

CABINET

Chatsworth Gardens West End Housing Exemplar Project- Deed of Variation to Funding Agreement

Report of Corporate Director (Regeneration)

PURPOSE OF REPORT				
To provide Cabinet with an update report regarding the delivery of the Chatsworth Gardens West End Housing Exemplar Project.				
Key Decision	X	Non-Key Decision		Referral from Cabinet Member
Date Included in Forward Plan	March 2008			
This report is public				

RECOMMENDATIONS OF COUNCILLORS ARCHER AND KERR

That Cabinet:

- (1) Notes (a) the need to provide quality family accommodation on a key gateway site into the West End, and (b) the current position regarding delivery of the Chatsworth Gardens Housing Scheme.
- (2) Requests full independent legal advice as to the status of and enforceability by or against the Council of “the 2005 funding agreement” and all the subsequent development and other related agreements, whether signed or not, and the continuing or future legal and financial implications of all those agreements.
- (3) Requests the Corporate Director (Regeneration) to enter into urgent discussions with English Partnerships as the funding body, to clarify the legal implications of our relationship, and to pursue the potential for options to be placed before Cabinet in place of a complete new-build which would be more economical and more environmentally sustainable than the current scheme, would not be subject to the risk of claw-back, and would deliver quality family accommodation in partnership with one or more developers over a period of time.
- (4) Subject to the advice received in (2) above, and the outcome of discussions in (3) above, requests a report setting out alternative options for the council, in place of a complete new-build.

1.0 Introduction

- 1.1 Following a process of comprehensive analysis and community consultation the Winning Back Morecambe's West End Masterplan was adopted by the Council in February 2005 (minute 149 refers) as a Supplementary Planning Document to the Lancaster District Plan. The Masterplan divides the area into 17 intervention areas categorised for high, medium and low levels of intervention. Chatsworth Gardens falls within an area requiring a high level of intervention and was identified in the Masterplan as being suitable for a housing exemplar scheme. The area was chosen as a result of a significant amount of HMOs being present within the scheme, and the need to provide a wider range of quality family accommodation on a key gateway site into the West End.
- 1.2 Housing studies have been carried out to underpin the West End Masterplan, and these identified that there is an oversupply of poor quality privately rented accommodation in the area, and also a shortage of housing suitable for families. In order that the West End becomes a strong and sustainable community, a broader housing offer is essential.
- 1.3 It was proposed that the housing "Exemplar" project would deliver modern housing choices that appeal to a wider spectrum of the housing market, with the emphasis on first time buyers and family housing.
- 1.4 The principle of the scheme, approved by Cabinet in 2005, was that the properties within the area bounded by Regent Road, Westminster Road, Albert Road and Balmoral Road (including Chatsworth Road) would be acquired by the City Council, and a developer would be selected to deliver the "Exemplar" scheme in line with a Development Brief. This Development Brief was approved following detailed option analysis by English Partnerships and consultation with the West End Partnership and provided for a part demolition and refurbishment of properties within the defined area (Plan A). The funding for the acquisition of the properties would be provided by both English Partnerships and the developer (via its contribution for the land value of a cleared site).
- 1.5 As a consequence of these proposals, Cabinet agreed to enter into a funding agreement with English Partnerships at its meeting of 13th December 2005, to secure funding for the scheme (Plan A). At this meeting Cabinet also agreed to:
- Give delegated authority to the Corporate Director (Regeneration) to negotiate and enter into a Development Agreement on behalf of the Council, jointly with English Partnerships and the Developer selected in accordance with the Funding Agreement.
 - Ring fence the capital receipt of £200,000 from the sale of the former Illuminations Depot on Heysham Road, Morecambe to fund property acquisitions of property within the Housing Exemplar Project.
 - Confirm that it was minded to bring forward and make a Compulsory Purchase Order for the purpose of acquiring property within the boundary of the Housing Exemplar Project.
- 1.6 A developer procurement process was subsequently carried out where developers were invited to submit scheme proposals based on the Development Brief and to make a monetary offer in return for being able to develop their proposal. The

developers' scheme proposals were displayed publicly to enable community views to be collected and subsequently fed into the final selection process.

