

Meeting:	Cabinet
Meeting date:	16 June 2016
Title of report:	Development partnership project
Report by:	Cabinet member contracts and assets

Classification

Open

Key decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

Wards affected

Countywide

Purpose

To agree a commissioning model for the procurement of a developer to work with the council to deliver the development of sites in council ownership.

Recommendation(s)

THAT:

- (a) the council commission a developer to progress the development of suitable sites in its ownership including the capability to progress development funding and provision of services and to be open for use with other collaboration partners as required;**
- (b) an EU compliant procurement (using the competitive dialogue process) be undertaken as outlined at Appendix 4, to appoint a developer; and**
- (c) the use of the sites at Station Approach and Merton Meadow (South) as evaluation case studies during the procurement be approved.**

Alternative options

In respect of the formation of a strategic approach to development with a partner:

- 1 Do nothing and the sites would remain either vacant or continue in their existing use and not contribute to the economic and financial regeneration of the county.
- 2 Bring forward disposal of the sites on a piecemeal basis (in the traditional way) by offering the sites on the open market and selling the land. This could result in capital receipts being received quicker but at a potentially reduced overall value and the council would have to rely on the planning process to control the type and quality of the development and have no control over the timing of development (including ensuring it is progressed at all).

In respect of the structure of the delivery model as a commissioned programme:

- 3 Establish the delivery model via a joint venture company (JVco). This may limit the council in terms of its: control over developments; ability to invest capital; increase set up and administrative costs and delay the start of development.

In respect of the use of 'real' sites as case studies as evaluation mechanisms within the procurement:

- 4 Use sample 'non-real' scenarios which would generate no return for bidder and council resources during the procurement; limit the council's ability to assess the deliverability and financial returns of the programme and increase the time taken to bring the first schemes forward as development appraisals would only be able to commence post developer appointment.

Reasons for recommendations

- 5 That the recommendations represent the most effective mechanism by which to:
 - Achieve the council's strategic development and economic regeneration objectives through the creation of 'holistic and balanced communities';
 - Deliver the development of the urban village (including the target of 800 homes);
 - Contribute to the housing targets set out within the core strategy;
 - Create a commissioning platform to support the emerging objectives of the economic masterplan;
 - Contribute to the construction of student accommodation to support higher education providers and as a key enabler of the establishment of university in Herefordshire;
 - Provide for further extra care provision throughout the county;
 - Generate the greatest potential to raise capital and revenue receipts from the council's land holdings;
 - Allow for council investment of land holdings and potentially capital;
 - Facilitate collaborative working between partners conducting developments within the county;
 - Deliver the outcomes required by the commissioning objectives; and
 - Generally limit development risks to council whilst strategically controlling development on land currently held by the council (when compared to outright land disposal).

Key considerations

- 6 The council's corporate plan 2016-2020 includes the following strategic priorities: helping residents to live safe, healthy, independent lives; keep children and young people safe and give them a great start in life; support the growth of our economy; and to secure better services, quality of life and value for money.
- 7 The emerging Herefordshire economic masterplan sets out a bold and ambitious framework for economic growth within the county, guiding investment to and within the county and is supported by the recently adopted core strategy.
- 8 To help support the corporate objectives in a period of funding reductions from central government the council needs to become more commercial in outlook, seeking to obtain maximum value from its assets and looking for innovative approaches to securing financial security into the future, by way of the generation of capital receipts and the creation of ongoing revenue streams.
- 9 The council's corporate property strategy, approved by cabinet in February 2016, recognises that the council owns dispersed land and buildings which may provide an exciting opportunity for housing or commercial development and/or regeneration through a formal partnership vehicle which could enhance the financial return to the council and make a contribution towards strategic growth and economic development.
- 10 To gather insight and ensure market interest in any programme of development a decision was taken in January 2016 to carry out consultation in respect of delivery models and approach with the marketplace. Comments received from the consultation were broadly supportive of the recommended option and further details of the results of this consultation can be found at appendix 1.

Why are we commissioning a development partner?

- 11 By commissioning a development partner the council is seeking to enable the strategic delivery of a development programme which will transform not only the built environment of Herefordshire, but will deliver regeneration; economic; employment and supply chain opportunities to support prosperity, growth, education and improve quality of life generally across the county, whilst still allowing for focus on the creation of benefits to local communities.
- 12 Taken in the round, the programme presents a highly dynamic and exciting opportunity across a number of key council objectives. The impact will be transformative and the appointment of a strategic partner enables the council to better co-ordinate and increase the benefits to be realised from these opportunities. Such benefits include the maximisation of financial returns to the council whilst responsibly controlling the sustainability, timing and nature of developments in a manner which is responsive to local needs and priorities.
- 13 The detailed aims of commissioning a developer to deliver a development programme ('the commissioning objectives'), are set out at appendix 2a and are illustrated in a diagram at appendix 2b.
- 14 In order to deliver these commissioning objectives the programme must provide:
 - Flexibility to deliver using a variety of funding mechanisms (see appendix 8);
 - Clear governance and rapid mobilisation, with minimum administration cost; and
 - Transparency, demonstrating best value.

