

RECOMMENDED that:

- a) the Development Agreement between the Council, Hertfordshire County Council, Sovereign Peveril Brookfield Limited and Bowmer and Kirkland for the proposed new town centre to be known as Brookfield Riverside is entered into;
- b) the Compulsory Purchase Order Indemnity Agreement between the same parties is also entered into; and
- c) the heads of terms for the collaboration agreement between the Council and Hertfordshire County Council be agreed which includes the agreement to enter into a Joint Venture with HCC to enable the grant of the 999 year lease to Sovereign Peveril Brookfield Ltd.

Purpose

To agree to enter into a Development Agreement in respect of Brookfield Riverside. The terms of this agreement will be between the Council, HCC, the developers of the site and its funders. To also agree to enter into a Collaboration Agreement with Hertfordshire County Council (HCC). The collaboration agreement will set out the terms and conditions under which both parties will act to jointly deliver the Brookfield Riverside project.

For members information Appendices A and B relates to this item.

Background

The Brookfield project comprises two separate projects; Brookfield Riverside, the retail and new town centre development, and the residential development to be known as Brookfield Garden Village. The appointment of Sovereign Centros as the preferred development partner and the future arrangements for entering into formal contracts for the projects' management and governance arrangements were considered by Cabinet at its meeting in April 2019. At that meeting it was resolved that;

(resolution c) the Chief Executive, in consultation with the Leader of the Council and the Cabinet Member for Finance, be authorised to agree detailed Heads of Terms to form the basis of an agreement between the Councils (Bromley and Hertfordshire) and the preferred partner;

(resolution d) a partnership agreement between the Council and Hertfordshire County Council be entered into based on the outline proposals set out in the report and that the Chief Executive be delegated to agree the final version in consultation with the Leader of the Council and the Cabinet Member for Finance; and

(resolution e) authority be granted to the Chief Executive, in consultation with the Leader of the Council and the Cabinet Member for Finance to pursue the compulsory purchase of any land within the area outlined on the attached plan, as a last resort, should it be necessary in order to secure the implementation of the scheme.

Following the appointment of Sovereign Centros as the preferred development partner, the councils have been negotiating the Development Agreement (DA), the Compulsory Purchase Order (CPO) Indemnity Agreement and subsequent 999 year lease for Riverside, based on the approved Heads of Terms as ratified by both councils (resolution c). The legal agreements which were referred to in resolution d) have now been drawn up and are awaiting approval.

The Legal Agreements

Three legal agreements have been prepared, they are:

- the collaboration agreement which set out the terms of the agreement between the Council and HCC
- the development agreement which will set out the terms of the agreement between the councils and the developer (Soverign Centros) and its funders
- the compulsory purchase indemnity agreement which sets out the road map for the Developer to request either of the Councils to commence the CPO procedure and for the Developer to meet all the costs involved in that process, including compensation.

Appendix A summarises the terms of each of these agreements. This summary has have been prepared by the councils' legal advisors, Womble Bond Dickinson (WBD).

Also attached at Appendix B is a covering report which has been prepared by Cushman and Wakefield. This report provides an update to the information provided to support the report to Cabinet in April 2019. It includes details of the property, including commentary on the current market and confirmation of compliance with S123 of the Local Government Act 1972 which requires local authorities to achieve best consideration when disposing of land.

The financial terms which were set out in the April 2019 Cabinet report have not changed during the negotiations and the report provided by Cushman and Wakefield confirms this.

The Development Agreement

The DA is conditional on a number of items, these are set out below:

The following conditions need to be satisfied within 12 months of the exchange of the DA:

- an exchanged agreement between the councils in respect of their joint holding entity
- an agreed highway strategy between all parties
- identifying and agreeing the infrastructure funding
- an agreement between the parties for the extent of the land required from the golf course
- the Procurement Condition and Masterplan Condition being satisfied and
- the councils agreeing and obtaining all necessary internal approvals to a business case for and costs associated with (i) the relocations (ii) the infrastructure Costs and (iii) the demolition costs of the existing property.

Following on from these preliminary conditions there are then a further set of conditions to be satisfied all of which are laid out in the attached legal report. The main conditions are:

- the councils gaining vacant possession of their land holdings.
- the project achieving viability
- planning permission being granted
- funding being secured
- viability tests being met

Once all conditions are achieved the councils, having formed a Joint Venture, as provided for in the Collaboration Agreement, for this specific purpose, will grant a 999 year lease to Sovereign Peveril Brookfield Ltd, or their successors and receive a minimum ground rental (MGR) of £700,000 per annum from the signing of the lease.

The MGR is fixed and is not subject to review. However at Practical Completion + one year (PC +1) of the scheme the MGR will be compared to the rental value of a fully let scheme and a percentage derived which will then continue throughout the life of the scheme ensuring the councils benefit in any rental growth as the scheme progresses. The MGR is to be split 75/25 between BoB/HCC.

By way of an example if the full market rental value of the scheme at PC+1 is £14,000,000, the MGR of £700,000 is taken as a percentage of this, i.e. 5%. In future years, as the rental increases the ground rental will be 5%, so if the market rental is £20,000,000 then the ground rent will be 5% of this or £1,000,000.

