

# CABINET

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

17<sup>th</sup> February 2009

### 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	<input checked="" type="checkbox"/>	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	March 2008		
This report is public, save for Appendix A which contains exempt information by virtue of paragraphs 5 of Schedule 12A of the Local Government Act 1972, and Appendices B and C which contain confidential information as defined in Section 100A(3)(a) of the Local Government Act 1972.			

**RECOMMENDATIONS OF COUNCILLORS ARCHER AND KERR to follow.**

#### 1.0 Background

At its meeting on 17 November 2008, Cabinet received a report on the delivery of the Chatsworth Gardens "Exemplar" Scheme, and were advised that whilst the original concept for the scheme, in 2005, was to provide a partial demolition/refurbishment of properties, following a full tendering exercise, it was provisionally agreed by all parties that a refurbishment/part demolition was not a viable scheme, and that a complete "new build" scheme was to be proposed.

Resolutions from Cabinet on 13 December 2005 are:

- (1) That Cabinet authorises the Corporate Director (Regeneration) to enter into a Funding Agreement on behalf of the Council with English Partnerships as set out in Appendix B

of this report, subject to concluding legal negotiations and the financial implications being agreed by the Head of Financial Services.

- (2) That Cabinet gives 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 set out in Appendix B of this report for the purpose of undertaking the Housing Exemplar Project set out in that Funding Agreement.
- (3) That Cabinet approves the payment of £200,000 towards the Housing Exemplar Project to be paid within 18 months of the Funding Agreement set out in Appendix B of this report.
- (4) That Cabinet confirms that it is minded to bring forward and make a Compulsory Purchase Order for the purpose of acquiring property within the boundary of the Housing Exemplar Project located on the plan attached as Appendix A of this report.
- (5) That Cabinet authorises the Head of Financial Services to update the General Fund Capital Programme and General Fund revenue budget to reflect the expenditure and financing of the project, subject to there being no additional net call on the Council's resources.

Cabinet have never resolved to approve a complete "new build" scheme. However, the tender process to appoint Places for People regarding the "new build" did have Cabinet representation through the Portfolio Holder for Regeneration, on the team.

The report of 17 November 2008 identified that Cabinet were required to accept a revised funding agreement with English Partnerships, now Homes and Communities Agency (HCA), in order to fund the extra cost of acquisition for the new build scheme. Cabinet were also advised that in order for sufficient funds to be made available to progress the scheme, the Development Agreement needed to be signed with Places for People. However, notification had been received that the developer was not in a position to sign up to this agreement due to the current economic recession.

Cabinet resolved the following :

That Cabinet:

- 1) Notes (a) the need to provide quality family accommodation in 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.

## 2.0 Issues

As a consequence of the Cabinet resolution (2), legal opinion has been sought from external solicitors regarding the 2005 Funding Agreement, and is shown in Appendix A of this report.

As a consequence of the Cabinet resolution (3), discussions have taken place with HCA, and it is apparent that in 2006, the City Council went through a rigorous exercise to assess the part demolition/part refurbishment option. As a consequence of this exercise, HCA assessed the cost liability of new-build to part refurbishment/part demolition, and advised the City Council, through the working party, that they would wish to pursue funding for the New-Build scheme only, as costs for part demolition/part refurbishment was in excess of intervention rates.

Following oral discussions with HCA, and looking at the 2005 Funding Agreement, it is clear that if the City Council does not wish to pursue the new-Build proposals being put forward, the Council would need to go back to HCA with a comprehensive, costed proposal for part demolition/part refurbishment.

The cost of delivering such a scheme would be significant to Lancaster City Council. A full appraisal and tendering process would need to be carried out, along with selection of a development partner who would be capable of delivering a scheme, and the funding gap would need to be met. The City Council has no funds identified to deliver this scheme. This would effectively be a re-run of how this project has progressed and how it has come to the resolution where only the New-Build option is considered viable by HCA, and, because of this, officers' advice is that this is not an option to pursue.

The City Council could well be criticised for duplicating costs on delivering regeneration schemes.

