

# URGENT BUSINESS DECISION

## Variation to Contractual Terms for Chatsworth Gardens Housing Regeneration Project Urgent Business Decision

### Report of Chief Officer (Regeneration and Planning)

PURPOSE OF REPORT			
To authorise working amendments to the Heads of Terms agreed by Cabinet on 5 <sup>th</sup> November 2013 to facilitate legal requirements associated with external funding streams. The decision is urgent as the amendment must be included in the contract documentation which must be completed before the developer is able to commence on site early in the New Year.			
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input type="checkbox"/>
Referral from Cabinet Member			<b>X</b>
Date of notice of forthcoming key decision	Not Applicable		
This report is public			

#### RECOMMENDATIONS OF CHIEF OFFICER (REGENERATION AND PLANNING)

- (1) That a working amendment to the Heads of Terms for the project be agreed and incorporated in the final contract documentation, so as to provide for the transfer of the freehold ownership of the Phase 1 properties to PlaceFirst to occur once the developer has incurred expenditure of £1.25M in relation to the project, rather than upon the completion of the refurbishment works.
- (2) That consultation is undertaken with a view to waiving call-in, in accordance with Overview and Scrutiny procedure rule 17, to enable the decision to be implemented immediately.

#### 1.0 Introduction

- 1.1 On 5<sup>th</sup> November 2013 Cabinet agreed to appoint a private sector regeneration developer PlaceFirst to undertake the first phase of a major refurbishment scheme of council owned properties in the Chatsworth Gardens area of Morecambe's West End. This would be facilitated by the developer setting up a specific company, known as a Special Purpose Vehicle (SPV).
- 1.2 The scheme would be aided by three public sector funding streams: firstly the transfer of housing properties already owned by the council at nil value; secondly the allocation of Clusters of Empty Homes Funding (CEHF) which the City Council had been awarded to use on this and other schemes in the

West End; and thirdly, in the absence of Homes and Communities Agency (HCA) funding (which was originally anticipated in the Cabinet report, but failed to materialise) or appropriate private sector finance, a loan from the Lancashire Enterprise Partnership (LEP). Full relevant details are given in the 5<sup>th</sup> November Cabinet report.

- 1.3 Given the different strands of public sector finance and especially the introduction of Growing Places funding from the LEP which must be repaid, there has been an obvious need for complex binding legal obligations covering grant, building licence and development agreement matters to ensure that the different public sector organisations retain appropriate control over the development until it is completed and in the hands of PlaceFirst's rental management partner. The earlier Cabinet report also covered arrangements leading up to reinvestment of funds into a second phase of the scheme, but these are not altered by this report.

## **2.0 Proposal Details**

- 2.1 The original resolution (3) specifically refers to the Heads of Terms in an annex to the Cabinet report. This specifically states that on completion of Phase 1 ownership of the refurbished properties will be transferred to the developer. This, along with controls under the building licence and development agreements, would retain a level of City Council control over the capital assets until the full standard of restoration had been completed.
- 2.2 During the final stages of drafting of the various agreements between the Developer, the County Council and the City Council, however, it has become apparent that the funding from the LEP (Growing Places) cannot be regulated by a charge on the development site whilst it is still in the ownership of the City Council. To overcome this problem and ensure that all the required funding streams can be secured before a start on site, the solution is to transfer the ownership of the properties to the developer before the Growing Places funding goes into the project to allow their charge to be placed.
- 2.3 Because the original report anticipated transfer at a different stage in the project and this was reflected in the Cabinet resolution, a revised decision is now required to achieve the main objective of the Cabinet decision.
- 2.4 The fundamental issue is to ensure that the freehold is with the developer when the Growing Places funding is accessed, after the City Council's grant and the developer's equity is fully spent. However, the timing of when the transfer takes place can either be when the Development Agreement goes unconditional or at some pre-determined point prior to when the Growing Places funding flows into the project.

## **3.0 Details of Consultation**

- 3.1 Project and legal advisors at the County Council and the Homes and Communities Agency have been consulted and are happy with the approach. The transfer of the freehold ownership during development will not impact on the level of control effected by the Development Agreement and Grant Funding Agreement and offers the security required by Growing Places. There is little risk associated with transferring ownership earlier, as opposed to risks associated with further delays in the project.

