

Decision maker:	Director for Economy Communities and Corporate
Decision date:	30th May 2018
Title of report:	Pomona Place public art and footpath improvements project
Report by:	Project Development Officer

Classification

Open

Decision type

Non-key

Wards affected

Greyfriars

Purpose and summary

To approve the spend of section 106 monies received in respect of planning application DCC061134/F - Development At Pomona Place Hereford HR4 0LW for the purposes set out in this report, together with an explanation of the considerations that have been taken into account in reaching this recommendation.

Recommendation(s)

That: Approval be given for the spend of section 106 monies at Pomona Place, Hereford, HR2 0LW for the provision of public art (£30,450) and physical improvements to the pathway (£55,415) between Ryelands Street and Pomona Place which will be delivered through Balfour Beatty Living Places (BBLP).

Alternative options

1. The council could decide not to progress with the public art or pathway improvements projects, however where monies are paid to the council by a developer or landowner to satisfy the terms of the legal agreement, there is a requirement that the contribution is

refunded in full, if it is not spent in accordance within the terms of the agreement unless otherwise negotiated with the relevant developer/landowner.

2. Herefordshire Council could commission the artwork project directly, but this is not recommended as delivering this project with the Cider Museum means that we are engaging with the local community and adding value to the section 106 funding through other community based funding accessed by the Cider Museum and using the skills of the local community to deliver a better value project.

Key considerations

3. The council enters into legal agreements with developers and landowners under section 106 of the Town and Country Planning Act 1990 (as amended) to enable mitigation of the impacts of development and to enable the delivery of necessary infrastructure. Funds received through the section 106 agreement process must be used for the purposes specified within the agreement.
4. Planning permission DCC061134/F was granted on the 24th May 2006 for a hotel (Travelodge), A4 public house outlet and residential development at Pomona Place, Hereford, HR2 0LW. A section 106 agreement was signed on 11th May 2006 in relation to this planning permission that secured the following sums:
 - £55,415.58 for highways works including a variety of potential activities as follows; traffic calming, safer routes to schools programme, improvements to bus shelters / stops near the site, improvements to lighting to highways leading to the site, improvements to pedestrian and cyclists connectivity with the site, improvements and lighting to public footpaths in the vicinity of the site.
 - 1% (£30,450.37) for the development of Public Art in the vicinity of the development.
5. Other section 106 monies secured through this agreement have already been allocated including £7,577 for education and £28,144 for camera contribution (CCTV) and are therefore not included in this report or the attached project documentation.
6. A working group has been established including representatives from the local community, the Cider Museum which is located in Pomona Place, Herefordshire Council and BBLP. A project to improve the pathway between Ryelands Street and Pomona Place, called Cider Apple Alley, was initiated by the local community during the spring of 2017 and has been expanded in its scope to encompass this funding and to add value to the allocation. This project has been developed alongside a local artist who has worked with pupils from Lord Scudamore Academy to develop the artwork.
7. The Cider Museum will be the accountable body for the public art project, a costed proposal has been developed (appendix 1) which includes the following works:
 - Production and installation of 17 8ft x 6ft original art works, high quality vinyl printing on metal affixed via bracket frames;
 - Install new locally designed and produced iron-work screen / fence to the side of the museum entrance to improve the appearance and security of this section;
 - Re-plant with single species hedge along the new fence line;
 - Commissioning of a bespoke artwork for the wider Pomona Place site.

8. The artist was procured by the community group that initiated the Cider Apple Alley project prior to the Council's involvement. He is giving his time and skill at no cost to the project. All other elements of the public art project will be procured by the Cider Museum as the public art project lead in line with the Council's procurement policy.
9. A public consultation on the design proposals and the outline landscape design improvements was undertaken at the Cider Museum during May 2017. The consultation was well supported by the community.
10. The landscape design improvements were initially designed by a local landscape architect who has worked with BBLP, as the council's public realm contractor (2013 – 2023), to develop these plans in more detail. The improvements to the footpath and related landscaping works will be managed directly by BBLP. BBLP, the Cider Museum and the Council are working together to ensure that these two projects complement each other and that planned works are co-ordinated to minimise disruption and maximise both the budget and the project's impact.
11. In relation to this location the S.106 monies are noted as being for the following:
 - Highway works including traffic calming and improved signage in Grimmer Road/Whitecross Road, safer routes to school programme, improved bus shelter/stops in the locality of the site, improvements to lighting to highway routes leading to the site, improved pedestrian and cyclist connectivity with the site, improvement and lighting to public footpaths in the vicinity of the site.
 - The scheme as proposed therefore can be clearly demonstrated to fall under this scope of permissible works improving a pedestrian route that is noted to be an important route for school children to and from Lord Scudamore Primary School. It is a Public Right of Way (HER23).
12. Under the current Annual Plan (2017-18), Annex 4 which outlined the programme of works BBLP will undertake in the financial year, BBLP have scoped the potential works and developed a design brief for the work (appendix 2) as follows:
 - Widen the existing pathway;
 - Remove high fence feature to replace with lower fence line;
 - Improve drainage and resurface alley;
 - Enhance lighting provision and associated street furniture;
 - Dropped kerb provision and connections at either end of lane.
13. The delivery of the works are included in the provisional plan for 2018-19 but to ensure works are undertaken in a timely manner, early approval to proceed to detailed design will allow the project to continue with the community momentum that has been garnered.
14. Herefordshire Council is the Highway Authority for all highways maintainable at public expense within Herefordshire, with the exception of the Trunk Roads and Motorways. As a Highway Authority the Council has to fulfil a number of statutory duties, many of which are contained in the Highways Act, 1980. In addition, a number of other Acts impose duties and give the Council additional powers relating to the management of highways. Under these powers HC have the capacity to instruct BBLP to undertake the improvement works within the public realm.