## 3.0 Proposal

Taking all the information to hand, and following a further officer meeting with HCA, a request has been received advising that HCA are prepared to consider possible funding options for the "new build" scheme, on the proviso that Member support is sought in principle to the scheme (see email Appendix C). This, therefore, provides for the following options:-

### 3.1 Option 1

The projected financial cost of this option will remain largely as reported to Cabinet on the 11<sup>th</sup> November, with the main differences being:

- The transfer of £62,200 contingency from the Surveyors / Valuations & Contingency, into Property Holding costs. This does not alter the total cost of the project, and
- The funding allocation between Capital and Revenue as shown in Table 2. The shortfall in the Capital funding would be met from a contribution from the revenue allocation, with the overall project cost being contained within the total available funding.

A summary of the indicative costs and funding are set out in the tables below.

### **Table 1 – Financial Costs**

<b>Capital Costs</b>	(£)
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.	33,600
<b>Total Capital</b>	<b>3,813,300</b>
<b>Revenue Costs</b>	
CPO Legal Advice	49,200
Property Holding Costs	148,200
Delivery Team	150,600
<b>Total Revenue Costs</b>	<b>348,000</b>
<b>GRAND TOTAL</b>	<b>4,161,300</b>

**Table 2 - Funding**

<b>Capital Funding</b>	(£)
EP Deed of Variation	2,200,200
Resale of Existing Property	1,379,500
Illuminations Depot Receipt	200,000
<b>Total Capital</b>	<b>3,779,700</b>
<b>Revenue Funding</b>	
EP Deed of Variation	242,600
Rental Income	139,000
<b>Total Revenue Funding</b>	<b>381,600</b>
<b>Total</b>	<b>4,161,300</b>

<b>Operational Risk</b>	<b>Financial Risk</b>	<b>Legal Risk</b>	<b>Benefits</b>
The City Council must ensure the effective property management of all the properties currently acquired as part of the Exemplar scheme, and as soon as contracts are in place, must ensure a robust management plan is in place to manage the said properties up until all the properties have been acquired (either by agreement or compulsory purchase order).	Subject to all appropriate funding being in place to acquire the remaining properties, a robust financial plan will need to be in place to manage the “property management plan” for the scheme, and the revised funding agreement with HCA will reflect such costs.  As an interim provision, funds will need to be made available to cover the	The City Council must ensure that it has robust legal arrangements in place to ensure the Developer is contractually committed to the scheme, and at the same time, any legal agreements are made with HCA to accept further funding for the scheme.	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>holding costs of the properties, as current funding for this expires on 31<sup>st</sup> March 2009. These costs are contained within Table 1 and will be covered, should option 1 be approved. It is estimated that up to £66,000 of the £148,200 would need to be allocated, within the first quarter of 2009/10.</p>		
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### 3.1 Option 2

The City Council does not approve in principle the revised proposal to deliver a “new build” Exemplar scheme in line with the Development process that has been carried out.

<b>Operational Risk</b>	<b>Financial Risk</b>	<b>Legal Risk</b>	<b>Benefits</b>
<p>To proceed with this option would leave the City Council with ownership of residential properties to which no funding would immediately be available to progress an alternative scheme. The failure to deliver this would also significantly affect the delivery of a significant element of the West End Masterplan. A property management plan will also need to be put in place to assure the on-going safety of the public and buildings.</p>	<p>Should the City Council agree to not progress the “new build” Exemplar scheme, cost will be incurred in managing the currently vacant buildings acquired for the Exemplar scheme for example the holding costs alone are currently estimated at £66K per annum, and such costs could not be re-charged to HCA as there is currently no contractual funding agreement in place after 31 March 2009 to accommodate these costs. The City Council would then need to incur costs of re-appraising what scheme could progress, which are currently not provided for within the City Council’s Capital and Revenue</p>	<p>The legal advice sought on this matter is that, technically, because a Development Agreement has not been signed, there is currently a breach of the 2005 Funding Agreement with HCA. Should the Council not wish to pursue the HCA option of progressing with the “new build” Exemplar project, then further work will be required to seek an appropriate legal framework to exit the project (see legal advise, Appendix A).</p> <p>It should also be noted that further work will also need to be carried out to assess the implications of the “Critchell Down” rules in this matter.</p>	<p>Given current economic climate, and the City Council’s current financial position, it is difficult to advise Members of what benefits there would be in not progressing the “new build” Exemplar scheme.</p>

	programmes, particularly with the threat of "Critchell Down" (see legal risk).		
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With regards both these options, it should be noted that the financial data used is based on 2008 figures. Subject to Cabinet decision, these will be revisited and a further report will be submitted to Cabinet regarding the proposed funding agreement with HCA.