## **4.0 Options and Options Analysis (including risk assessment)**

- 4.1 Realistically there are no alternative options to consider if the project

approved by Cabinet is to be commenced in line with its expectations and as soon as possible. The best option to achieve this is to agree to transfer the ownership of the properties in phase 1 after a total of £1.25M Grant and Equity have been expended thereby providing delivery of a significant part of the project. Advantage: provides confidence to council that physical delivery is being achieved prior to the transfer of title. The redrafting of the existing agreements will be refined and such a measure will secure both elements of public funding being in place to enable a start on site as soon as practicable. Disadvantages: None (in context of the aims of the original November Cabinet report).

## **5.0 Officer Preferred Option (and comments)**

5.1 The Officer preferred option is to transfer the properties at a point when delivery is considered to be proven at the point where a combined total of £1.25M City Council grant and Developer's equity has been expended. This is considered to be the most expedient option to enable the Growing Places fund to invest, whilst still offering the City Council the best available level of protection.

## **6.0 Conclusion**

6.1 This decision is considered to be an appropriate working amendment, which continues to achieve the cabinet's original objectives by adapting appropriately to the circumstances the project has presented.

### **RELATIONSHIP TO POLICY FRAMEWORK**

Chatsworth Gardens is a high priority housing regeneration scheme. It has been long established in the council's priorities and sits strongly within the Economic Growth and Health and Wellbeing priorities.

### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)**

Continuing delays with the project, most of which have been outside the councils control, have an impact on the local community due to the condition of the properties, their empty state and means to attract tipping and anti-social behaviour.

### **LEGAL IMPLICATIONS**

Legal Services have been involved with the negotiations for this variation and will assist in amending the legal agreements to reflect the initial implications of these arrangements and subsequently deal with the transfer of the site, if agreed.

## **FINANCIAL IMPLICATIONS**

Accountancy (Resources) have also been involved with the negotiations and consider the proposal to be the most sensible way forward in order to enable the scheme to proceed, whilst minimising risk for the City Council as well as meeting the County Council (Growing Places) legal charge requirements as senior lender.

As set out in the body of the report, in order to minimise risk for the City Council it is proposed that Phase 1 properties transfer when £1.25M has been expended by the Developer. This figure more or less equates to 50% of the combined City Council grant and Developer's equity being invested at this stage and therefore gives some comfort of the Developer's continued commitment to achieving this first phase. It is re-iterated that the Developer will not be able to start on site until it has met all of the main works conditions as per the main overarching Development Agreement, one of which is to provide evidence of full funding being in place prior to commencement of the project, i.e. the Developer's equity and the Growing Places loan in addition to the City Council's grant.

Finally, Members should note that in the 5th November Cabinet report, Appendix 3 made reference to the need for the Developer to refinance at some point after practical completion of Phase 1 in order of priority to meet:

- The HCA Build to Rent (BTR) loan repayment obligations (now replaced by Growing Places loan)
- Return to the Council a proportion of the CEHF grant applied to Phase 1
- Return of the Developer's investment with required internal rate of return profit

As negotiations with the Developer have evolved, the order of priority has shifted slightly within the draft Grant Agreement in that the return to the Council now comes after return to the Developer. This is not considered a significant change, however, and does not undermine the original intention of recycling Phase 1 capital returns into Phase 2, subject to the success of Phase 1, i.e. using a second tranche of loan funding, PlaceFirst's equity investment and recycled proportion of Council grant. To provide further comfort, the Developer has agreed that upon any disposal in relation to Phase 1 that any remaining proceeds shall be distributed between the Developer and the City Council at 25% and 75% respectively, i.e. calculated at the percentage that the anticipated Developer's equity bears to the total sum provided by the Developer and the Council grant.

## **OTHER RESOURCE IMPLICATIONS**

### **Human Resources:**

None

### **Information Services:**

None

### **Property:**

The revision to the trigger for transferring the properties does not alter when the council's liability for their maintenance would transfer to the developer, i.e. at the point when the main overarching Development Agreement becomes unconditional.

### **Open Spaces:**

None

**SECTION 151 OFFICER'S COMMENTS**

The s151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

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

**BACKGROUND PAPERS**

Cabinet report 5<sup>th</sup> November 2013

**Contact Officer:** Andrew Dobson

**Telephone:** 01524 582303

**E-mail:** adobson@lancaster.gov.uk