

# ESG RETAIL QUARTER DEVELOPMENT AGREEMENT

## PORTFOLIO RESPONSIBILITY: ECONOMIC DEVELOPMENT AND COMMUNITY SERVICES

**CABINET**

**25 JUNE 2009**

### Wards Affected

Central

### Purpose

To seek approval to proceed to conclude negotiations and enter into the Edgar Street Grid (ESG) Retail Quarter Development Agreement between Herefordshire Council, ESG Herefordshire Ltd, and Stanhope following an initial European procurement process and subsequent detailed financial and programming negotiations.

### 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 Herefordshire in an area comprising one or more wards.

It was included on the Forward Plan.

### Recommendation

#### THAT:

- (a) **the substantive terms of the Development Agreement so far negotiated as described in this report be approved; and**
- (b) **approval be given for negotiations to be finalised on the basis of those substantive terms and for the finalised Development Agreement to be signed under the authority of the Director of Regeneration.**

### Reasons

The Retail Quarter is one of the principal elements of the Edgar Street Grid (ESG) redevelopment. Signature of the Development Agreement will tie both parties into the development process and give greater certainty that this mixed-use scheme will progress within a structured timeframe. The signature of the Development Agreement represents the conclusion of an open market process that started with a developer selection procedure that recommended Stanhope as the preferred developer.

The ESG Herefordshire Ltd (ESG) Board and Advantage West Midlands (AWM) have been involved in the selection process alongside senior Herefordshire Council Officers. This report summarises the terms of the Development Agreement and the financial implications for the Council.

## Considerations

### Background

- 1 The Retail Quarter lies in the south western corner of the Edgar Street Grid area and is shown outlined in red on the plan at Appendix 1; the site includes the Council assets of the Livestock Market and associated business premises, Garrick House, the New Market Tavern, and the multi-storey and surface car parks adjacent to Garrick House. The Herefordshire UDP and ESG SPD identify that the entire Retail Quarter site should be considered for redevelopment as a mixed-use site.
- 2 At its meeting on 28 February 2008 Cabinet approved the selection of Stanhope as the preferred developer for the Edgar Street Grid Retail Quarter and authorised detailed negotiations with them prior to consideration of a full Development Agreement.
- 3 Herefordshire Council land ownerships within the Retail Quarter are shown in Appendix 2 and amount to approximately 4 hectares (9.9 acres). As a condition of the Development Agreement Stanhope will be expected to fund the acquisition, within the Retail Quarter, of any further land and property required to progress the redevelopment.
- 4 After signing of the Development Agreement, Stanhope will be refining their design proposals and confirming the ownerships within the Retail Quarter necessary to progress their scheme. Such land may be vested in the Council pending redevelopment

### Negotiations

- 5 Since their selection as preferred partner in February 2008, Stanhope have been in negotiation with Herefordshire Council, ESG Herefordshire Ltd, and AWM with regard to the final development mix and designs for the site, and over the detailed financial considerations.
- 6 This period has seen a significant deterioration in the economy and therefore the terms of the Development Agreement have been amended to reflect the requirements of both Herefordshire Council and Stanhope.
- 7 Of particular note is that negotiations have included the consideration of a phasing mechanism that will have the result of delivering retail development on a staged basis. The phasing programme and critical delivery path will require some months of refinement and evaluation and when agreed will be incorporated in the Development Agreement.
- 8 The proposed Development Agreement with Stanhope comprises of the following:-
  - Development Agreement with around 20 appendices and over 10 schedules;
  - CPO Indemnity Agreement (to be concluded at a later date); and
  - 250 year Head Lease.

Should Cabinet approval be given to this report, the Development Agreement will be in a position to be signed shortly, with the CPO Indemnity Agreement to follow later in the year once the phased scheme has been agreed. The 250 year Head Lease will not be granted to Stanhope until the scheme has been practically completed.

- 9 This Cabinet report and its appendices summarise the terms of the Development Agreement with Stanhope and the procedure that has been followed, with the major implications to the Council highlighted. The detailed synopsis of the Development Agreement is attached in Appendix 3 which is a confidential document and exempt from publication and will be tabled at the meeting during the confidential session.

### **Development Programme**

- 10 The wider Edgar Street Grid programme should be viewed in the context of an area wide infrastructure framework with individual development projects, such as the Retail Quarter, “plugged” into the wider infrastructure on a phased basis.
- 11 The infrastructure framework consists principally of: off-site flood mitigation, the Link Road, on-site flood alleviation and re-alignment of Widemarsh Brook, and the new livestock market construction. The major development projects are the Retail Quarter, Urban Village, Transport Hub and New Area.
- 12 The capital sum received from Stanhope for the Retail Quarter forms a proportion of the overall funding package required to finance the wider Edgar Street Grid redevelopment. Details of the redevelopments expenditure and income can be seen in Appendix 4 – ESG Programme Finance which is a confidential document and exempt from publication and will be tabled at the meeting during the confidential session.
- 13 Advantage West Midlands and Herefordshire Council have already made significant financial investment within the Edgar Street Grid development, principally on land and property acquisitions, and preliminary infrastructure design.
- 14 The Development Programme identifies elements of the redevelopment unfinanced by either Herefordshire Council or AWM. Discussions are underway between Herefordshire Council, ESG Herefordshire Ltd, and the Homes and Communities Agency (HCA) with a view to the latter providing the necessary financial contribution.