What kind of delivery model is being proposed?

- 15 The potential delivery models, described in the options appraisal at appendix 3 are: land disposal; construction contract; design and build contract; commissioned programme

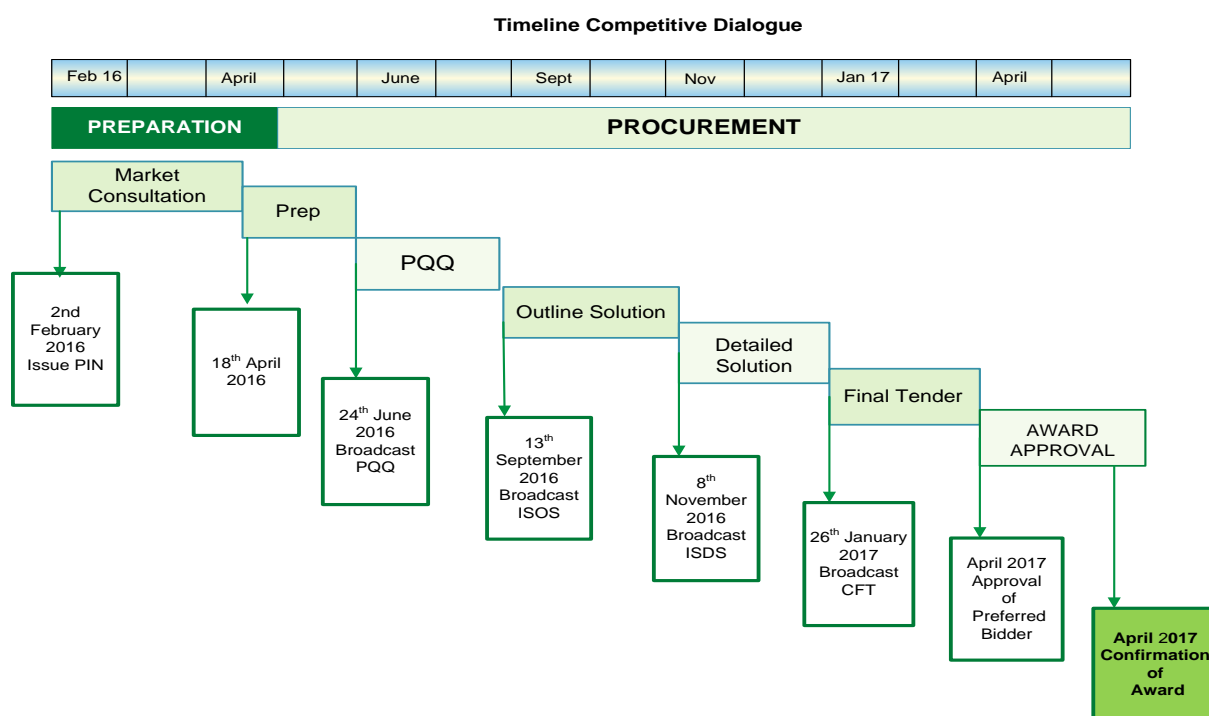
- and joint venture. The first three delivery models offer the simplest relationships with developers. However, they put the burden of programme development onto the council and do not offer the required flexibility in risk management and funding arrangements.
- 16 In order to deliver the commissioning objectives, therefore, the council needs a development 'partner'. There are, essentially, two mechanisms: via a commissioned approach (a contract) or joint venture (with the council contributing land and the developer providing capital and expertise).
- 17 The report considers the pros and cons of each model and, in summary, a commissioned approach is considered more appropriate as:
- Cabinet retains control over key aspects of the development programme;
 - A commissioned agreement (via a contract) is simpler with more straightforward governance; and
 - A commissioned approach can deliver more quickly than joint ventures.
- 18 Also, as the portfolio of land capable of development will need to be nurtured over the lifetime of the programme, it is difficult to quantify the council's initial investment in any joint venture. And experience of JVCos suggests that once in place, the JVCo can be more difficult to influence than a programme that is defined by a contractual relationship.
- 19 It is important to note that whilst the council will be commissioning via a contract, the intention is to work 'in partnership' with the developer in the context of a long term strategic relationship, which involves integrated working between the parties rather than the establishment of a formal legal partnership. The contract will not, in itself, create a new organisation (such as a JVCo) but will be a contractual agreement between the council and its developer 'partner'.
- 20 The contract will take the form of an overarching programme agreement. This will establish and manage a long term development programme in support of in the council's strategies (including its economic masterplan). The programme agreement will also regulate the overarching relationship between the council and the developer. Underneath it there will be a series of development agreements for housing and, potentially, other developments such as student accommodation, extra care or car parking. These will be put in place whenever a new project is agreed. The council will benefit from the value of the developed land, whilst the developer will receive profit from its contribution (which is the resources required for the agreed development).
- 21 Best value is assured by the co-design of projects by the developer and the council, as it is the value of the developed assets that ultimately determine land value. In this way, the council and the developer can balance the maximisation of sales revenue (for example via house types; density of development and massing), with the achievement of other commissioning objectives, such as the creation of 'holistic and balanced' communities.
- 22 The options for each site (e.g. land disposal; tenure and funding) will be presented as an options appraisal, which will also confirm the feasibility of proposals for cabinet approval. Land value will be assessed through transparent valuations (with the potential for the council to retain ownership of the land throughout the process).
- 23 Due diligence arrangements include estimated land value backed by an independent land valuation; subsequent sales will be via a competitive, open market process; developer's costs will be visible via open book accounting and rates for profit and overhead will be determined via the procurement process to appoint the developer.
- 24 The council could also consider the establishment of a council officer working group (i.e. a housing programme group) to ensure that a co-ordinated approach is taken to feasibility investigations and due diligence.