- 1.7 The winning developer was finally selected by an assessment panel including the Cabinet Member with special responsibilities for Regeneration during April 2007. The Panel undertook a detailed assessment of the bids and took account of the results of the community consultation events in making its selection. The preferred bid/scheme proposal was made by Places for People. However, this bid was fundamentally different from the Development Brief in that it comprised of proposals to carry out a complete demolition of all the properties, and provided for complete new-build (Plan B).
- 1.8 As a consequence of the final Exemplar bid (Plan B) requiring all of the properties within the scheme to be demolished, with a complete new-build proposal, the financial offer and development cost required for further funding to be sought from English Partnerships, to acquire the extra properties. As a result of the quality of the scheme proposals, English Partnerships (EP) sought approval to meet the funding shortfall. The amount of additional expenditure however meant that the scheme was outside of EP's delegated authority and approval was required from DCLG. To secure DCLG approval a detailed economic appraisal was required to demonstrate value for money. This work was completed and DCLG approval was secured in October 2007.

2.0 Proposal Details

- 2.1 In order to draw down the funds from EP a Deed of Variation is now required to the original 2005 Funding Agreement between EP and the City Council. The Deed of Variation will release an additional £ 2,442,000 to the Council in order to complete site assembly, including owner and occupier compensation and disturbance costs. These funds are required to partially meet the Council's costs in securing a Compulsory Purchase Order, maintaining security of the property and supporting the Masterplan Delivery Team for a further 18 months. As part of the financial package to deliver Plan B, the City Council will also require a contribution from the Developer partner of £1,239,000 and will also be required to dispose of assets outside the "Exemplar" Scheme, purchased by English Partnerships' funds, and redistribute these funds (estimated £1,379,500) into the acquisition programme. A summary of the financial costs is set out in Table 1 below.

- 2.2 Table 1 – Financial Costs

Capital Costs	(£)
Remaining property acquisitions including Compensation and Disturbance	4,810,000
Less Developer Bid – Places for People	<u>(1,239,300)</u>
Net Cost of Property Acquisition	3,570,700
Contingency	209,000
Surveyors/ Valuations & Conveyancing Costs, inc Contingency	100,800
Total Capital	3,880,500
Revenue Costs	
CPO Legal Advice	49,200
Property Holding Costs	81,000
Delivery Team	150,600
Total Revenue Costs	280,800

GRAND TOTAL	4,161,300
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2.3 It is proposed that these costs are funded as set out in Table 2.

2.4 Table 2 - Funding

Funding	(£)
EP Deed of Variation	2,442,800
Resale of Existing Property	1,379,500
Illuminations Depot Receipt	200,000
Rental Income	139,000
Total	4,161,300

2.5 In return for this funding, the Agreement will commit the Council to entering into a Development Agreement with Places for People, acquire the remaining properties and to use its CPO powers if necessary.

3.0 Details of Consultation

3.1 The Winning Back Morecambe's West End Masterplan was developed by a multi agency steering group which included community representation through the West End Partnership, along with representation from the City Council, County Council, English Partnerships, the Housing Corporation, Adactus Housing Group, NWDA and the MP for Morecambe and Lunesdale. The initial scope of the Masterplan was set following a day long consultations event where the local community was asked what issues they wanted to see addressed. The options for addressing those issues were then developed through a two day Enquiry by Design event which included expert professional advisors working through potential interventions with representatives of the local community. The final options for intervention were then agreed by the Steering Group before going out to a three day consultation event held at Heysham High in September 2004. A further public meeting was held in December 2004 at the Platform which was attended by approximately 300 people. Following this event the final Masterplan was agreed by the Steering Group in December 2004. The Masterplan was subsequently adopted by Cabinet as a supplementary planning document to the Lancaster District Plan at its meeting in February 2005.

3.2 The Chatsworth Gardens Housing Exemplar Project has specifically been subject to further detailed consultation process. The initial development brief which formed the basis of the developer selection process was developed and agreed in consultation with the West End Partnership. Community views were then sought on the developer bid submissions during a three day consultation event. These views were collated and fed into the selection panel who interviewed each developer. Lancaster City Council was represented by the Cabinet Member with special responsibilities for Regeneration who also represented the West End Partnership. Following this process, the scheme submitted by the Places for People Group was preferred by the results of the community feedback and by the selection panel.

3.3 Following their selection, Places for People undertook a further community consultation day to seek community views on the scheme, the site layout, urban design principles, house layouts and on other ways that community benefits can be achieved throughout the development period. The results of this event have informed the detailed design development.

3.4 An Outline planning application has now been approved with a reserved matters application programmed for submission late autumn. These processes will lead to further statutory consultation which will be reported into the formal planning decision making processes.