Also at PC+1 the final scheme accounts will be ratified. The Developer is entitled to a priority 20% return on costs as their profit for the risk in undertaking the development. If following the application of this percentage the accounts show a super profit element over and above this return this is classified as overage and if any overage becomes due this will be paid at this point with the councils share being 40% to be shared equally between both Councils.

As part of the DA the Council is also entitled to floor space to enable the creation of a civic hub which could include the establishment of new Council offices. The Council will have a maximum period of three months from the grant of a satisfactory planning permission to determine whether or not it wants this space. The Council would then be required to pay for the construction of the space and would be granted a similar long term lease (i.e. expiring 1 day before the 999 year lease granted to the Developer) at a peppercorn rental. Discussions are being held internally and with HCC, the NHS and other public sector bodies over requirements for this space. A £50,000 grant has been secured through the One Public Estate programme to progress the designs for this hub and to explore the feasibility.

Key Date for Council Decision

For both councils, the key date is when the decision over whether or not to move forward with the relocation of the operational uses within the Brookfield Riverside site (household waste recycling centre, Broxbourne's depot, the Halfhide lane travellers site and allotments) and the demolition of the New River Trading Estate, is made in order to provide vacant possession of the site at the unconditional date. This decision will be informed by a business case to be produced at that time. The business case will also consider the funding for the required infrastructure.

This date will be within a maximum of 12 months after the exchange of the DA.

BoB/HCC Joint Venture and Collaboration Agreement.

In order to progress with both Riverside and the Garden Village developments it is necessary (for legal purposes) for the councils to form a Joint Venture (JV), single legal entity for each project. The existing landholdings would be transferred to this entity and it would grant the 999 year lease to the developer in line with the DA.

The collaboration agreement (CA) sets out the basis of the JV including the governance arrangements. The land holdings of each council is different in terms of land area. Therefore within the Riverside project there will be a split of costs and

revenues relating to this project of 75:25 (Broxbourne:HCC). The CA also gives the Council the casting vote in any matters related to Riverside.

For the Garden Village the land holding is 50:50 and so all costs and revenues will be split 50:50 and all decisions will be by agreement with a dispute resolution procedure outlined in the agreement.

HCC is insistent that land within Brookfield should be made available or reserved for a secondary school. The CA will therefore address the secondary school issue and place a requirement on the Council to start and complete the process of producing a Development Plan Document (DPD) to determine the need, and best location within the Borough, for the secondary school.

As stated the setting up of this agreement is one of the preliminary conditions within the DA and needs to be satisfied within 12 months of the exchange of the DA.

Financial, Legal and Risk Management Implications

The report from Cushman and Wakefield shows that the DA, and proposed lease, represents best consideration for the Council and satisfies the Council's responsibilities under S123 of the Local Government Act 1972 to achieve best consideration. This report also sets out the cash flows required to enable the realisation of profit from the Garden Village development and the creation of Brookfield Riverside. From this it can be seen that if external funding is not achievable then the councils would have to finance approximately £15 million towards the provision of infrastructure and relocations. The ability therefore for the councils to withdraw from the agreement is key.

The conditional nature of the DA means that the councils do have the opportunity to disengage from the agreement if certain conditions over viability and costs, especially in respect of the relocations, are not met. However, there is still a need for the Council to progress with these matters, and incur costs prior to this decision, for which a reserve has been established. Currently the balance in the Council's earmarked reserve is £3.9 million.

The conditionality of the DA means that the Council can monitor and assess all risks as the project moves forward and put in place any necessary mitigations. Full risk assessment have been produced and the risks are being monitored on a fortnightly basis.

The original bid was made by Sovereign Centros Limited, however during the intervening period Sovereign Centros has combined with funders for the project and formed Sovereign Peveril Brookfield Limited for the purposes of entering into this DA. Additionally the funders, Bowmer and Kirkland, are to be one of the parties to the agreement. This arrangement has been assessed by procurement specialists at WBD to ensure that the councils are not at risk by awarding the DA to a party not named in the original bidding process. Whilst a risk of challenge cannot ever be completely ruled out it is felt that the risk arising from this arrangement is low. The developer has indemnified the councils against all costs arising from such a challenge. Once the Contract Award Notice (CAN) is issued (a requirement of the EU procurement rules) there is a six month period in which a challenge could be made. The financial security of the funders has been assessed and found to be acceptable.

If the DA goes ahead as planned and conditions are met, the Council will lose the current rental income of £650k from tenants at the New River Trading Estate. However, through careful management of the process, the period between the loss of this income and the creation of the new income stream from the Riverside scheme will

be minimised. This loss has been accounted for within the Council's Medium Term Financial Strategy.

Should the developer consider that a CPO is required it can request the Council starts, and completes, the process but the developer will be liable for all costs of the CPO including compensation payments as provided for in the CPO Indemnity Agreement.

Grant funding is being sought for all associated infrastructure costs; this could be a mixture of loan and grant funding. However if this is not successful the councils may need to fund the infrastructure works either from capital reserves or via borrowing.