- 25 If the council decides to enter into more commercial arrangements, there will also be the options to: create special purpose vehicles (SPVs) with the developer for sharing profit from specific development projects including those which may offer services such as extra care and car parking; or develop and manage housing targeted at specific markets via a trading company, such as Hoople. Any such initiatives will be subject to Cabinet approval and legal review and cannot be undertaken without the establishment of or delivery via a trading company.

How will the developer be procured? And when will they be in place?

- 26 The developer will be procured by the EU competitive dialogue process. This is designed for the procurement of “particularly complex” contracts and encourages co-development and innovation. It also allows the council to build relationships with developers during the process, facilitating a rapid transition from procurement to delivery.
- 27 Positive to very positive feedback was received from the market consultation in respect of the use of the competitive dialogue process. A description of the proposed process including process maps can be found at appendix 4.
- 28 The procurement process will use two actual potential development sites to better assess the capability of each bidder in a realistic setting. Proposals to progress any aspects of the successful final tender will be subject to approval by Cabinet; however, the approach can accelerate delivery by developing projects ready to be taken to planning shortly after contract award.
- 29 The procurement timetable is shown below. Cabinet is asked to approve the recommended approach; then will decide whether to commission any aspects of the successful final tender (in January 2017); and approve the recommendations from the procurement process (in April 2017).

Table 1: Procurement Timetable



Potential Sites for Development

Further information on the subject of this report is available from Richard Gabb, programme director growth on Tel (01432) 261902

- 30 The project has considered the council's portfolio of existing land holdings and concluded that many of these sites could be utilised to meet these housing and regeneration needs, as well as generating capital and ongoing revenue streams for the council.
- 31 A list of sites that could potentially be included in the programme are listed in Appendix 5 below. (These sites are for indicative purposes only). This list is made up of potential sites within the council's land holding that may be suitable for inclusion in a programme that may span the next 10 – 20 years.
- 32 A site would require cabinet approval before being included in the development programme and this approval would only be gained after initial feasibility work and consultation, as per the sample governance process attached at Appendix 7. Support of these initial feasibility services and effective consultation processes are part of the services to be provided by the developer 'partner'.
- 33 Further feasibility work and consultation will be then necessary to confirm that sites within the programme are confirmed as suitable for development. This preliminary appraisal will take account of options for the development of these sites including analysis of needs.
- 34 This analysis of needs will include the potential for various options including (but not limited to), housing (including tenure types), extra care; commercial usage or civic amenities. Plus considerations in respect of infrastructure and economic regeneration; site suitability and the prospects for capital generation and revenue return (taking into account commercial funding viability and affordability) and political and local support for development.
- 35 Sites would only be delivered once Cabinet has decided that the development provides overall best value and the most effective way to ensure that the commissioning objectives are achieved.
- 36 These sites can be added to by the provision of land assembly expertise as part of the services provided by the developer, including that the council and the developer could jointly bring forward suitable sites on which the council could commission developments.
- 37 The potential for collaborative use of the agreement by other partners within Herefordshire (e.g. Herefordshire University), also allows sites within Herefordshire to be brought forward for development by other partners. This could either be in respect of stand-alone or joint projects with the council.
- 38 As speed of delivery is important to meet housing needs, generate capital and revenue receipts and bring momentum in the fledgling stage of the programme, it is recommended that sites are prioritised based on the following broad principles:
- developments should meet an identifiable housing, infrastructure; amenity need or have significant regeneration potential;
 - sites should be readily capable of development without significant constraints e.g. flood risks, topography; ground condition;
 - sites should have broad political and community support for development;
 - sites should be economically viable (without subsidy) and provide capital and or revenue generation.
- 39 Given that the development potential of many of the council's landholdings is yet to be clarified, the following sites within Hereford's proposed 'urban village' have been

