

**Meeting of the Cabinet – 31 October 2007**

**Report of the Director of the Urban Environment**

**Delivering the Masterplan for Dudley Town Centre**

**Purpose of Report**

1. To seek Cabinet approval to create an Arms Length Company and select a development partner to lead delivery of the Dudley town centre Area Development Framework.

**Background**

2. The Dudley Area Development Framework (ADF) was adopted as supplementary planning guidance in 2005. Its vision is to achieve comprehensive and sympathetic housing led redevelopment of opportunity areas (see Appendix A) which will act as a catalyst for regeneration of the town.
3. There is a real opportunity through housing led regeneration, which is in accord with the Housing Green Paper *'Homes for the Future; more affordable, more sustainable'*, to rescue the town from decline and provide a catalyst for complementary development within the town centre and the surrounding area. Market forces have failed to turn the fortunes of the town centre and are unlikely to do so without public intervention.
4. Delivery of the Dudley Area Development Framework will also contribute to fulfilling the new role of Dudley town centre as set out in the Regional Spatial Strategy which states that the future renaissance of Dudley will be founded upon the town's unique tourism and cultural assets, major residential development and other uses appropriate to a non-strategic centre.
5. Implementation of the ADF will bring significant benefits to the town centre including creation of:
  - 1,100 residential units;
  - an additional 2,500 residential population in the town centre;
  - 3100 jobs;
  - £10m of improvements to public and civic spaces;
  - development in the region of £318m; and
  - a catalyst for complementary development in and around the town centre.
6. Progress to date in preparatory work and development to facilitate delivery of the Dudley Area Development Framework has been considerable and is summarised at Appendix B of this report.

7. The development outlined in the Dudley Area Development Framework is integral to regenerating the town centre. It will be supported by other complementary development projects, which are intrinsically linked to delivery of the Dudley Area Development Framework, and are proposed within and adjacent to the town centre. Together these projects will have a significant positive impact for local residents, businesses, investors and visitors and will raise the profile of the town in the region.
8. A summary of each complementary project, as listed below, is provided at Appendix C:
  - Civic Quadrant
  - Castle Hill/ Zoo
  - Castle Gate
  - Burnt Tree Island Transportation Improvements
  - Midland Metro – Wednesbury to Brierley Hill Extension
  - North Priory Housing Development
  - Dudley Townscape Heritage Initiative
  - Wrens Nest
  - Priory Park
  - Dudley Guest Hospital
9. Cabinet, on 13 June 2007, approved the principle of delivering the Dudley Area Development Framework via a traditional joint venture approach. The Director of the Urban Environment was authorised to develop a business case for the establishment of a Joint Venture. Regeneration specialists Navigant Consulting were appointed in June 2007 to produce the Business Case.
10. The Business Case, which contains commercially sensitive financial information, sets out the methodology for delivering the Dudley Area Development Framework through establishment of a traditional contractual Joint Venture. The focus of the Joint Venture will be on place shaping in Dudley town centre – delivering development to improve the well-being of the town and its community, reflecting its distinctive historic identity and promoting its interests and future prosperity. Key actions to achieving this are summarised below:
11. **Way forward to delivery of the Dudley Area Development Framework**

**[a] Secure public sector support**

Under present market conditions development of opportunity areas would produce a significant loss and therefore not be financially viable. However assuming normal industry returns, and through review of phasing options and public sector intervention, it is possible to increase the profitability of the development and mitigate this loss.

On approval of the approach set out in this report, the Council would enter into negotiations with English Partnerships (EP) and Advantage West Midlands (AWM) to agree the roles and responsibilities of each party and identify funding to support costs of delivering the Dudley Area Development Framework. This would be set out in a Memorandum of Understanding which would not be a legal document but a statement of intent by all parties. Opportunities for securing funding from other funding bodies would also be investigated.

It is anticipated that the terms of the Memorandum of Understanding would be agreed and entered into in December 2007.

**[b] Set up Arms Length Company**

The Business Case recommends that an organisation is established which would work at arms length to, but on behalf of, the Council and its public sector partners to provide a broad range of expertise in programme management and design, public and private finance, valuation and cost consultancy, commercial and legal advice, and fundraising and structuring for at least the first 4 years of the project.

Justification for establishment of the Arms Length Company and details of the proposed structure, scope and draft Heads of Terms are provided at Appendix D. It is proposed that the Arms Length Company is formed in early 2008.

