
Meeting of the Cabinet – 13th December, 2023

Report of the Director of Regeneration & Enterprise

Portersfield

Purpose of report

1. The purpose of this report is to update Cabinet on progress with the project; the proposed next steps and timescales moving forward; and to seek approval for proposed actions and for ongoing revenue funding.

Recommendation(s)

2. It is recommended that: -
 - Cabinet notes the progress made to date and the updates presented in the report.
 - Cabinet notes the headline activity and timescales proposed over the next six months, with further detail to be provided in due course on specific elements.
 - Cabinet notes the revenue budget and how that is proposed to be used, prior to seeking further financial approvals.

Background

3. Progress on the project in the last six months has included:
 - Completion of the Intrusive Geo-environmental and Geotechnical Site Assessment and reporting.
 - Completion of the topographical, archaeological, historic building, ecological and arboriculture surveys.

- Agreement on Heads of Terms (HoTs) with Avenbury and the subsequent preparation of a Collaboration Agreement, for discussion and agreement with Avenbury.
- Ongoing engagement with other third-party landowners, and further due diligence in respect of The Beaches land and the Dudley Motor Company.
- Completion of the Public Consultation exercise.

There are two key workstreams to progress over the course of the next quarter, both critical to the procurement of a development partner. These are summarised below, with details in the following sections.

- *Land Assembly* – securing HoTs with Avenbury has been a significant step forward, but that needs to be maintained through to a legal Collaboration Agreement, which will form the basis of a draft Development Agreement, necessary to procure a development partner.
- *Scheme Design and Development Brief* – following the public consultation event and the completion of the site investigation works, a scheme design and a development brief is now required. This will inform preparation of development appraisals, required to support analysis of viability and capital funding, and determination of the agreed scheme.

Land Assembly

Avenbury

4. The Council own and control around 44% of the total Portersfield site area, with Avenbury owning 27%. The balance of the site is owned and controlled by several other third-party landowners including WMCA.
5. HoTs have been agreed with Avenbury and legal adviser DWF has been appointed by DMBC to prepare a Collaboration Agreement (CA). The CA will document the intentions of both parties; how DMBC and Avenbury will work together to progress a joint disposal of their respective land interests to a third party developer; details of costs and value apportionment; and timescales. Agreement of the CA is the pre-cursor to the preparation of a Development Agreement (DA) that the collaborating parties will then prepare, setting out the proposed arrangements with the development partner.

6. DWF has prepared a draft CA which has been reviewed by the DMBC team and it is currently with Avenbury for review. The timescales for agreement of the CA will be dependent on discussions with Avenbury, but the objective is to seek completion prior to the end of 2023. Completion of the CA will also require DMBC to identify the proposed route for the procurement of a development partner, including the criteria that will be used during the dialogue process to evaluate submissions. This will be included in an appendix to the CA and is work that needs to be undertaken prior to formal agreement with Avenbury and signing of the CA.

Other third-party interests

7. Discussions continue to be held with the other third-party owners, including the Dudley Motor Company (DMC) and WMCA, with a view to securing negotiated acquisition.

Compulsory Purchase Order (CPO)

8. A CPO will require DMBC to demonstrate that it has made all reasonable efforts to work with the landowners (or reach mutual agreement to acquire) before land is sought to be acquired by compulsion.
9. With respect to Avenbury, the advice received is that the CA approach is the way to proceed, to bring forward the scheme in a collaborative rather than a potentially combative way. However, it is important to note that even though HoTs have been agreed and a draft CA is in circulation, Avenbury could still not progress within a reasonable timescale, or refuse to progress at all.
10. Aside from Avenbury, DMC and WMCA, there are twelve other separate land interests within the Portersfield site and negotiations are ongoing with ten, with offers sent to nine of those and one awaiting approval to inspect. There are two that are not responding to contact from Gateley Hamer. Progress in several cases is being frustrated by unreasonable expectations of value.
11. It is vital for a CPO process that the discussions and negotiations with all parties continue and are played out in their entirety, to demonstrate it is not possible to collaborate or to agree reasonable value. DMBC should continue to anticipate that a CPO process will be required and, supported by specialist adviser Gateley Hamer, should continue to progress engagement with third parties on that basis, right up to any CPO Inquiry.
12. Following (i) the agreement of a scheme and a development brief that satisfies the need for a comprehensive planning policy approach; and (ii) the appointment of a development partner, DMBC could then consider the need for a CPO and, if so, confirm the preparation of a CPO. This decision

point is likely be in Autumn 2024 - with the timescale for preparing and submitting the CPO, the Public Inquiry and the Inspectors reporting process, meaning that the vesting of land by DMBC and securing possession could take a further 2½. years.

13. A planning consent will also be required for the scheme, in advance of a CPO Public Inquiry. This is a key task for the development partner and can be prepared in conjunction with it, once it is appointed.

Next steps and timescales

14. The immediate next steps and timescales in respect of land assembly are:
 1. Engagement with Avenbury to confirm the Collaboration Agreement – ongoing activity, objective is to reach agreement by end of 2023 and then seek approval from Cabinet for DMBC to sign.
 2. Gateley Hamer to continue ongoing discussions and negotiations with other third party landowners, including the DMC.

Scheme Design and Development Brief

15. A scheme design and a development brief are required, to support the following:
 - The preparation of development appraisals – to enable an assessment of viability, the scale of any funding gap, potential funding sources and investment timescales, based on projected cashflow and receipts.
 - The preparation of documentation for the procurement of a Development Partner and the competitive dialogue process. A developer will need to know what scheme it is expected to deliver.
 - To form the basis of a comprehensive planning policy document; to support a future planning application and the CPO process.
16. Recent progress has included:

Completion of the Public Consultation exercise

Held from 26th July to 20th September 2023, 459 people completed the questionnaire which asked ten questions about movement, accessibility, heritage and landscaping. All questions secured a 'strongly agree or agree' rating from more than 70% of respondees, with several in the high 80%/low 90% rating.

