

Meeting:	Cabinet
Meeting date:	Thursday 13 December 2018
Title of report:	Development Regeneration Programme - Station Approach project approval
Report by:	Cabinet member contracts and assets

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

Widemarsh;

Purpose and summary

To enter into a development agreement to provide student accommodation on the station approach site.

Cabinet identified, through the one public estate programme, the provision of student accommodation at a council-owned site at station approach as a priority project. On 27 July 2017 Cabinet resolved to bring forward an options appraisal and business case for development of the station approach site as a first phase site of the development and regeneration programme,

subject to the council reaching a successful conclusion on the contract negotiations to enter into the overarching agreement, which was achieved in June 2018.

On 27 July 2018 the Cabinet Member contracts and assets authorised the issue of a new project request to Engie, under the terms of the overarching agreement, which specified the council's requirements and its criteria for the development of up to 220 units of student accommodation on the site; these are capable of being refined as the project moves forward.

A number of workstreams have been progressed since July in order to meet a challenging project programme, working back from a scheme which could be open to new students in September 2020. This report updates Cabinet on the output of those workstreams and specifically seeks approval to move the project from Stage 1 (preliminary appraisal stage) to Stage 2 (full business case stage) of the Development and Regeneration Programme, as well as seeking delegated authority to take the project through to legal and financial completion, within the defined parameters set out in this report.

Recommendation(s)

That:

(a) the council approves the Stage 1 Submission (appendix 1) for the Station Approach student accommodation project, provided by Engie Regeneration Ltd under the development and regeneration programme (DRP), and the project be authorised to proceed into stage 2 of the DRP new project approval process with the Project Criteria, for submission in February 2019, being as follows:

- i. A student accommodation block of up to 180 units;
- ii. A design and specification in line with normal market practice and demand, subject to other criteria set out here;
- iii. A design which is Equality Act compliant and which respects the requirements of students with diverse needs and promotes the wellbeing of all its residents;
- iv. To achieve the earliest possible completion date to align with the commencement of an academic year;
- v. To develop the project in liaison with higher education and further education providers identified by the council including Hereford College of Arts and NMiTE;
- vi. To clarify funding options for the project and recommend a preferred approach;
- vii. To identify options for the asset management of the accommodation;
- viii. To identify ways to provide active frontage and a commercially viable amenity on the site;
- ix. To work with the council to ensure sufficient public parking supply is maintained and that this is clearly identified for potential users;
- x. To provide a scheme which meets the requirements of BREEAM (Building Research Establishment Environmental Assessment Method) Good or above;
- xi. To provide the council with options for the project to make an enhanced contribution to environmental sustainability, over and above that which would be required by relevant law or existing planning policy;
- xii. To work with the council to develop the evidential framework by which the Stage 2 Submission can be assessed against the council's requirement to demonstrate best

value and meet all other relevant legal obligations.

