consider acquisition.
- 4.9 A provisional offer was made by the Council in Sept 2017 based on this, with a short expiry date, and terms have now been provisionally agreed to acquire the Evans' interest on heads of terms attached at **Appendix 1**.

Proposed Variations to the Owners Agreement

4.10 As part of the terms for the purchase of the Evans' interest, it will be necessary to amend the Owners Agreement. This is a complex document which took a significant period of time to produce, agree and complete. Neither party can unilaterally terminate the agreement. If the authority wishes to purchase the land then it needs to take a pragmatic view on the Owners Agreement and minimize the variations. It is prudent to ensure that any variations to the Owners Agreement are carried out simultaneously to the purchase and that they follow the current terms and structure.

4.11 However, some changes are necessary. The key changes are as follows:

- All references to Phase 1 land removed.
- The Evans' have the right to request the grant of leases for up to 5 kiosks along Eastern Promenade and the proposed Sandy Bay Promenade. It is proposed that none are permitted on Eastern Promenade and up to 5 kiosks are permitted along the proposed Sandy Bay Promenade. This will be subject to planning consent and the kiosks not adversely impacting on the phase 2 development. The quality and use will be controlled by the lease (on the basis of the draft terms included within the existing OA).
- Under the current OA the Evans' have the right to be granted a temporary car park in the Phase 2 Area, once Phase 1 land is to be developed, to enable them to continue the running of their funfair business until it is closed down by the phase 2 scheme. It is proposed that the terms of the lease are varied as follows:
 - The Evans' will be responsible for securing planning consent and undertaking any necessary works. They will be permitted to remove the pay and display machines from Salt Lake car park.
 - The area of the land has been confirmed and will enable a temporary campervan site to continue to operate on a reduced area.
 - A lease will be granted over Salt Lake car park for the period 1st February 2018 – 30th November 2018 at the current rental, to enable the Evans' to set up the new temporary car park on Sandy Bay.

4.12 Due Diligence

The Council has consulted with the Wales Audit Office in relation to the steps it should undertake to ensure that it has followed due process and safeguards the public interest.

Two independent valuers have been appointed to consider and provide their advice on the market value of the land. They have based their advice on the following information:

- The current planning position - the SPG, the LDP, the current planning consent and S106 planning agreement (which is no longer deliverable as it assumes large scale food retail), and the draft Master Plan
- The Jubbs Infrastructure report of 2016 which reviewed all reports, technical information and tendered works costs, to provide advice on the most effective and commercial scheme, along with estimated costings. (The Council hold detailed technical site information, which has contributed to being able to provide accurate development costs.)

Alder King has a wealth of knowledge of this project and provided valuation advice on this scheme in the past. They have advised on:

- Market valuation of the phase 1 land;
- Apportionment due to the Evans' in relation to their leasehold interest;
- Proposal to vary the Owners Agreement and impact on the value of the Council's interest (including the appropriateness of the 60:40 split for phase 2)

Alder King has considered the entirety of the proposal:

- a. The market value of phase 1
- b. The receipt to be paid to the Evans'
- c. The nature of the variations to the Owners Agreement
- d. The impact on the phase 2 land

They are of the opinion that this transaction represents value for money for the Council.

Jones Lang LaSalle has been asked to provide a second, independent valuation of the market value of phase 1. They have valued the whole of the phase 1 site marginally above Alder King, therefore providing additional assurance to the Council.

4.13 Risks / Issues

The following provides a summary of the key risks and issues which the Council has considered, along with any mitigation measures, prior to entering into this agreement.

1. What are the benefits of the Council purchasing the land versus continuing with the current Owners Agreement?
 - Currently there is an impasse between the landowners and no clear way forward. The parties could defer proceeding any further until circumstances change e.g. uplift in property market and achievement of the "minimum price"
 - The disadvantage of deferring is that this prime site may not be brought forward for regeneration for the foreseeable future. It currently is an unattractive site which detracts from the tourism offer of Porthcawl, and opportunities to attract beneficial investment are being missed.
 - Acquisition of the site will enable the Council to have full control in setting its objectives, delivering regeneration of this site and meeting housing targets. However, it will, nonetheless need to deliver a commercially viable scheme which will provide a positive financial return on the acquisition and development costs.
2. What if land values fall in future?
 - Economic prospects for the UK as a whole are uncertain, and national growth projections were revised downwards in the Chancellor's autumn budget statement. Cabinet should be mindful of the risk that land values could decline in future;
3. Could the Council terminate or renegotiate the OA?
 - The OA cannot be terminated unless both parties are willing.
4. What is the value of the land and how much should the Council pay the Evans'?