Community impact

15. The use of section 106 monies for the proposed physical improvements will make this more accessible, aesthetically more attractive and improve people's feelings of safety. It is an area that suffers from regular graffiti, littering and fly tipping. The high fence inhibits light and makes the area feel enclosed. The project contributes positively to the council's corporate priorities in enabling residents to lead safe, healthy and independent lives by enabling safer access routes and by creating public art which improves community cohesion, transforms the ways individuals interact in and with public spaces, and builds safer urban environments.
16. Previous clearance works have taken place on Kernal Road with the support of BBLP to try and address issues of litter and safety concerns. Litter picks and clearance of the alleyway between Ryelands Street and Pomona Place have been undertaken by the community over the last 18 months, demonstrating the strong desire of the community to see physical improvements to this area.
17. The community has continued to support the development of this project, most recently (in February 2018) by stripping back the overgrown shrubs and trees along the footpath to prevent nesting to enable works to start later in the year. Twenty-three volunteers from the local community contributed to this clean up, demonstrating the community's support for improvements to this area.
18. The council is committed to providing a healthy and safe environment for all individuals impacted by the council's funded activities. The council endeavours to ensure that the work they and their partners undertake, does not adversely affect the health, safety or welfare of staff or members of the public. Therefore council partners are expected to work to the same health and safety standards and codes of practice as the council, as far as is reasonably practicable. This requirement will be included in the final contract terms

Equality duty

19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes. BBLP are aware of their contractual requirements in regard to equality legislation.

Resource implications

21. There is £85,865.95 of remaining Section 106 monies allocated for the purposes outlined above. This funding cannot be used for any other purpose than that set out in the section 106 agreement.
22. The pathway, once completed, will continue to be maintained by Herefordshire Council through our existing contract with BBLP. The artwork attached to the Cider Museum will be maintained by the Cider Museum. The free standing artwork will be located on Herefordshire Council land and is the responsibility of the Council once in place. The sculpture will be galvanised and similar to the Woodpecker sculpture, and like this it is expected to be 30 years before it requires any substantive maintenance.

Legal implications

23. As this report notes, the funds proposed for this scheme have been committed by a developer pursuant to a s106 agreement and the Council is liable to return those funds should the scheme not proceed against the timescales set out in the s106 agreement.
24. The council will ensure that all requisite permissions and consent are in place prior to the work being undertaken. Permission from Travelodge, an affected landowner, has already been obtained.
25. A grant funding agreement will need to be put in place to secure the delivery of the works which the Cider Museum has agreed to lead on.
26. The footpath works will be covered by BBLP's public liability insurance. The public art attached to the Cider Museum will be covered by their insurance and the freestanding public art will be covered by Herefordshire Council's public liability insurance as it sits on Herefordshire Council land. The artwork will not be insured for theft as Herefordshire Council has to pay a £50,000 excess on claims and this far exceeds the cost of the artwork. Theft of the artwork can be insured against by opting for all-risks cover for an extra premium which would reduce the excess.

Risk management

27.

Risk / opportunity	Mitigation
Environmental constraints prevent scheme going forward.	Relevant environmental assessments must be provided by BBLP.
Refusal of planning permission.	Pre- planning engagement indicates that the scheme is seen in favourable terms by local planners.
Build costs exceed available funds.	Regular budget control meetings are required with BBLP and the Cider Museum to give reassurance on budget.
Amendments to design necessary due to existing statutory undertaker's equipment hindering construction.	Design to be undertaken with consideration of STATS. Any amendments to design to be BBLP / Cider Museum's responsibility.
Availability of contractors and artists to	Early engagement of artists and contractors

deliver within project timescale.

in process.

Community and stakeholder co-operation – specific requests/objections from the local community/parish.

BBLP/Cider Museum and HC to manage stakeholder engagement.

28. Risks will be managed through established working group.

Consultees

29. A consultation on the public art and landscape proposals was carried out by the Cider Apple Alley working group in May 2017. The direct feedback from the community was overwhelmingly positive as the area is generally regarded as something of an eyesore.
30. The local ward member has been informed about the project as it has progressed and have an overview of this report for their consideration. The ward member has given approval in writing for the project to take place.
31. BBLP have undertaken early consultation with local members and are working to ensure the improvement works combine with the public art project to deliver best value for the community.

Appendices

- Appendix 1 Section 106 Agreement for planning application DCC061134/F.
- Appendix 2 Cider Apple Alley project proposal.
- Appendix 3 BBLP project proposal.

Background papers

None.