

Agenda Item No: 18
Report To: CABINET
Date of Meeting: 27th February 2020
Report Title: Elwick Road Development



Report Author & Job Title: Paul Mckenner – Head of Corporate Property and Projects

Portfolio Holders: Cllr Clokie – Regeneration and Corporate Property
Cllr Clarkson – Leader of the Council

Summary: This report sets out a proposal to enter into an agreement with Stanhope PLC (the Developer), to bring their development rights for all remaining phases to an end.

The Development Agreement with the Developer, was in place when the site was purchased from the Homes and Communities Agency (HCA, now Homes England) in 2015. All phases of the development, of which there are currently three, are subject to the rights and obligations of this agreement.

This report seeks authority from Cabinet and Council to negotiate the termination of the rights of Stanhope PLC under the Development Agreement and bring the unfettered site solely within the Council's control.

Key Decision: Key

Significantly Affected Wards: Victoria.

Recommendations: **That Cabinet recommends to Council :-**

- I. to complete the due diligence to the satisfaction of the Chief Executive in conjunction with the Leader and the Portfolio Holder;
- II. officers to negotiate the termination of the development agreement with Stanhope PLC, releasing them from their obligations for the remaining phases up to a maximum cost of £x as per the exempt appendix A
- III. to approve the use of the undeveloped land in the short term as a temporary car park once the termination agreement has been completed;

- IV. to agree the capital cost of extending the current car park boundary of £200,000
- V. authorise the Director of Law and Governance in conjunction with the Head of Corporate Property & Projects to execute and complete all necessary documentation to give effect to the above.

Policy Overview:

The proposed agreement will remove the development rights from the remainder of the phases, and will provide the Council with control of any future development. Any proposed development will be cognisant of the emerging masterplan of the town centre.

Whilst the masterplan is being developed, the site is proposed to be used as a car park. This will also provide an income generation source for the Council in the short term.

Financial Implications:

The payment and the associated costs would be funded from borrowing, the cost of financing will cost £124,000 per annum and will need to be included within the revenue budget as a pressure and will increase the corporate savings target accordingly. Management Team will need to develop proposals to manage the increased budget pressure as part of the financial planning process.

Legal Implications

The Council is the owner of the freehold of the land, which was purchased subject to the Development Agreement with Stanhope. This report asks members to agree to pay to release the land from the Development Agreement. By doing so it will provide the Council with greater control of the longer-term use of the land.

Equalities Impact Assessment

Not required.

Exempt from Publication:

Exempt Appendix A&B Not For Publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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Introduction and Background

1. In 2015, Ashford Borough Council purchased the Elwick Place site from HCA at a cost of £350k and assumed HCA's rights and obligations under the Development Agreement (DA) with Stanhope PLC, which was novated to the Council at the same time.
2. The DA provides for Stanhope to develop the site in Phases. Development cannot commence on any particular Phase until a number of pre-conditions have been satisfied or waived as appropriate.
3. The first phase of development has now been constructed and consists of a Cinema, Hotel, restaurants and car parking.
4. There are two further Phases:
 - a. Phase 2, which has outline planning consent for 200 residential apartments and
 - b. Phase 3, which is intended for a mixed-use scheme but does not have planning permission at this time.
5. In October 2018, Cabinet approved the disposal of phase 2 of the development, which it was anticipated would have seen the Council receiving a receipt in the region of £2.5m after costs. It is important to note the Development Agreement does not permit Stanhope to sell without our permission which was also included within the Cabinet report.
6. A number of bids were received for phase 2, in a range of £4.5m to £5.5m. These bids were not progressed due to a number of reasons and Stanhope proposed to remarket the phase. Subsequently a bid was received at £5.8m which represents a fair value for the phase by both Stanhope and the Council. Before proceeding with the sale Stanhope have asked the Council to consider purchasing its rights under the Development Agreement, in relation to Phase 2 and Phase 3.
7. Stanhope have made their position known to the Council, in the event the Council does not agree to terminate the Development Agreement for Phases 2 and 3 or agree to mutually sell the site. Stanhope will drawdown Phase 2 which they are permitted to do so under the Development Agreement in which the Council would receive a notional payment of £1 plus any overage due.
8. By taking control of Phase 2 and 3, the Council would have unfettered control of an important site within the town centre. This site will play a key role in assisting in the emerging masterplan of the town centre and has the potential for the site to be developed for a variety of uses. In addition, should the Council decide to sell part or whole of the site in the future there is potential to release a significant capital receipt to the benefit of the Council.
9. This report seeks agreement for the Council to enter into an agreement to buy Stanhope out of their existing right to call down and develop the remaining two phases.

Commercial Terms

10. The proposed commercial terms of the agreement are to terminate Stanhope's rights at a cost of £[see exempt appendix A] and to reimburse Stanhope for all abortive costs associated with both remaining phases. The costs are estimated at £ [see exempt appendix A], costs will be subject to detailed scrutiny.
11. By terminating Stanhope's rights under the development agreement, the Council will have complete control over the site and its redevelopment.
12. As with any significant expenditure, there is a need to complete the due diligence promptly but robustly to the satisfaction of both Members and senior officers prior to the completion of the transaction.