identified most readily suitable for development and as such potential 'first batch' sites. A map detailing the scope of the sites within council ownership within the urban village is attached at appendix 6a.

- 40 Within the urban village sites the sites at Station Approach (appendix 6b) and Merton Meadow South (appendix 6c) are considered to be the most suitable for development (alongside a site (to be confirmed) to accommodate alternative car parking). On this basis, it is proposed to use the Station Approach and Merton Meadow South sites as evaluation case studies during the procurement.
- 41 The use of evaluation case studies means that development proposals can be requested from bidders to enable rapid progress of these sites once the developer has been appointed. The use of these sites would also enable the evaluation of bidders' capabilities to effectively deliver two important components of the programme: the creation of financial opportunities in terms of the generation of capital receipts and revenue generation.
- 42 The potential development on these sites is also of a manageable scale to ensure that their outline design stages can be accommodated within the proposed procurement timetable, to enable bidders' capabilities to be assessed against real opportunities. So enabling the plans developed during the tender stage to be progressed (via refinement and consultation) immediately on appointment.

Community impact

- 43 The project will significantly contribute to the achievement of the following council strategies:
- The Corporate Plan;
 - The emerging Economic Strategy;
 - The Core Strategy;
 - The Corporate Property Strategy;
 - Health and Wellbeing Strategy;
 - Children's and Young People's Strategic Plan;
 - The Equalities and Human Rights Charter;
 - And the Environmental Strategy / Policy.
- 44 Demographic information from 'Understanding Herefordshire' has been used in the preparation of this report.

Equality duty

- 45 The Public Sector Equality Duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying "due regard" in our decision making in the design of policies and in the delivery of services.
- 46 The project aims to create a more cohesive and accessible community within Hereford city centre urban village (and potentially county wide depending on the location of the sites included within the development programme).
- 47 This would be achieved through improved road layout and improved accessibility to multi-modal transport links. Plus the construction of additional community facilities and amenities, within the context of a strategic programme of development (as compared to development on a site by site basis).
- 48 The project also seeks to create balanced communities with the inclusion of extra care housing; student accommodation; private housing for sale (to meet a mixed

- demographic from executive; mid-range family range and affordable homes) designed to a portfolio of house types and styles. The project would also wish to consider the potential to develop mixed tenure housing such as housing for affordable rent.
- 49 Social capital will be realised through training, employment and education opportunities which will include targets for opportunities for young people. These will be delivered by commissioning to the standards within the council's CITB CBA accreditation.
- 50 Further, there will be transparent and accessible local supply chain opportunities including targets for social businesses and community groups.
- 51 Programme targets will be set in relation to the achievement of wider community benefits such as volunteering and support for community groups and third sector organisations. There will also be scope for innovative proposals from bidders as to how further social and community benefits could be gained.
- 52 The equalities track record and capability of bidders to assure good practice will be assessed during the PQQ stage of the procurement and bidders' specific proposals to ensure the achievement of equalities will be evaluated as part of the procurement.
- 53 An initial equalities impact assessment will be completed, which will be reviewed frequently throughout the process. It is not envisaged that there will be any negative equality implications arising out of this report. However, it is expected that a full equalities impact assessment will recognise that there are many positive implications: including increased provision of homes to tackle homelessness; increased and improved provision of accessible homes for the disabled and elderly and improved access to transport and amenities.