Completion of the Intrusive Geo-environmental and Geotechnical Site Assessment

Undertaken by specialists TRC, the purpose of the investigation was to identify geotechnical risk, support due diligence and the acquisition process. It is not a geotechnical design investigation and would not support detailed or structural design work. The assessment has considered soil, groundwater and ground gas environmental conditions. The report notes that the made ground encountered would largely be considered suitable for reuse; there were no asbestos fibres or fragments identified within the aggregate stockpile originating from the demolition of Cavendish House and that the re-use of materials derived from site should be feasible, subject to meeting the geotechnical and engineering specifications required for any proposed development.

Based on the results, it recommends a number of remediation and mitigation measures for the proposed development.

Further ground investigation will be required to aid the civil and structural design of the proposed final scheme, including additional deep ground investigation likely to be required to satisfy the Coal Authority during the planning application process. These investigations could cost up to £150,000, but this is a cost to the development, and would be undertaken by the development partner at the appropriate time.

Completion of the topographical, archaeological, historic building, ecological and arboriculture surveys.

The completion of several key surveys, necessary to establish baseline site conditions and support the design process.

Next steps and timescale

17. The next steps for finalising the scheme design and the development brief are:
 1. The internal DMBC design team including officers from planning, highways, heritage, placemaking and regeneration - supported by the Interim Regeneration Lead – to review the public consultation results, the TRC site investigation report, the movement and accessibility factors, and the proposed end uses.
 2. Agree the form/content of the development brief required to demonstrate 'comprehensive development' for CPO purposes.
 3. Prepare a draft development brief and scheme design – this will include general parameters for end uses, movement/accessibility, height, design, scale, massing and sustainability targets. This will need to be agreed with Avenbury.
 4. Appoint a development appraisal and viability adviser – to review the scheme prepared and advise on viability. The costs for this can be met from the approvals currently in place.

5. Engage in an iterative process to finesse the scheme and the viability appraisals – to identify a preferred layout and development form.
18. Items 1, 2 and 3 are ongoing with the objective of producing a draft development brief by the end of December 2023. The intention is to appoint a development appraiser by the end of 2023, to enable the iterative design/appraisal process to complete by the end of January 2024, with decisions made on final scheme and funding gaps/sources in early February 2024.

Procurement of a Development Partner

19. The procurement of a development partner requires the following to have been completed:
 - Scheme design/Development Brief – as set out above, so a tenderer will know what it is expected to secure planning permission for and deliver.
 - Viability appraisal and confirmed sources of funding – so all parties understand the financial viability of the scheme, who is expected to contribute what, and that any funding gaps are addressed.
 - A Development Agreement – which sets out what DMBC (and its partner Avenbury) expects from the development partner, how the commercial relationship will function and the conditions around engagement and delivery. This firstly requires the completion of the CA with Avenbury.
20. Further details on the procurement process and the professional support required during the procurement and dialogue process will follow in early 2024, when financial arrangements are understood, and further approvals will be required. At this stage DMBC will highlight the likely procurement route and the evaluation criteria for the selection of a preferred partner, for inclusion in the CA.

Finance

Revenue

21. There is currently c£246,000 of approved revenue funding remaining unspent. The intention is to continue with the following tasks, utilising this remaining budget:
 - land assembly programme, including Avenbury Collaboration Agreement, retaining the necessary budget to proceed through CPO.

- complete the development brief and scheme design - with supporting development appraisals.
 - progress vacant possession of the Dudley Motor Company site.
22. Further tasks, principally related to the preparation of a development agreement and the procurement of a development partner, will require additional funding approvals in due course.

Capital

23. Cabinet has previously endorsed (and Full Council authorised) the Director of Finance and Legal, in consultation with the Cabinet Member for Finance and Legal, to amend the capital programme and the medium-term financial strategy to reflect the costs of acquisition of land.
24. The estimated costs of acquiring third party land are set out in the Property Cost Estimate (PCE) at £8.1m.

Law

25. Section 111 of the Local Government Act 1972 provides the Council with power to do anything which is calculated to facilitate or is conducive or incidental to, the discharge of any of their functions. Pursuant to Section 1 of the Localism Act 2011 a local authority has a general power of competence to do anything that individuals generally may do.

Risk Management

26. The corporate risk register recognises that the Portersfield Development is an ambitious project that has potential to drive regeneration of Dudley Town Centre and add value to the local economy but, at the same time, carries financial, commercial, planning, procurement and other compliance risk that will need to be carefully managed.
27. An updated Risk Register for the project is required and is a key early priority for an incoming Project Manager.

Equality Impact

28. The Council's Equality and Diversity policies will be applied throughout the delivery of this project, including the identification of any specific equality impacts. Where required equality impact assessments/statements will be prepared, for example in relation to the development brief and public consultation.

Human Resources/Organisational Development

29. Resource will be brought in to contribute to the delivery of the project. This will be progressed in partnership with Council policy.

Commercial/Procurement

30. Any contracts or commercial agreements needed to deliver the prescribed outcomes will be let in accordance with Contract Standing Orders. The procurement route for a development partner will be identified in early 2024 and reported back to Cabinet.

Environment/Climate Change

31. The development brief will set out the requirements to ensure that any scheme conforms to planning policy requirements.

Council Priorities and Projects

32. Facilitating the Economic Regeneration of the Borough is a key priority of the Council. The regeneration of this key site in Dudley Town Centre will contribute to that aim by delivering a high-quality development in a high-quality public realm setting.

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