There is potential, if required, for the role and scale of the Arms Length Company to be extended to deliver other major regeneration projects in the Borough. This would be reviewed as redevelopment potential is investigated in these areas. The creation of a development vehicle acting in this way within the Borough would reflect current activity in other Black Country Boroughs including Wolverhampton (Wolverhampton Development Company), Sandwell (RegenCo) and Walsall (Walsall Regeneration Company).

**[c] Set up Dudley Town Centre Partnership**

It is proposed that the Dudley Town Centre Partnership is established to include local Councillors, businesses, community representatives and other key stakeholders to ensure effective consultation and engagement during the process of delivery of the Dudley Area Development Framework. The Partnership would be set up following establishment of the Arms Length Company.

Terms of reference and representation for establishment of a Dudley Town Centre Partnership received approval by the Council's Executive on 17 December 2003. Establishment of the Dudley Town Centre Partnership was put on hold whilst agreement of the appropriate form of vehicle for delivery of the Dudley Area Development Framework was determined.

**[d] Select a Joint Venture partner**

The Council does not have sufficient in-house resources to manage the procurement process to establishment of a Joint Venture. Specialists would be appointed in accordance with the Council's Standing Orders and Financial Regulations to advise. Expert legal advice has confirmed that the Council should select a private sector partner using the negotiated procedure as set out in European Union procurement rules. This advice has been endorsed by the Director of Law and Property and project partners EP and AWM.

The preferred private sector development partner would be selected by November 2008. A report would be taken to Cabinet in December 2008 seeking approval to contract with the preferred partner. Negotiation with the preferred partner to sign of contracts would be completed by April 2009.

A summary of the methodology for delivery of the Dudley Area Development Framework by the Joint Venture is provided at Appendix E.

### **[e] Prepare Development Agreements and Planning Applications**

Development Agreements relating to each opportunity area would be produced by the private sector partner to agree detailed approach to delivery of development. On signing up to the Development Agreements by the Council and private sector partner, planning applications would be prepared by the private sector partner and the Council would commence CPO proceedings to assemble sites for development if necessary. Preparation of Development Agreements would commence by April 2009.

### **[f] Extension of Compulsory Purchase Powers**

Cabinet approved Compulsory Purchase powers to acquire properties within Tower Street, Prospect Hill, New Mill Gate, South West Gateway and Priors Street opportunity areas on 21 September 2005 and 8 February 2006. To fully realise the vision for regeneration of Dudley town centre, it is necessary for Compulsory Purchase powers to be extended (see Appendix F). This will enable sites to be assembled and development to commence more quickly. Any acquisitions carried out in advance of procurement of a private sector partner could be funded with public sector support.

### **[g] Commence work on site**

Development work in Dudley associated with delivery of the Area Development Framework and other complementary developments as set out at Appendix C is scheduled to start in early 2008 with implementation of the £8 million Dudley Townscape Heritage Initiative project. Commencement of complementary developments will follow. It is anticipated that development of the first opportunity area by the Joint Venture would start towards the end of 2009.

## **Finance**

12. There will be significant early costs associated with establishment and running of the Arms Length Company and procurement of a private sector partner. The Council is working with AWM and EP to secure funding to enable this.
13. The principle contribution of the Council to the delivery of the masterplan itself would be the transfer of land and property assets within opportunity areas to the Joint Venture to facilitate site assembly. Financial support to make the development attractive to private sector investors would need to be met by public sector partners AWM and EP. The Council will need to be satisfied that such a transfer represents a Best Value use of those assets.
14. The Council is working with AWM, EP and Navigant Consulting to establish a mechanism for profit to be paid back to the Council and public and private sector partners on completion of development.
15. The potential impact of loss of revenue income from transferred assets, and how this might be recovered from any "profit share" arrangement is also being assessed.
16. The Council will seek to minimise its risks within the context of its overall development aims and objectives and the potential to generate returns and to limit costs to within available resources.

## **Law**

17. The Council may do anything which it considers is likely to achieve the promotion or improvement of the economic, social, or environmental well being of its area under S2 of the Local Government Act 2000.
18. The Council may do anything which is incidental to conducive to or which facilitates the discharge of its functions under S111 of the Local Government Act 1972.
19. S120 of the Local Government Act 1972 permits a planning authority to acquire land by agreement for any of its authorised purposes.
20. S227 of the Town and Country Planning Act 1990 confers specific but widely drawn powers on a local planning authority to purchase by agreement any land which is required for development or other planning purposes under S226 of the Town and Country Planning Act 1990 – referred to below.
21. The Council have a range of powers under S226 (1) of the Town and Country Planning Act 1990 (on being authorised by the Secretary of State) and S13 of the Local Government (Miscellaneous Provisions) Act 1976 which give a local planning authority power to acquire compulsorily any land or acquire new rights in their area if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, and if they think that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of the their area.
22. The Council may dispose of land at the best price reasonably obtainable on the open market, unless it grants a lease for less than seven years or the consent of the Secretary of State for the Department of Communities and Local Government is obtained, under S123 of the Local Government Act 1972.
23. Part V of the Local Government and Housing Act 1989 gives local authorities the power to set up a new arms length company or acquire shares in an existing arm's length company.