Development Agreement

13. The Development Agreement is a contract that can be varied with the agreement of both the parties. It can therefore be terminated by the agreement of both parties. It is proposed that it is terminated in respect of phases 2 and 3.
14. Under the terms of the Development Agreement, Stanhope have until November 2020 to complete the drawdown process for phase 2. Officers have completed a review of the drawdown criteria (see section below on Implications and Risk assessment) and it is believed, that Stanhope easily get into a position to serve the appropriate notices as set out in **Appendix B**
15. Should the Council not agree to terminate the Development Agreement for phases 2 and 3 and in addition Stanhope do not proceed to the drawdown the phase, which we believe is unlikely, the Development Agreement for phases 2 and 3 would expire.
16. Stanhope have suggested that rather than complete this process they would come to an agreement with the Council regarding the termination of the Development Agreement.
17. The Development Agreement anticipates the transfer of the land to Stanhope being completed on practical completion of each phase. In return for a payment of a phase premium in relation to Phase 1, Stanhope and the Council varied the Development Agreement to enable the Council to remain the owner of the land after completion of the phase. What is now proposed is not a transfer of ownership of the land by the Council, but the acquisition of Stanhope's existing rights under the Development Agreement.
18. By acquiring Stanhope's rights under the Development Agreement, the Council would then have an unfettered site that it could sell, develop, or hold on to, as it sees fit.
19. It is intended that the provisions of the Development Agreement relating to phase 1 will remain in place.

Valuation

20. The Council has to be satisfied that the proposed termination payment to Stanhope represents 'best value' for the termination of those rights. The valuation will be based on the value of the Council's interest in the land with Stanhope's rights over the site (e.g. as it was when the Council purchased the site), and the value of the land without Stanhope's rights over the site.
21. It must be remembered, that the development agreement states that the Council would have to transfer the land to Stanhope on practical completion of

a phase if Stanhope exercised their right to develop – the Council could not let Stanhope develop a phase and then refuse to transfer without being in breach of contract. The Council only retained ownership of Phase 1 because Stanhope agreed to vary the Development Agreement Because the Council saw the long term investment opportunity of remaining the owner of the site.

Due Diligence

22. Officers will be carrying out the due diligence process on the proposed agreement with Stanhope to buy out their rights for Phase 2 and 3.
23. There are a number of work streams that need to be satisfied to complete the due diligence process.
 - a. Review of the drawdown conditions are commercial sensitive as such are set in the exempt Appendix B and the likelihood these could be satisfied by November 2020. The Council has received the development appraisal, further work needs to be completed by third parties and this will include a detailed assessment of the appraisal in ensuring that the return required by the Development Agreement can be achieved. The assessment will include the review of the bankability and deliverability of the phase 2 development. An independent surveyor be asked to provide assurances to carry out this particular work stream.
 - b. Review of VAT considerations.
 - c. Valuation advice will be required on the termination payment on the basis described above.

Implications and Risk Assessment

24. There are risks associated with the proposed termination and these will all form part of the due diligence process and will continue to be carefully managed.
25. Review of the drawdown conditions and the likelihood these could be satisfied by November 2020 has been completed and is attached at Appendix B. Subject to professional checks, officers believe that there is a strong probability that Stanhope will be able to meet the draw down requirements.

Other Options Considered and Reasons for Supporting Options Recommended

26. Members could decide not to buy out Stanhope obligations and wait for the market conditions to change for a sale of all or part of the site.
27. Members could decide to wait and see if Stanhope are able to serve the drawdown notices before November 2020. There is a real risk that Stanhope will be able to drawdown the site and do enough works to implement the planning permission potentially land banking the site. This would leave this key town centre site out of the Councils control and potentially undeveloped.
28. If Stanhope do not comply with the terms of the DA by 4 November 2020, ABC could terminate the Development Agreement for phase 2 and phase 3 at no cost.

Short term use

29. Phase 3 of the development and part of Phase 2 are currently used as a temporary car park, and a planning application has been recently submitted to extend this for a further three years. In the event that agreement is reached with Stanhope, it is proposed to extend the temporary car park to the boundary of the hotel. This will provide additional car parking spaces, which would accommodate

the displacement of the users on Vicarage Lane in due course without having the need to build the multi storey car park at this time. A further planning application will be needed in relation to the additional area.

30. The estimated cost of extending the car park beyond its current boundary is estimated to be £200k. The extension of the scheme is predicated on the traffic assessment and will be reviewed as part of the overall design for the scheme.

Consultation

31. The Economic Regeneration and Investment Board have been consulted throughout the evolution of the proposals in the report and supports the recommendation to buy out Stanhope's rights for both remaining phases.

Conclusion

32. The Council has the opportunity to buy out Stanhope's rights under the Development Agreement and in doing so will enable the Council to have unfettered control of an important site within the Town Centre.

Portfolio Holder Comments

33. I thank our officers for the hard work in bringing forward the various stages of Elwick development. The approach to buy out Stanhope's rights will provide the Council with unfettered control of this site in the Town Centre.

Contact and Email

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