4.0 Issues

4.1 As detailed in the report, whilst English Partnerships have received Government approval to the Exemplar Scheme (Plan B), Members of Cabinet have currently not approved the Deed of Variation to the 2005 funding agreement.

4.2 A difficulty has now arisen in that, when drafting this report for Member consideration, clarification was sought from Places for People with regards to their commitment to the development costs via their proposed contribution of £1,239,000 (for the cleared land).

4.3 The Development Agreement was never formally signed by the developer partner, and Places for People have now formally notified the City Council that, due to current market conditions, the residual valuation for the scheme now shows viability issues, and as such, they are unable to sign up, at this stage, to the terms of the Development Agreement.

4.4 Without this commitment from the Developer, the project has a £1,239,000 gap in funding, and, the current proposals to enter into a revised funding agreement, along with the terms of such an agreement, cannot be implemented.

5.0 Options

5.1 Option 1

The City Council has already started a process of acquisition in line with the 2005 funding agreement and the 2005 funds have now been fully drawn down by the City Council. In accordance with the (Plan A) proposals of the original scheme, the City Council could seek to work with English Partnerships to identify how a partial demolition/refurbishment scheme could progress, and identify future funding needs to deliver such a project. At this stage, it is impossible to assess whether such a scheme would be financially viable and whether funds could be made available. Further work will be required to draw up a (Plan A) option and it is recommended that officers are instructed to start early negotiations with funders to seek an “acceptable” funding package for further consideration by Members.

Operated Risk	Financial Risk	Legal Risk	Benefits
<ul style="list-style-type: none"> English Partnerships would not agree to such a proposal as their existing analysis on the refurb/demolition option (Plan A) was originally considered by the funder as not to be a cost effective option. Bearing in mind current market conditions, it is difficult to see how 	<p>In the absence of a full commitment from English Partnerships and on a fully committed developer partner, there would probably be an increase in the financial contribution required from the Council sufficient to rule this option out.</p> <p>There is also the risk</p>	<p>All options have legal implications in terms of our contractual relationship with English Partnerships and at this stage it would be premature to observe what these implications would be prior to further discussions with the funding body.</p>	<ul style="list-style-type: none"> The City Council is seen to be proactive with the community and its funders to finding a positive solution in current economically challenging times.

<p>this analysis would significantly change to provide a positive cost effective outcome.</p> <ul style="list-style-type: none"> • A developer partner cannot be found to deliver such a scheme. This is of particular concern as the Plan A scheme was the proposal that was originally tested with developers. • The community within the West End will consider the consultation exercise for the Exemplar Scheme to have been “ignored”, and they may raise concerns that a “step change” project has not been achieved. • Further design work/appraisal work will take time, and we currently have empty properties within the scheme awaiting demolition. We are also holding all costs of staff and security as a City Council cost, which is outside budget provision. 	<p>that while a certain level of commitment might be obtained from English Partnerships and / or a developer partner could be secured under certain conditions, the increase burden would still be greater than the Council could afford.</p> <p>Further costs that would be incurred will be, in the absence of any additional funding, represent an additional cost to the Council which will increase steadily with time.</p>		
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5.2 Option 2

The City Council seeks to re-negotiate the current “variation to funding agreement” document with English Partnerships to reflect the funding gap, and seek possible options on how this funding gap should be addressed, for further consideration by Members.

Operated Risk	Financial Risk	Legal Risk	Benefits
<ul style="list-style-type: none"> • Insufficient funds will be made available to bridge the gap, causing a delay in delivery for any possible alternative options. 	<p>There is no specific financial risk in that if sufficient funds are not made available the scheme will simply not proceed.</p> <p>There will be some residual costs but this is dealt with in</p>	<p>All options have legal implications in terms of our contractual relationship with English Partnerships and at this stage it would premature to observe what these implications would be prior to further</p>	<ul style="list-style-type: none"> • The City Council is seen to be proactive with the community and its funders to finding a positive solution in current economically challenging times.

	option 4.	discussions with the funding body.	
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5.3 Option 3

That the City Council seek to implement both Option 1 and Option 2, ensuring that a full report is submitted to Members, providing for:

- a) Possible options for partial demolition/refurbishment.
- b) Options for implementing a full scale demolition/re-build for the Exemplar site.