Financial implications

- 54 The programme has the potential to contribute significantly to the council's medium term financial plan as well as helping to secure financial security into the long term future through the contribution of capital and revenue receipts. Indeed, as more innovative self-financing approaches become needed during a period of funding reductions from central government, the programme's contribution may prove to be vital in supporting the achievement of the council's corporate objectives.
- 55 In addition to the programme's potential to contribute to the medium term financial plan and beyond, the programme will be a pivotal mechanism to secure development funding, as traditional sources of capital funding (such as grants to invest in capital schemes), have been reduced over recent years. On this basis, sourcing funding for the developments is a key outcome of the programme, as whilst the council has the capability to use the cost effective option of prudential borrowing, there are many competing demands on this funding source across the council. As such it is prudent to use commercial funding when it is available and presents value for money, as can be the case with development funding.
- 56 Furthermore, with revenue budgets under extreme pressure, the programme will need to be self-financing, that is, all revenue and capital costs the programme incurs need to be financed by capital or revenue generated by developments. The affordability of the programme will be assessed at all stages during the process. The costs of managing the programme will be met from existing budgets and would be part of the costings within any business case on support of commercial activity, such as the potential to use Hoople Ltd to manage affordable to let homes or student accommodation etc.
- 57 There are a number of potential sources of funding detailed at Appendix 8. At this stage in the process it is impossible to state with certainty which will prove to be the model(s) (and potentially the mix of these models) which will be best fitted to meeting the commissioning objectives. However, the procurement process does not at the outset need to specify the source of funding. Indeed, it is fundamental objective of the

programme to source innovative and cost effective / risk managed approaches to secure the required funding.

58 Factors which make it difficult to predict the most appropriate sources are the lack of certainty around:

- The nature of the developments to be commissioned: not least the tenures; numbers and types of homes to be built;
- The cost of the developments (for example, house types; specification and whole life costing);
- The phasing of developments (and hence when funding will be required and the prevailing market conditions and funding rates / terms);
- The extent of the council's landholdings and the potential availability for the council to invest land for development and to share the profits with the developer; and if included, the likely value; size and timing of such investment.
- The revenue streams likely to be created by the developments.

59 Once these factors are known they will be used to inform the procurement process and thereby identify the funding model which best meets the commissioning objectives. Bidders will be evaluated on their capabilities to source a wide range of funding options, alongside costed funding proposals for the sample evaluation schemes (which are intended to represent revenue and a capital generating scheme).

60 The available options will be those presented by bidders during the procurement process. These will be presented in an update report to Cabinet broadly detailing the available and recommended funding options, prior to the finalisation of the terms of bids to be issued at final tender stage.

61 The financial implications of the establishment of a commissioned programme are reflected in the commissioning objectives. An outline of the development programme and capital funding implications will be reported to Council in January 2016.

62 The resources required for the procurement of the developer have been estimated at 750 days inclusive for all officers and external support. Project costs have been estimated at £250K and a budget has already been provided for this.

63 The small client team which would needed to be established by the council to manage the agreement. This would be self-financing from the development budget.

Legal implications

64 The council has the legal powers to carry out the functions and activities described within this report by virtue of a wide range of legislative sources including the general power of competence under the Localism Act 2011.

65 Although the Council has powers to implement this report under any of the options described in this report, there are advantages and disadvantages to them, some of which are outlined in this report.

66 The legal issues in this project are likely to be complex and the legal work involved is likely to be significant. Council officers are expected to work closely with Legal Services in relation to this matter, particularly for the following purposes:

- Drafting the relevant contractual documentation according to the option approved by Cabinet;
- Ensuring the procurement is conducted lawfully;
- Assessing any state aid implications;
- Advising in contractual negotiations in the course of the procurement procedure.

- Assisting in incorporating a company if any of the proposed activities involve 'trading'. Use of a company is mandatory if the Council wishes to trade 'for profit'.
- 67 The use of the word 'partnership' or 'partner' in this report are not intended to imply that the Council intends to enter into a partnership (for the purposes of the Partnership Act 1890) with any person in connection with this project.

Risk management

- 68 A table summarising the project risks and the responses which seek to eliminate; manage or mitigate these is included at Appendix 9.

Consultees

- 69 A summary of the market consultation results is attached at appendix 1.
- 70 Consultation has taken place with prospective partner organisations including: Place Partnership; Hereford FC; and NMITE.
- 71 In terms of ongoing consultation, there will be public consultations in respect of any development masterplan (the creation of which could form part of the commissioned programme) and planning applications.

Appendices

Appendix 1 - Market Consultation Summary

Appendix 2a – Commissioning Objectives

Appendix 2b – Commissioning Objectives Diagram

Appendix 3 – Options Appraisal

Appendix 4 - Indicative Competitive Dialogue Process Guide

Appendix 5 - Indicative Council Landholdings

Appendix 6a – Urban Village Site Plan

Appendix 6b –Station Approach Plan

Appendix 6c – Merton Meadow (South)

Appendix 7 – Sample Governance Process

Appendix 8 – Sources of Funding

Appendix 9 – Risks and Responses

Background papers

- None identified