

To: Executive
10TH NOVEMBER 2020

**JOINT VENTURE BUSINESS PLAN FOR THE DEVELOPMENT OF MULTIPLE SITES IN
BRACKNELL FOREST AND THE COOPERS HILL SITE DEVELOPMENT PLAN**
Stuart McKellar, Director: Resources

1 Purpose of Report

- 1.1 As has previously been highlighted to the Executive in a number of reports since June 2018, the establishment of a Property Joint Venture (JV) will help to continue the successful regeneration of Bracknell town centre and secure delivery of the Council's agreed vision to; *"deliver high quality development that supports a thriving, 18 hour town centre and catalyses further regeneration in the area, and that serves the needs of all residents and businesses, including new community facilities and affordable housing, fostering a sense of local ownership"*.
- 1.2 Following a competitive procurement process that commenced in May 2019, the Executive agreed at its meeting in July 2020 to authorise the Director: Resources to appoint Countryside Properties (UK) Ltd (Countryside) as the preferred bidder for the Joint Venture Partnership and to authorise the Director: Resources and the Borough Solicitor to finalise the necessary contractual agreements on such terms as best protect the Council's interests.
- 1.3 Good progress has been made since the July meeting to finalise the contractual agreements with Countryside. The terms of the arrangements remain as previously explained to Members and represent the position clearly set out by the Council at the start of the OJEU procurement process, with only minor amendments agreed through the competitive dialogue procurement process.
- 1.4 The purpose of this report is to present to the Executive for its consideration and recommendation to Council the proposed first Business Plan for the JV and a Site Development Plan for Cooper's Hill. These documents will form part of the legal agreements between the Council and Countryside
- 1.5 The JV Business Plan determines the areas of focus for the Partnership for the next three years and sets out broad proposals and development timescales for the Category 1 sites, together with indicative land values, profits and funding requirements. The JV Business Plan will be reviewed annually, and its approval must be granted by the Council and Countryside as partners, rather than the joint venture itself. The Joint Venture shall be responsible for the day to day development of the JV Business Plan ensuring that the best interests of the Limited Liability Partnership (LLP) are followed. The Site Development Plan for Cooper's Hill provides more detail of the specific proposals for this site, which are well advanced and will be further refined by detailed design work prior to a planning application being submitted early in 2021. The Site Development Plans for individual sites identified in the overarching JV Business Plan, including formal adoption of the delegation policy will be approved by the Council prior to any site being formally adopted for development by the JV.
- 1.6 As part of the July report the Executive agreed the contents of the delegation policy set out in Confidential Annex B to be incorporated in the Partnership Members' Agreement, subject to any non-material changes agreed by the Director: Resources and the Borough Solicitor as part of finalisation of the contractual agreements.

2 Recommendation(s)

That the Executive accepts the proposals set out in this report and in doing so makes the following recommendations to Council;

- 2.1 To approve the first proposed JV Business Plan for the Bracknell Forest Limited Liability Partnership joint venture between the Council and Countryside Properties (UK) Ltd as set out in Annex A/A1 and confidential Annex B;**
- 2.2 To approve the proposed Site Development Plan for Coopers Hill for “Bracknell Forest Limited Liability Partnership”, including land drawdown where conditions have been met as set out in confidential Annex C and the Council’s equal share of funding needed to undertake this development of up to £2.25m;**
- 2.3 Subject to recommendations 2.1 and 2.2 being approved by the Executive and Council, to note that the formal Incorporation of the JV and execution of the associated legal contract documentation for “Bracknell Forest Limited Liability Partnership JV” will take place in December 2020;**

3 Reasons for Recommendation(s)

- 3.1** The recommendations support the fulfilment of the JV project’s aims and objectives and form the final step toward Incorporation of the “Bracknell Forest Limited Liability Partnership” and the completion of the associated legal contract documentation”. There have been no material changes made to the suite of legal contracts as set out in the 14th July report to the Executive
- 3.2** The Cooper’s Hill Site Development Plan is a proposal for development of the Cooper’s Hill site. This will be refined during the next 2 months and will be subject to several conditions being fulfilled as laid out in the Site Development Plan, including securing planning permission and fulfilling best consideration requirements for the land value.