- The site has been valued by Alder King and by JLL. Both independent valuations are marginally above the value of the proposed transaction.
 - Under the terms of the OA the sale receipts (value of the land) are split 60:40 in favour of the Council. The valuation basis for the apportionments has been certified in a number of valuations dating back to 2006 and commissioned from King Sturge, Alder King and Hewdon Consulting Ltd. The 60:40 split relates to both the entire scheme and Phase 1 in isolation. Alder King have reviewed the 60:40 split and confirmed that it continues to represent the appropriate valuation of the parties' interests.
 - Alder King have certified that in their opinion if Phase 1 is removed from the OA, the respective value of the Council and Evans' interests remains at 60:40 (in favour of the Council) for phase 2.
5. Will the Council recoup all of the Necessary Expenditure owed under the OA?
- Yes - the purchase price is paid to the Evans' and simultaneously the Necessary Expenditure owed is paid back to the Council
 - Over the next 5 years the Council is entitled to a further amount, so is benefitting from early receipt of this sum in full.
6. Will the Council have full control of Phase 1 land?
- Yes - members should be aware however that the Evans' will be permitted to use Salt Lake car park for the summer of 2018, whilst they set up a temporary car park on Sandy Bay, to ensure the continued operation of the funfair until the phase 2 development commences.
7. What does the amendment to the OA mean for Phase 2?
- In relation to Phase 2 the terms of the OA remain intact. The parties will be obliged to progress disposal if the minimum price is achievable and will need to agree the basis on which this will proceed.
 - The Evans' require some assurance that the Council will progress with Phase 2 and a programme will need to be agreed between the parties as a side letter, but will not form part of the OA.
8. What are the next steps once the site is purchased?
- The expectation is that the development of the Phase 1 site will be progressed as expediently as possible;
 - The Council will need to consider internal capacity and resourcing. This no longer exists within the Council's staffing resources. For example, the Communities Directorate does not have the capacity currently to take forward the work on this development, and market conditions are making it very difficult to recruit staff with the appropriate skills and experience on current pay scales. Development work on the scheme will therefore, in all likelihood have to be outsourced, and the costs of this met from future receipts. This is likely to include project management, engineering, property, legal and planning. The repayment of the necessary expenditure of £330,000 will be treated as an earmarked reserve to fund these costs.

- Other factors to consider include the need for funding for infrastructure costs; review of the draft Master Plan; local dialogue / consultation; and production of marketing strategy and plan.

5. Effect upon Policy Framework & Procedure Rules

None

6. Equality Impact Assessment

There are no equalities issues arising from this report

7. Financial Implications

7.1 The current capital programme, approved by Council on 4th October 2017, includes a scheme entitled 'Porthcawl Infrastructure' with a budget of £5.507 million. This scheme was approved in September 2012 to fund the infrastructure works outlined above, the cost of which would be met initially from prudential borrowing until the Council secured the capital receipt arising from the sale of the land. As such, this scheme is not cash-backed and cannot be used for another scheme without the guarantee of a resultant capital receipt to repay any borrowing.

7.2 Given that a decision is still needed on the future use of the land, it is recommended that this scheme be removed from the capital programme and replaced at a future date with a revised proposal and associated costs and funding.

7.3 It is proposed that the repayment of the necessary expenditure of £330,000 will be treated as an earmark reserve to fund the future resourcing costs required to bring the site forward for disposal.

7.4 The cost of the transaction to the Council is £3,330,000 plus VAT (recoverable) of £666,000 and Stamp Duty Land Tax of £178,800, which totals £4,174,800.

8. Recommendation

8.1 Council is recommended to approve the revised Capital Programme as set out in Appendix 2 of this report.

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Background documents:
None

APPENDIX 1

HEADS OF TERM

PURCHASER: Bridgend County Borough Council, Civic Offices, Angel St, Bridgend, CF31 4WB

VENDOR: Williams and Brooke Ltd and Trustees and/or Partners of Coney Leisure Beach as lessees / sub lessees of land within Phase 1; together with the consent of the parties to the Owners Agreement including Barclays Bank and any other mortgagees.

PROPERTY: Leasehold land held under title no. WA172960 held by Williams and Brooke Ltd and under lease dated 22 August 1996 between Williams and Brooke Ltd and Charles Patrick Evans.

PRICE: £3.33 million (Three million and three hundred and thirty thousand pounds) plus VAT if applicable and Stamp Duty Land Tax.

CONDITIONS: Overage - none will be payable

Necessary Expenditure - The vendors are to pay the monies owed for Necessary Expenditure (plus interest), invoiced and outstanding under the Owners Agreement, in the sum of £330,000 (Three hundred and thirty thousand pounds) simultaneous with this sale, together with VAT (as applicable). (This has been rounded down from £332,135.32).

Variation of the existing Owners Agreement:

- the current Owners Agreement will be varied on completion of this sale, to reflect the sale and the parties intention to work jointly on phase 2 only. All current references to phase 1 will be removed.
- The impact of this is that there will be no retained land nor reference to restrictive covenants in relation to phase 1. (The mechanism for this will be set out within the sale contract.) For clarity, any compensation claims relating to the retained land will be considered as null and void.
- Kiosks : the Evans' will be entitled to up to 5 kiosks on the proposed Sandy Bay Promenade (subject to planning and no adverse impact on the phase 2 development), as opposed to 5 kiosks on Sandy Bay and Eastern Promenade.
- Delivery of Phase 2 - The parties will agree a programme which does not negatively impact on Phase 1. However the OA will not be varied and the current relevant clauses will remain in force, in terms of determining how land is brought forward for disposal.

INFRASTRUCTURE WORKS - BCBC to be granted the right to enter the vendors adjoining or neighbouring land to undertake any infrastructure works required to benefit the property acquired.

COSTS: each party to be responsible for their own costs in relation to the transaction and any costs associated with variation of the Owners Agreement

TIMESCALES: Legal completion to take place no later than 30th December 2017.

APPROVALS: The Council will need to obtain the following before completing the sale

- formal approval to the heads of terms provisionally agreed to be sought from Cabinet and Council.
- Two independent valuations certifying the market value of the land

TEMPORARY PARKING:

- the Council will make available an area of land at Sandy Bay car park as temporary car parking for the benefit of the continued operation of the funfair, for a period of 10 years or until the phase 2 development proceeds (whichever is the sooner) and on similar terms as contained within the Owners Agreement. However, the Evans' will be responsible for securing planning consent and undertaking any necessary works.
- As an interim measure and to ensure the continued operation of the funfair whilst Sandy Bay car park is facilitated, the Evans' will be granted a lease to occupy Salt Lake car park from 1st February 2018 - 30th November 2018 and on the basis of the existing rental.

OVERAGE: no future overage will be paid by the Council, which would often be the case in this type of transaction, when a vendor tries to safeguard any potential uplift in value once the development takes place.