#### **4.0 Officer Preferred Option**

4.1 The preferred option is Option 1 in the report.

### **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**

#### **Option 1:**

The scheme as structured above is fully funded by a contribution of external grant and directly generated capital receipts, leaving a nil additional demand on the Council's internal resources. The key costs of the scheme have been based on best information and professional advice, which was taken almost 12 months ago, therefore these will need to be revisited and further appraisals will be required to ensure that this project can be delivered within the funding quoted in table 2 of this report.

As it is the intention here that agreement be given in principle for new build, subsequent Cabinet approval would be sought for all funding agreements, which would be supported by a robust financial plan and a property management plan.

The mismatch between the capital and revenue funding allocation in table 2, has arisen from the capitalisation of some costs, previously included as revenue. This is not a major issue as, should option 1 be adopted;

- 1) It will be picked up as part of the extensive appraisals which will be required and will also be contained within the financial plan, and in any case,
- 2) The shortfall in capital can be easily remedied by a contribution from a corresponding surplus in revenue.

It was previously reported to Cabinet that this project could also give rise potentially to a need to increase the Council's underlying borrowing requirement, either in the short or longer term, due to the potential difficulties in resale of the properties in current market conditions. Further negotiations will need to take place with HCA to see if this issue can be addressed.

Should Members ultimately approve the project, the scheme costs and funding would be incorporated into the approved Capital Programme, profiled over three years. Progress and reporting would then be monitored through the Council's existing arrangements, with any further recommended actions being identified and reported accordingly.

At this stage (in seeking an in-principle decision only) it is not possible to fully assess extent of the financial risk involved. To do so would not be easy under stable market conditions let alone with the current uncertainties in both the property and financial markets. Although this is a factor which must be carefully considered, this must be done in the full context of the scheme and its projected benefits. It must be noted that no project of this scope and scale can be expected to be risk free, even with the implementation of the most robust procedures.

As with previous phases of this project, it is anticipated that the Council will defray capital expenditure upfront and claim back funding quarterly in arrears, therefore the impact on the City Council's Capital Programme and cashflow position needs to be taken into account. This will need to be managed through advanced warning of any significant expenditure commitments.

It is re-emphasised that should Option 1 be adopted, the Council will not enter in to any contractual or financial arrangement without bringing back a more detailed report for Members to consider.

### **Option 2:**

The key financial risks and issues for option 2 are as outlined in table 3.1 of this report. However, it is highlighted that should option 2 be adopted in principle, again the financial implications would need appraising fully, including the following:

A thorough options analysis would need to be undertaken, together with preparation of an exit strategy for the scheme. The Council has no budget provision for this.

If a situation arose that would lead to claw back of all or part of the external grant, this may need to be funded from unsupported borrowing. This could be mitigated by property / land sale, although outside of a formal valuation there is currently no indication of what such a sale could achieve. However, it is possible that a straight disposal of a site on to the market

could be cost neutral to the Council, as all receipts may be returned to the funder under the 2005 funding agreement. This is by no means certain, however.

Until the Council disposes of the property / land, it will be responsible for the site management and security and all the costs associated with this. This is a continuing financial liability to the Council, for which it would have no budget provision.

Should option 2 be adopted, any estimated additional costs falling on the Council (e.g. interim property holding costs) would need to be fed into the 2009/10 budget process.

#### **SECTION 151 OFFICER'S COMMENTS**

Given the wider financial risks facing the Council at this time, Option 1 (the officer preferred option) represents a way forward that would help manage the Council's financial risk, whilst still delivering a regeneration scheme. Under Option 2, potentially the Council would be faced with far greater financial risk and there would be the immediate need to make some revenue budget provision in 2009/10 for property holding costs, etc. This would need to be reflected in Cabinet's budget proposals.

#### **LEGAL IMPLICATIONS**

Please note independent advice and legal risk shown in Option 1.

#### **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

**Contact Officer:** Heather McManus  
**Telephone:** 01524 582301  
**E-mail:** hmcmanus@lancaster.gov.uk  
**Ref:** CD(Reg)/DP/CAR/05