

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

15 MARCH 2016

REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES AND THE SECTION 151 OFFICER

RHIW GATEWAY VIBRANT AND VIABLE PLACES

1. Purpose of Report

1.1 The purpose of the report is to:-

- agree to undertake a Deed of Variation to the Development Agreement with Coastal Housing Group Limited (CHGL) the purpose of which will be to provide for a provision to enable the Council to make an advance payment to CHGL. The contract between CHGL and their contractor for the Rhiw Gateway Development has terms and conditions which allow for the provision of an advanced payment bond;
- seek Cabinet approval to authorise a payment of £1 million to CHGL to cover expenditure that CHGL will incur making an advanced payment bond to ensure that the Welsh Government's (WG) Vibrant & Viable Places (VVP) Grant allocation for 2015-16 is fully maximised by the Council;
- suspend Rule 8 (4) (a) of the Council's internal Financial Procedure Rules to allow for the payment to CHGL to take place before 31 March 2016.

2. Connection to Corporate Improvement Objectives / Other Corporate Priorities

2.1 The VVP programme in Bridgend supports the emerging Corporate Priority: Supporting a successful economy by creating successful town centres.

3. Background

3.1 In March 2013, Welsh Government (WG) announced its new Regeneration Framework for Wales, 'Vibrant and Viable Places.' Bridgend CBC was successful awarded £5,978,000 over three financial years. The restriction contained within the award letter was that "each financial year's allocation must be claimed in full by the end of that financial year otherwise any unclaimed part of the Funding will cease to be available".

3.2 The annual allocations are set out in the table below:-

2014-15	2015-16	2016-17
To be expended in full by 31 March 2015	To be expended in full by 31 March 2016	To be expended in full by 31 March 2017
£641,635	£4,267,175	£1,069,190

In common with other VVP schemes in Wales, managing WG's annual budgets without the ability to move funding between years is proving challenging on schemes of this scale and complexity. The project did achieve full spend and thus

maximised the grant in 2014-15. However, there is an issue achieving the full spend necessary for the current financial year.

4. Current Situation

- 4.1 In April 2015, Cabinet approved that the Council entered into a Development Agreement (DA) with CHGL to deliver the Rhiw Gateway Project and any ancillary contracts. The DA recognised that the successful contractor identified to undertake the project works would be appointed by CHGL, in accordance with the Public Contract Regulations 2006 and that there would be no direct contract between the Council and the Contractor although there would be a number of collateral warranties with the Council and relevant contractors including consultants.
- 4.2 CHGL undertook the procurement process following the OJEU procedure and this resulted in tender returns exceeding the secured funding available for the contract which included the WG grant together with resources from CHGL and Bridgend CBC. This required an extensive period of Value Engineering of the scheme to achieve a contractual position to bring the project within the budgets available for both the car park and the residential and commercial units. The consequential effect of the prolonged procurement was a delayed construction start date by two months beginning on site in late September 2015. At this point, it was identified that the target spend for 2015-16 would not be achieved and this was raised with WG in October 2015.
- 4.3 Discussions have taken place with WG officials, to find the most suitable means to ensure there is no underspend on grant at year end and the following options have been explored:
 - i. WG managing this at programme level (i.e. Pan Wales), and identifying projects in other areas that may be able to bring forward expenditure from next year into this year and allow a sway of grant allocations between authorities;
 - ii. The Council identifying other eligible expenditure within the Bridgend VVP programme against which the grant may be drawn down in this financial year and the capital resources that were to be used in 2015-16 retained for use in 2016-17 on the Rhiw development; and
 - iii. CHGL investigating instruments to enable advance payments to be made without incurring financial risk.
- 4.4 At January's VVP Project Board Meeting, WG officials confirmed that option (i) above had not materialised, but a revised approval letter was issued which allowed other eligible expenditure within the Bridgend VVP Programme to be used to draw down grant as per option (ii). The Council has endeavoured to maximise this and CHGL have authorised the early procurement of steel which will be funded from the grant. However, despite this, there is still an anticipated shortfall, which allowing for a contingency in case forecast valuations for February and March are less than anticipated, is circa £1 million. The Project Board therefore agreed that, subject to cabinet approval, CHGL should proceed with option (iii) and make an Advanced Payment Bond in line with their contract. Once CHGL can evidence the defrayment of monies following payment to the contractor, it will raise an invoice to Bridgend CBC for payment and the grant will be drawn down in 2015-16.

- 4.5 If this option is not pursued, the completion of the scheme will be at risk as there would be a circa £1 million shortfall in funding due to the loss of the WG grant. WG have confirmed the terms of the grant and that there is no opportunity to carry forward the funding into 2016-17. The Advanced Payment Bond would be an On Demand bond, so could be drawn down by the Council or CHGL, however, this would be likely to be used to pay for April and May valuations to the contractor. WG have confirmed that the legal costs and professional fees for setting up this arrangement will be eligible expenditure that the grant will cover and therefore will have no impact on the Council.
- 4.6 The delayed start on site will have no adverse effect on meeting the grant drawdown for the 2016-17. The projected spend for 2016-17 is over £6 million of which only just over a £1 million is WG grant with the remainder being external sources of funding mainly from CHGL.
- 4.7 In drafting the Deed of Variation, consideration will also be given as to whether any of the other financial provisions of the Development Agreement should be amended to meet the needs of the Council, given the requirements of the WG Grant, and to ensure that the development can be completed by the contractual deadline for the project, in particular the provisions relating to retentions to be held by the Council under the terms of the Development Agreement. It is therefore proposed that Cabinet give the Corporate Director – Communities delegated power to agree any other provisions of the Deed of Variation in consultation with the Section 151 Officer and the Assistant Chief Executive Legal & Regulatory Services.

5. Effect upon Policy Framework and Procedure Rules

- 5.1 Cabinet are asked to suspend Rule 8.4 (a) of the Financial Procedure Rules as detailed below to allow for the payment to CHGL to be made:-

8.4 Before authorising an account, the authorising officer shall be satisfied that:

- (a) The work, goods or services to which the account relates have been received, carried out, examined and approved.

6. Equality Impact Assessment

- 6.1 A screening exercise has been undertaken on the Welsh Government Regeneration Strategy to ensure it will have a positive impact on the equalities agenda.

7. Financial Implications

- 7.1 The financial implications are reflected within the report. The Wales Audit Office (WAO) has been consulted and advised that they are happy for the payment to be made in 2015-16 and the accounting treatment will reflect that it is a payment in advance within the Statement of Accounts 2015-16.

8. Recommendation

- 8.1 It is recommended that Cabinet :-

- a) Approve that a Deed of Variation on the Development Agreement is undertaken to include the provision for advancing funds to CHGL and including suitable clawback arrangements;
- b) Authorise that a payment is made to CHGL upon evidence that they have defrayed monies into the Bond of £1 million;
- c) Suspend Rule 8.4 (a) of the Council's internal Financial Procedure Rules to allow for the payment to CHGL to take place
- d) Give the Corporate Director – Communities delegated power to agree any other provisions of the Deed of variation in consultation with the Section 151 Officer and the Assistant Chief Executive Legal and Regulatory Services.

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23 February 2016

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Background documents:

Welsh Government Award of Funding – VVP Programme for Bridgend