Operated Risk	Financial Risk	Legal Risk	Benefits
<ul style="list-style-type: none"> • See Options 1 and 2. 	See options 1 & 2	All options have legal implications in terms of our contractual relationship with English Partnerships and at this stage it would premature to observe what these implications would be prior to further discussions with the funding body.	<ul style="list-style-type: none"> • The City Council is seen to be proactive with the community and its funders to finding a positive solution in current economically challenging times.

5.4 Option 4

The City Council no longer proceed with the Exemplar scheme, and either offer the properties acquired back to the original owners, or dispose of the assets on the open market, in their current condition.

Operated Risk	Financial Risk	Legal Risk	Benefits
<ul style="list-style-type: none"> • The City Council may be subject to claw-back provision with EP, for the funding already spent on the scheme. Due to current market conditions, it is unclear whether the subsequent sale of these properties on the open market will release sufficient capital to re-pay the funding drawn-down. It is also uncertain whether the City Council could sell these properties taking into account current market conditions. • The delivery of the objectives of the West End 	<p>The maximum amount that is potentially subject to claw-back is £4.5M. Though, if the full amount were required this would be offset by receipts from the sale of the properties currently held.</p> <p>A more likely outcome is that EP would require that the properties be sold and the proceeds be remitted to them, though any such arrangement would be subject to negotiation.</p> <p>There would be some additional revenue cost to the</p>	All options have legal implications in terms of our contractual relationship with English Partnerships and at this stage it would premature to observe what these implications would be prior to further discussions with the funding body.	

<p>Masterplan would be significantly affected, as the original proposals for the project was to reduce the large numbers of rented accommodation and HMOs, and replace with family sized owner occupied/part ownership accommodation.</p> <ul style="list-style-type: none"> The future relationship with our funding partner, English Partnerships, could be damaged due to the Exemplar Scheme not proceeding in some form. 	<p>Council incurred in the maintenance and security of properties pending sale. These are estimated at approximately £32K per annum.</p> <p>The Delivery Team is subject to a separate funding agreement of £277K and there is sufficient funding to finance the team for another 9 – 12 months, if it isn't subject to claw-back. Provision.</p>		
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6.0 Officer Preferred Option

6.1 The preferred option is Option 3 in the report. This will hopefully find an early solution to an issue that has been created by a recession in the markets, and will work with funders, to ensure that we retain good partnership working, which is essential during the current financial crisis.

RELATIONSHIP TO POLICY FRAMEWORK

The Morecambe Action Plan recognised the housing issues within Poulton and West End areas as having negative impact on the perception and economic potential of the town and that radical interventions were necessary to remove HMOs and privately rented flats and create new modern housing options.

The Council's Housing Strategy 2004/08 prioritises neighbourhood level investment in Poulton and West End areas of Morecambe.

The Chatsworth Gardens Project is a key element of the Winning Back Morecambe's West End Masterplan.

As 40% of the districts homelessness derives from failed private sector tenancies in the West End, these proposals will help reduce homelessness as the housing supply imbalances are corrected and the transient nature of the community is stabilised.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The Masterplan has carefully considered issues of sustainability and is drafted on those principles. The scheme will be designed and built in accordance will English Partnerships Quality and Price Standards which ensure high quality urban design, including safer by design and life time homes standards as well as high environmental.

Human rights and diversity issues are given special consideration as owner interests are

acquired and through dedicated resettlement support offered to existing residents.

FINANCIAL IMPLICATIONS

The financial implications have been addressed in the financial risk column of the table shown in 5.0. The cost of obtaining independent legal advice is set out in the legal implications below.

SECTION 151 OFFICER'S COMMENTS

The report sets out the key financial risks facing the Council in connection with this scheme and whilst the officer preferred option should help mitigate these risks as far as is possible; depending on the outcome of negotiations / any future options appraisal there is still the potential for some costs / risks to remain with the Council. These will be re-assessed and fed into the budget and planning process accordingly. The financial issues associated with the project are also highlighted in the Medium Term Financial Strategy update report, elsewhere on the agenda.

LEGAL IMPLICATIONS

All options set out above have legal implications in terms of the Council's contractual relationship with English Partnerships and at this stage it would be premature to observe what these implications would be prior to further discussions with the funding body.

Advice has already been sought from external solicitors on the proposed Deed of Variation. It is difficult to quantify the cost of obtaining the further advice referred to in Recommendation 2, but it is estimated that this should not exceed an additional £1,000, which could be met from the Project Management budget.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Winning Back Morecambe's West End Masterplan
Morecambe Action Plan 2002
Lancaster District Housing Strategy 2004/08

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