### **Community Benefits**

- 15 The proposed development will bring a range of significant economic and social benefits to the county. These have been outlined in previous reports on the Retail Quarter. Benefits will be achieved over a number of years as the development commences.
- 16 In addition to proposed retail development, the scheme contains a multi-screen cinema and associated restaurants, car parking and high quality pedestrianised streets. The agreement also requires Stanhope to deliver very substantial improvements for pedestrians through extensive works to Blueschool Street and Newmarket Street in order to ensure excellent connections to the Maylord Centre and High Town.

### **ESG Board Position**

- 17 The ESG board has considered the redevelopment of the existing livestock market and adjoining land in considerable depth, both through debating reports at key stages in the selection and negotiation process and through scrutiny of the Stanhope proposals by the Retail Quarter sub-group which comprises board members and senior officers of Herefordshire Council and AWM. Following this lengthy consideration, the ESG board has considered the terms of the development agreement and concluded that the board should recommend Herefordshire Council

sign the agreement. The board is also of the view that the development of the site must be brought forward in carefully considered stages rather than as a single scheme.

## Legal Considerations

- 18 The contractual obligations and potential risks of entering into the Development Agreement are set out in Appendix 3 (which is exempt from publication and will be tabled in confidential session.)

## Financial Considerations

- 19 The financial implications for the Council are at Appendix 4, (which is exempt from publication and will be tabled in confidential session.)

## Risk Management

- 20 In order to ensure effective negotiations and minimise risk, external legal and retail development/ valuation advice has been provided by Pinsent Masons and Montagu Evans respectively, with the latter further supported by EC Harris, quantity surveyors. This will continue during the final negotiations.
- 21 The agreement contains a series of defined stages, at which both parties must take important decisions. In this way, both Herefordshire Council and Stanhope progressively make greater commitment as the development becomes more certain. This is a tried and tested means by which the public sector ensures delivery of high quality, complex commercial developments. These stages are described in detail at Appendix 3.
- 22 If at the end of the conditionality period all the other main pre-conditions have been satisfied but the Development Agreement has not gone unconditional because the Council have still failed to satisfy its livestock relocation condition (that is the Council have failed to relocate the livestock market from the Retail Quarter site), Stanhope can terminate the Development Agreement and the Council will be responsible for meeting Stanhope's abortive costs.
- 23 These costs will be substantive, hence the Council need to be absolutely certain that they can deliver vacant possession of the livestock market before they confirm they are satisfied, during the initial 18 month period, with the initial pre-condition relating to delivering vacant possession of the livestock market.
- 24 Should discussions with the Homes and Communities Agency be unsuccessful (paragraph 14) it will be necessary to realign the development and in particular reduce the infrastructure element. A secondary development programme has been worked up by ESG Herefordshire Ltd for implementation should the above scenario arise. Should this programme need to be implemented a further report will be brought back to Cabinet.

## Alternative Options

- 25 To not sign, or to delay the signing of, the Development Agreement with Stanhope.
- 26 Not signing the Development Agreement has direct implications for the rest of the ESG development in terms of delivery and financing. In the current economic climate, government agencies and private developers require confidence that

redevelopment schemes are progressing to programme. Non signature of the Development Agreement may cause both Stanhope and AWM to review their investment in the Retail Quarter, and, should this be delayed, the whole of the ESG scheme including the essential investment in local infrastructure.

- 27 Additionally either alternative option would have implications for the role and integrity of the ESG Herefordshire Ltd Board and Company. A decision not to progress the proposal would result both in damage to the reputation of the authority and loss of significant resources to support the regeneration of the city.

## Consultees

ESG Herefordshire Ltd has been integral to the selection of Stanhope as the preferred development partner and has been constantly involved throughout the negotiation process.

Legal

Asset Management and Property Services

Finance

## Appendices

Appendix 1 Site Map of Retail Quarter

**Appendix 2 Map of Herefordshire Council owned land and property within the ESG Retail Quarter**

### **EXCLUSION OF THE PUBLIC AND PRESS**

**Not for Publication: the following two appendices are exempt from publication on the grounds that they disclose information relating to the financial or business affairs of any particular person (including the authority holding that information). The appendices will be tabled at the meeting in confidential session.**

Appendix 3 Synopsis of Development Agreement – ESG Herefordshire Ltd

Appendix 4 ESG Programme Finance Proposals

## Background Papers

None identified.