Alternative Options Considered and Rejected

The only alternative at this point is to not sign this DA but this is not considered to be feasible or desirable.

Contribution to the Council's Objectives and Environmental Sustainability Priorities

Within the Corporate Plan Brookfield is the number one priority but it also meets, or will help to meet, all the following elements of the corporate plan:

A THRIVING ECONOMY OFFERING BUSINESS GROWTH AND JOBS

1. Commence construction of Brookfield Riverside and Brookfield Garden Village.
2. Enable sustainable growth in local employment for residents by encouraging the creation of high-skilled, high-value jobs on identified sites.
3. Pursue the implementation of the housing and infrastructure needed to support a thriving economy.
4. Foster development of town centres as vibrant locations for business and leisure.

SUSTAINABLE LIVING IN AN ATTRACTIVE ENVIRONMENT

7. Take action to improve air quality.
8. Increase tree cover and greenery and enhance biodiversity in the Borough.
9. Increase the proportion of local journeys made by sustainable modes of travel.
10. Deliver affordable homes for local residents and reduce homelessness.
11. Help residents to lead a healthy lifestyle.
12. Promote community safety and reduce fear of crime.

AN EFFECTIVE COUNCIL

15. Maintain a stable financial position.
16. Build strong partnerships to deliver more for the Borough.

Conclusion

The Council should enter into the Development Agreement for Brookfield Riverside, sign the CPO Indemnity Agreement and agree the collaboration agreement with HCC in order to deliver one of the Council's key corporate priorities.

Contact Officer: Kevin Clark

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Date:

September 2020

Action reported to the Cabinet on:



EXECUTIVE SUMMARY

BROOKFIELD RIVERSIDE

- 1) This report (**Report**) has been prepared for the benefit of Broxbourne Borough Council and Hertfordshire County Council (the **Councils**) in connection with the proposed development of Brookfield Riverside (the **Development**). This Report summarises the provisions of the agreement relating to this development (the **Development Agreement**) which also serves as an agreement for lease in relation to the proposed grant of a 999 year lease (the **Lease**) in respect of the site to Sovereign Peveril Brookfield Limited (the **Developer**). Bowmer and Kirkland Limited (the **Guarantor**) will guarantee the performance of the Developer's obligations under the Development Agreement.
- 2) This Report has been provided by Womble Bond Dickinson (UK) LLP for the benefit of the Councils and is not to be relied upon or made available to any other party without our written consent. The Report is a high level summary of the key provisions of the Development Agreement and ancillary documentation to provide a general overview of the structure of the Development. The Councils should nevertheless ensure that they read the full versions of the documents and our detailed report.
- 3) The Development Agreement is drafted so that a number of conditions (**Conditions**) need to be satisfied before the Development Agreement becomes unconditional and the Developer is obliged to proceed with the Development. This reduces the risk exposure to the Councils as it ensures before construction commences and the lease is granted that almost all aspects of the Development are agreed between the parties and the land is ready to be developed. The Conditions include:
 - a) a number of **preliminary conditions** which must be satisfied before the other conditions come into play and the Councils' obligations in relation to the relocations kick in. These are (i) an exchanged agreement between the Borough and the County in respect of their joint holding entity (ii) an agreed highway strategy between all parties (iii) identifying and agreeing the Infrastructure Funding required for the Infrastructure Costs (iv) an agreement between the parties for the extent of the land required from the golf course (v) the Procurement Condition and Masterplan Condition being satisfied and (vi) the Councils agreeing and obtaining all necessary internal approvals to a business case for and costs associated with (i) the relocations (ii) the Infrastructure Costs and (iii) the Demolition Costs. These must be satisfied within one year after completion of the Development Agreement;
 - b) the Developer drawing up a **masterplan**, taking into account the Local Plan and the Council's objectives and minimum requirements (as set out in the Development Agreement) of what the development should contain. The Councils will then need to approve this Masterplan (such approval not to be unreasonably withheld or delayed). This is to be agreed within 6 months after completion of the Development Agreement;
 - c) the Developer obtaining a **satisfactory planning permission** for the Development. The Councils will need to approve this planning permission within 20 working days of receipt from the Developer otherwise it will be deemed to be approved. This is to be agreed within one year after the preliminary conditions have been satisfied;
 - d) the Developer making any orders stopping up, diverting, altering or creating any public **highways** in order to implement the satisfactory planning permission;
 - e) **all third party interests in the site have been acquired** (whether by private treaty or CPO) and any impediments to the development dealt with. The Developer is responsible for satisfying this condition although the Councils have agreed to meet the costs of relocating the New River Trading Estate, Broxbourne depot, the household waste recycling depot, Halfhide Lane travellers site and Halfhide Lane allotments. The Developer will acquire third party land with the assistance of the Council (Harvey/Bayfordbury option land and Thames Water). The Councils in their absolute discretion can decide whether to pursue a CPO and/or appropriation. There is a CPO indemnity agreement which will be entered into at the same time as the Development Agreement;
 - f) the Developer satisfying the Councils it has **sufficient funding available** to carry out the Development;

See document attached separately.

