

MEETING:	CABINET
DATE:	31 OCTOBER 2012
TITLE OF REPORT:	VARIATION OF RETAIL QUARTER (OLD LIVESTOCK MARKET) DEVELOPMENT AGREEMENT
PORTFOLIO AREA:	ENTERPRISE AND CULTURE

CLASSIFICATION: Open

Wards Affected

Central Ward/County-wide

Purpose

Further to its key decision on 5 April 2012, to seek Cabinet approval to vary the terms of the Retail Quarter Development Agreement documentation.

Key Decision

The key decision in this case was advertised in the Forward Plan and taken in April 2012 to proceed with agreements with Stanhope Plc and British Land Plc on the grounds that this was likely to involve the Council in incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or functions to which the decision relates. The decision now sought is to vary the terms of the agreement and is not therefore a new key decision.

Recommendation(s)

THAT:

- (a) the revised funding arrangements between Stanhope Plc and British Land Plc be approved; and**
- (b) authority to be delegated to Director for Places and Communities to finalise the necessary documentation required to address the issues raised in this report.**

Key Points Summary

- The Retail Development Agreement was originally approved by Cabinet on 25 June 2009 and was subsequently revised in September 2010 by Cabinet Member Decision in terms of phasing of the project. Further amendments were agreed by Cabinet in April 2012 in order to secure the funding for the delivery of phase 1.

- Since the Cabinet approval in April documents varying the Development Agreement have now been exchanged between Stanhope Plc, British Land Plc and the Council.
- Approval is now sought for further amendments which are described under Key Considerations in order that the agreement can go unconditional and enable the scheme to be built.

Alternative Options

1. Not to agree the amendments. This would leave Stanhope Plc without external funding to deliver Phase 1 of the old livestock market redevelopment. This would defeat the long-held objective to see the redevelopment of the former livestock market site and the community and economic benefits that redevelopment will bring.

Reasons for Recommendations

- 2 Following the exchange of contracts British Land Plc have taken a view that changing market conditions mean that for them to continue they need to see a change in the financial return from the development. British Land's view was also informed by the fact that the number of pre-lets achieved had not met their target. In addition to British Land's requirement to renegotiate terms, one of the original clauses in the Development Agreement provided for Stanhope Plc to satisfy themselves with the ground conditions for the development. Stanhope Plc have now completed assessments of ground conditions and have confirmed that they will need to incur costs of £1m above their initial estimates before development can be commenced.

Introduction and Background

- 3 After a European procurement process and subsequent detailed financial and programming negotiations, on 25 June 2009 Cabinet approved the move to conclude negotiations and enter into a development agreement for the retail quarter on the old livestock market site. This agreement was completed in November 2009.
- 4 Further detailed financial, design and programming negotiations took place as a result of which, on 24 September 2010, the then Cabinet Member for Economic Development & Community Services approved arrangements for the completion of a supplementary agreement to provide for changes to the phasing of the scheme.
- 5 Further variations to the Development Agreement were agreed by Cabinet on 5 April 2012 and were implemented following Delegated Officer Decision by the Director for Places and Communities on 27 September 2012.
- 6 This reports sets out additional variations sought by Stanhope Plc and British Land Plc in order to allow the development to proceed.

Key Considerations

- 7 The variations sought would enable:
 - The Funding Agreement between British Land Plc and Stanhope Plc to go unconditional, meaning that the development will proceed and for British Land Plc to fully fund the project. This will follow immediately from the Council confirming that it is satisfied with the revised funding terms, which will allow Stanhope Plc to satisfy the funding Condition Precedent in the Development Agreement.

- Stanhope Plc will confirm that it is satisfied with the Environmental Condition Precedent in the Development Agreement. This confirms that Stanhope Plc accepts the site ground conditions.
 - Stanhope Plc to meet the shortfall in the terms of its Funding Agreement with British Land Plc in part by the Council accepting a £500k reduction in the payments owing to the Council by Stanhope Plc/British Land Plc.
- 8 The variation sought to the payment to the Council arises as a result of changes to general market conditions which have led the funder, British Land Plc, to renegotiate the funding terms it is prepared to sanction with Stanhope Plc. These are the best terms available to Stanhope Plc, and the attached Appendix 1 [Montagu Evans Letter] confirms that this represents good value for money for the Council.
 - 9 In consideration of Stanhope Plc accepting a 0.2% reduction in the funding yield, British Land Plc has accepted a reduction in the required pre-lets. As a result, one required pre-let has been removed as a funding pre-condition. This change has no impact on the Letting and Displacement Strategy contained within the Development Agreement which remains unaltered.
 - 10 Subject to Cabinet endorsement of the proposed variations, it is recommended that approval be delegated to the Director for Places and Communities to finalise the necessary documentation.
 - 11 Appendix 2 summarises the impacts and risks associated with the proposed variations to the development agreement.

Community Impact

- 12 The variations do not of themselves impact either the community assessments or community and economic benefits previously expressed.

Equality and Human Rights

- 13 In the case of this report there is no direct impact on individuals or communities in terms of equality or human rights.
- 14 Stanhope Plc has signed up to the Hereford Futures Sustainability Policy which includes social sustainability indicators such as: demography, community involvement, accessibility, and equality and social justice.
- 15 Sir Robert McAlpine, as principal building contractor, will comply with all relevant equality and diversity legislation and will accord with the council's Equality and Human Rights Charter.

Financial Implications

- 16 Under the terms of the Development Agreement Herefordshire Council will receive £1.5m in capital receipt from Stanhope Plc at the point of completion in respect of Phase 1 of the development. In order to meet the requirements of the revisions to the Development Agreement it is recommended that the £500k contribution requested from the Council is met by waiving £500k of this capital receipt. The £1.5m had been factored into funding capital schemes and the £500k will now be covered by capital receipts, prudential borrowing or a combination of both.

17 Payments in respect of Phase 2 and future car park income to the Council remain unaltered.

Legal Implications

18 This development engages the European Procurement rules. Because the proposals in this report change the Development Agreement, Members should be alive to the possibility of challenge. Advice has been sought from Pinsent Masons on this matter as set out in Appendix 3. Accordingly, officers would advise Members that a re-procurement is not appropriate and that the steps outlined to protect the Council in the event of challenge being taken aim to mitigate any risk.

19 The Council may dispose of land held by them in any manner they wish by virtue of section 123, Local Government Act 1972. However there is a general obligation not to do so for a consideration less than the best that can reasonably be obtained. The advice of external valuers is that the proposed variation fulfils the statutory and fiduciary obligations of the Council.

Risk Management

20 Risks arising from the proposed variations are included in Appendix 2.

Consultees

21 The Hereford Futures Board Members have been advised of the terms of the proposed variations. The Board support the amendments sought. The development of the retail quarter has been subject to a significant consultation process, both through the selection of Stanhope Plc as preferred developer and as a part of the process to obtain planning approval.

Appendices

22 Appendix 1 – Montagu Evans Letter
Appendix 2 – Risk Register
Appendix 3 – Legal Advice from Pinsent Masons

Background Papers

- None identified.