## **Equality Impact**

24. Delivery of the Dudley Area Development Framework would bring significant regeneration benefits to Dudley town centre. It would have a major positive effect on all users of the town centre including residents, visitors, businesses, investors and developers. Benefits of delivery of the Area Development Framework would be achieved for people of all ages, including children and young people, and groups in society.
25. All work undertaken in connection with the delivery of the Dudley Area Development Framework would be carried out in accordance with the Council's Equal Opportunities Policy.

## **Recommendations**

26. It is recommended that:

The Director of the Urban Environment, in consultation with the Director of Law and Property and Director of Finance be authorised to:

- enter into a tripartite agreement with EP and AWM (Memorandum of Understanding);
- submit applications to funding bodies for funding to acquire premises within opportunity areas in support of site assembly, to meet costs to set up the Arms Length Company and Joint Venture, to meet running costs of the Arms Length Company and to address any other funding gaps that may emerge;
- to submit outline and full funding applications, to accept funding, negotiate and sign funding agreements with EP, AWM and any other funders;
- establish the Dudley Town Centre Partnership following creation of the Arms Length Company; and
- identify a preferred development partner to deliver the Dudley Area Development Framework for future approval by Cabinet in accordance with the Council's Developer Selection Protocol.

The Director of Law and Property be authorised to:

- register the Arms Length Company;
- enter into negotiations to acquire premises on terms to be negotiated and agreed and to sign associated funding agreements with any funders; and
- negotiate and complete any relevant undertaking from the Joint Venture partner and any required development agreement(s) prior to the making of any Compulsory Purchase Order(s).

The Director of Law and Property in consultation with the Cabinet Member for Economic Regeneration be authorised to:

- acquire and extinguish interests in land and new rights to support assembly of development sites within opportunity areas either by agreements or compulsorily;
- take all necessary steps to secure the making, confirmation and implementation of Compulsory Purchase Order(s) including the publication and service of all notices and the presentation of the Council's case at Public Inquiry. To be progressed in accordance with Section 266 (1) (a) of the Town and Country Planning Act 1990 for the acquisition of the land within one or more of the areas shown on the Plan attached at appendix F, for the purpose of securing mixed use development in accordance with the Dudley Area Development Framework;
- approve agreements with land owners setting out the terms for the withdrawal of objections to any Compulsory Purchase Order, including where appropriate seeking exclusion of land or new rights from the Order and/or making arrangements for relocation of occupiers; and
- dispose of Council owned land and property to the Joint Venture private sector partner as required to facilitate delivery of the Dudley Area Development Framework.

The Director of Finance, in consultation with the Director of Law and Property and Director of the Urban Environment be authorised to:

- agree the Business Plan which will provide the basis for the working arrangements of the Arms Length Company.

Cabinet consider the benefits of extending the role of the Arms Length Company in the future as a mechanism for bringing forward development and regeneration across the Borough.

Cabinet recommend to Council that any land or property acquisitions by the Council be included in the Capital Programme.



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### **List of Background Papers**

‘Developer Selection Protocol’, Dudley MBC Standing Orders

Cabinet Report (13 June 2007) ‘Delivering the Masterplan for Dudley Town Centre’, Report of the Director of the Urban Environment

Cabinet Report (13 December 2006) ‘Dudley Area Development Framework: Cavendish Quarter Compulsory Purchase Powers’, Joint Report of the Directors of the Urban Environment and Law and Property

Cabinet Report (15 March 2006) ‘Appointment of Consultants in Connection with Dudley Town Centre Area Development Framework’, Joint Report of the Directors of the Urban Environment, Law and Property and Finance

Cabinet Report (8 February 2006) ‘Dudley Area Development Framework: Cavendish Quarter Compulsory Purchase Powers’, Joint Report of the Directors of the Urban Environment and Law and Property

‘Dudley Area Development Framework’ (December 2005) Dudley MBC

Cabinet Report (21 September 2005) ‘Dudley Area Development Framework: Compulsory Purchase Powers’, Joint Report of the Directors of the Urban Environment and Law and Property

Executive verbal report (17 December 2003) ‘Establishment of the Dudley Town Centre Partnership’, Director of the Urban Environment.