4 Alternative Options Considered

- 4.1** The Executive could decide not to endorse the recommendations made in this report. This would mean that the Council may need to develop an alternative approach to securing development of identified sites in and around Bracknell town centre. The Business Case that informed the Executive’s decision in February 2019 indicated that alternative approaches would be less likely to deliver the agreed objectives.

5 Supporting Information

- 5.1** Bracknell Forest Council has a long-standing ambition to secure new development in Bracknell town centre and across the Borough, in order to promote economic development, enhance vitality, and secure new homes and facilities for residents and businesses. Specifically, the Council Plan 2019-2023 states, *“We will continue to work hard to make sure that Bracknell Forest continues to thrive, even with the challenges ahead for all sectors of the economy. The council is committed to continuing the town centre regeneration and over the next four years will deliver the next phases, helping the whole town centre to flourish and grow, providing a rich 18-hour economy.”*
- 5.2** A detailed options appraisal was prepared and submitted to the Executive in February 2019, which concluded that the establishment of a 50:50 joint venture with

an experienced development partner would present the optimum approach for the Council to fulfil these objectives. Following a detailed competitive procurement process, Countryside have been appointed as the preferred partner and have been working with Council officers since the Executive's meeting in July to finalise the suite of legal agreements that underpin the agreed Limited Liability Partnership structure for the joint venture.

- 5.3 As part of the legal documents the Delegations Policy sets out the decision-making parameters for the development manager, JV Partnership Board and matters reserved to the individual partners. A key principle is that the JV Business Plan, which sets out its planned activities for the next 3 years, key metrics such as the nature and scale of proposed development activity on individual sites, expected profits and land values and overall financing requirements, needs to be agreed by the two partners individually prior to being formally enshrined into the JV agreements. Similarly, individual site development plans, which are prepared once outline designs are in place and an initial financial appraisal has been undertaken, also need to be agreed by the Council before detailed design work commences to inform a planning application. The JV Business Plan will be reviewed formally by the individual partners annually or as required.
- 5.4 Coopers Hill Site Development Plan will be reviewed regularly until all the conditions that will need to be met prior to land drawdown have been fulfilled and the JV Business Plan can be settled. The updates will reflect design development, and progressively increased cost certainty. The land value and projected profit will be calculated at each stage based on these inputs. Once the detailed design has been completed, and all title and planning conditions satisfied a Settled Site Development Plan will be prepared. The Updated Market Value (UMV) will be set at this stage, immediately prior to land being drawn down by the JV.
- 5.5 This approach means that the Council itself is always able to determine the JV's activities at a strategic level, while more operational decisions are delegated to the JV Partnership Board which has the authority to act within the parameters of the agreed Business Plan and Site Development Plans. The Partnership Board comprises 3 representatives from each of the partners, with the Council's representatives being the Executive Members for Economic Development and Regeneration and for Transformation and Finance and the Executive Director: Delivery. Any decisions outside the parameters of the agreed JV Business Plan need to be referred by the JV Partnership Board to the Council and Countryside as the partners.
- 5.6 The JV Business Plan will be appended to the Members Agreement. The Members agreement defines the rights, duties, responsibilities and liability of each partner and sets out how the Partnership will be managed and run and will remain live throughout the life of the Partnership.
- 5.7 Oversight of the JV's performance is specifically included in the terms of reference of the Bracknell Town Centre Regeneration Committee and is also expected to be undertaken periodically by the cross-cutting Scrutiny Panels that review delivery of different elements of the Council Plan.
- 5.8 The proposed Coopers Hill Site Development Plan supports the overarching JV Business Plan by setting out detailed proposals for development at the Coopers Hill site, which is owned by the Council and has been earmarked for regeneration due to the current buildings being no longer fit for purpose. It is important to recognise that

this document does not represent the final, detailed proposals that will be submitted for Planning consideration early in 2021. These will be developed through a further stage of detailed design and pre-application discussions with the Council's Planning team. However, there is sufficient confidence from work undertaken to date to present the Coopers Hill Site Development Plan for approval, following which the nature and scale of development proposed and the financial parameters cannot change materially.

- 5.9 Although Countryside have been selected as the Council's partner through a competitive procurement process, there remains a requirement for the Council to ensure that "best consideration" is obtained for any of its land that is put forward for development by the JV and that treasury requirements will be met Market testing and S123 valuations will be undertaken at specified stages prior to land draw law within each Site Development Plan to ensure that there is not a material change to the Council position. This task is delegated to Assistant Director: Property.

6 Consultation and Other Considerations

Legal Advice

- 6.1 As set out in the report the JV will take the form of a Limited Liability Partnership ("LLP"). An LLP is a corporate entity with a legal personality separate from its members. It is the Council's preferred structure for the JV due to the limited liability status of its members, its flexible governance arrangements and tax transparency. Other key features of an LLP are that:

- It has unlimited capacity and can do anything that a legal person can do
- It has the organisational flexibility of a partnership. The members are free to agree:
 - *how to share profits;*
 - *who is responsible for management and how decisions are made;*
 - *when and how new members are appointed; and*
 - *the circumstances in which members retire.*
- It has no share capital and, unless otherwise agreed between the members, there is no obligation for members to contribute capital to the LLP

- 6.3 The Council has wide ranging statutory powers to enter into a joint venture derived from Section 1 of the Localism Act 2011, s95 of the Local Government Act 2003 and ancillary powers in s111 of the Local Government Act 1972. The predominant power relied upon for participation in the LLP is the General Power of Competence under S1 of the Localism Act 2011. The use of an LLP as a vehicle for Joint Ventures is common across local authorities and is lawful if it is entered into primarily for a non-commercial purpose. In the case of the Bracknell Forest Limited Liability Partnership the primary purpose of the LLP is non-commercial i.e. to better manage its land and deliver housing and regeneration and is therefore lawful.

Financial Advice

- 6.5 The expected financial returns to the Council from the sale of land to the JV and share of development profits are set out in the confidential section of the JV Business Plan, together with the scale of the required Council equity investment over the life of the initial JV Business Plan. The Council's equity will be in the form of land and cash. The latter has a forecast peak cash level of between £15 to £17m and will be funded by a combination of internal borrowing and short-term external borrowing if needed, with a typical funding cost to the Council of 0.5% to 1.5%. The Council will receive a coupon of typically 4% on its investment, a rate linked to PWLB borrowing rates. Amendments to the rate are to be delegated to the Partnership Board with the

agreement of Director: Resources. This includes a margin of 2% which can help fund front-line services during the development period. The expected profile of Council investment and returns is set out within the initial JV Business Plan. The Council will also have the opportunity to benefit from residents in the new developments parking in its town centre car parks, on terms to be agreed, as well as other ancillary benefits including Council Tax income and additional footfall in the town centre. It is also expected that the Council will be able to benefit from ongoing revenues from development of sites included in the JV Business Plan, subject to robust financial appraisals which will be included in future Site Development Plans.

Other Consultation Responses

- 6.6 The recommendations are supported by the Bracknell Town Centre Regeneration Committee.

Equalities Impact Assessment

- 6.7 None undertaken

Strategic Risk Management Issues

- 6.8 Commercial development, by its nature, cannot be risk free. The establishment of a JV with an experienced development partner and the approach set out in the JV Business Plan is intended to strike a balance between minimising the Council's risk exposure while allowing it to achieve its regeneration objectives for Bracknell town centre. The incorporation of a 50:50 Joint Venture ensures that the Council is sharing risk and reward with an experienced and successful development partner.

Background Papers – Commercially Sensitive

Introduction to Appendices

Annex A – JV Business Plan

Annex A1 - JV Business Plan Policies Pack

Confidential Annex B – JV Business Plan Pack

Confidential Annex C – Coopers Hill Site Development Plan

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