- (b) a Stage 2 Development Fee of up to £752,648 be approved for underwriting by the council, subject to the terms of the overarching agreement, with an additional contingency of 20% (£150,530) to be released, if required, by the Director for Economy and Place;**
- (c) the preferred funding model to the project is for a commercial investor to provide funding for the construction and operational phases (the council to act as guarantor during the operational phases)**
- (d) the Chief Finance Officer be authorised to complete legal and financial due diligence on this preferred option during Stage 2, including the selection of a preferred funder and the negotiation of final terms, following consultation with the Cabinet Member Contracts and Assets, the Cabinet Member for Finance and Corporate Services, and the Director for economy and place, and provided that the funding model delivers for the council:**
 - i. a capital receipt for the leasehold interest in the site that reflects the best consideration that can reasonably be obtained; and**
 - ii. a best value solution for the project which meets the Project Criteria.**
- (e) in the event that acceptable terms cannot be agreed with a commercial investor in accordance with item (c) above by 28 February 2019 and subject to the Stage 2 submission having met the Project Criteria, the Chief Finance Officer be authorised, following consultation with the Cabinet Member Contracts and Assets, the Cabinet Member for Finance and Corporate Services, and the Director for economy and place to secure funding for the project up to a maximum sum of £18m from the council's capital allocation for the Development Partnership by using the council's own funds and/or Public Works Loan Board borrowing;**
- (f) subject to the Stage 2 Submission meeting the Project Criteria (item a. above) and an acceptable funding model being secured under item (c), (d) or (e) above, authority be delegated to the Director for Economy and Place, following consultation with the Cabinet Member Contracts and Assets and the Chief Financial Officer, to approve the project for immediate implementation;**
- (g) authority be delegated to the acting Director for Economy and Place, following consultation with the Cabinet Member Contracts and Assets and the Chief Financial Officer, to enter into all necessary legal agreements including as set out in Financing Options and Project Agreements (appendix 2 to this report) and/or the giving of securities or guarantees and take all operational decisions necessary to implement the above within the approved budget;**
- (h) the £35k cost of further services commissioned from Engie on 14 August 2018 to address issues with the Welsh Water sewer crossing the site be capitalised as part of the project; and**
- (i) a further capital sum of up to £100k is approved for drawing down from the Development Partnership capital budget for council client support to deliver the project, including staff costs, due diligence and financial and legal support.**

Alternative options

1. The council could decide not to proceed with the project and either leave the site as a car park, or develop it for some other purpose. The cost of developing the designs for the facility would be written off and the site would remain a car park or be developed or sold for some other purpose. This is not recommended as the requirement for student accommodation remains and not proceeding with the station approach project will have a negative impact on the growth plans of the Hereford College of Arts (“HCA”). The location of the site was identified in an options appraisal commissioned through One Public Estate, is ready to develop and is a preferred location for the HCA given its proximity to their two campuses.
2. The council could sell the site once planning permission is in place for others to deliver. This is not recommended as it would be likely to lead to a delay in the delivery of student accommodation to meet the needs of the HCA and NMiTE.
3. The council could decide to continue but change the criteria for the project to reduce the scale of the development or utilise the site for an alternative purpose such as an alternative development proposal. This is not recommended as significantly reducing the scale of the development impacts the economic viability of the student accommodation facility and an alternative use would not meet the identified needs of HCA and NMiTE.
4. The alternative options for financing are set out in appendix 2.

Key considerations

Background

5. In 2016 Cabinet approved the commissioning of a developer to progress the development of suitable sites in its ownership including the capability to progress development funding. The Development Partnership is intended to support the delivery of the ambitious goals of the Invest Herefordshire economic vision and support the council’s financial sustainability and will include a mix of house building and regeneration projects that will be delivered over the next 10 to 20 years.
6. The main long-term customer for the student accommodation is HCA, which has a proven demand for purpose built accommodation of the type proposed. The ability to offer potential students suitable accommodation is considered by HCA as important for the successful delivery of its expansion plans. There is also a proposal that an allocation of rooms within the accommodation could be made available on a short term basis to students of the new university, NMiTE, thereby supporting its development.
7. On 27 July 2017 Cabinet resolved to bring forward an options appraisal and business case for the site at Station Approach as part of the development and regeneration programme, subject to the council successfully completing contractual negotiations with Engie Regeneration Ltd on the overarching agreement. The overarching agreement with Engie Regeneration Ltd was signed in June 2018.
8. Also on 27 July 2017 Cabinet requested, as part of the One Public Estate (OPE) programme, business case assessments for the development of the land at either station approach or the country bus station for use as key worker/student accommodation or a multi storey car park. An option appraisal was carried out for the OPE programme by our proposed development partner Engie (see appendix 5). This option appraisal recommended:

- a. Student accommodation on station approach

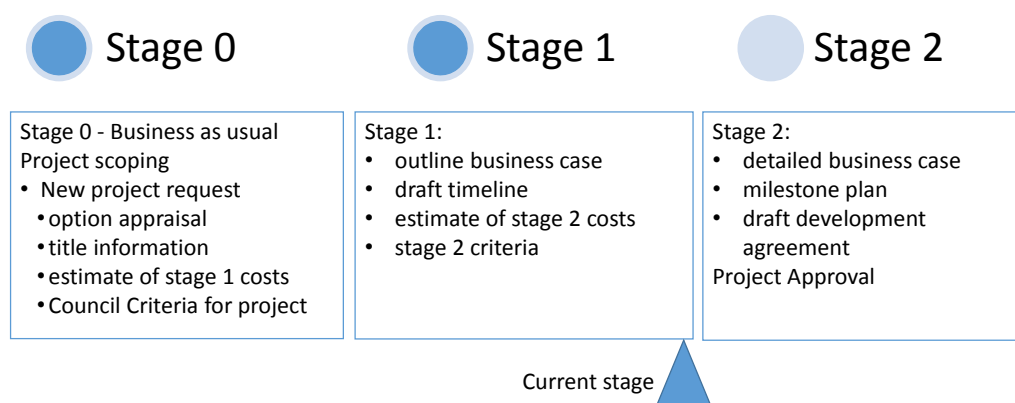
- b. Multi storey car park and other facilities on the country bus station and car park
- 9. On 28 July 2018 the Cabinet member for contracts and assets decided to include the station approach site on the development and regeneration programme and set the council's criteria for the project in line with the options appraisal. This is the first Development Partnership project on the urban village site. This is due to the availability of the site and the need to support Hereford College of Arts (HCA) strategy to grow its degree level student community to at least 680 full time students and to support the early development of the new university NMiTE. Letters of support from HCA and NMiTE are included in appendix 4.

The new project request – request for stage 1 submission

- 10. In accordance with the overarching agreement, on 24 July 2018 the developer partner was commissioned via a New Project Request to develop the outline business case for student accommodation on station approach. The stage 1 submission from Engie, including the outline business case, is the subject of this report and is included as appendix 1. The council set its criteria for the project as follows:
 - a. A student accommodation block of up to 220 units;
 - b. A design and specification in line with normal market practice and demand, subject to other criteria set out here;
 - c. A design which is Equality Act compliant and which respects the requirements of students with diverse needs and promotes the wellbeing of all its residents;
 - d. To achieve the earliest possible completion date to align with the commencement of an academic year;
 - e. To develop the project in liaison with higher education and further education providers identified by the council including Hereford College of Arts and NMiTE;
 - f. To clarify funding options for the project and recommend a preferred approach;
 - g. To identify options for the asset management of the accommodation;
 - h. To identify ways to provide active frontage and a commercially viable amenity on the site;
 - i. To work with the council to help replace car parking spaces impacted by the scheme;
 - j. To provide a scheme which meets the requirements of BREEAM (Building Research Establishment Environmental Assessment Method) Good or above;
 - k. To provide the council with options for the project to make an enhanced contribution to environmental sustainability, over and above that which would be required by relevant law or existing planning policy;
 - l. To work with the council to develop the evidential framework by which the Stage 2 Submission can be assessed against the council's requirement to demonstrate best value and meet all other relevant legal obligations.

11. The diagram below outlines the DRP's stage process and shows the project's progress to date. At the end of the next stage, a further decision whether to approve the project as part of the development and regeneration programme will be taken. If approved, this would trigger the construction phase of the development.

DRP – stage process



12. In view of the substantial construction programme, and working back from September 2020 (the start of a new academic year and the earliest date a completion could likely be delivered), a number of workstreams have been running in parallel as the project progresses through the appraisal stage process set out in the DRP. These workstreams essentially cover:
- Design of the scheme and application for planning permission
 - Construction programme, costs and methods
 - Establishing the demand for student accommodation
 - Financing the scheme

The preliminary appraisal – stage 1 submission

13. Engie has provided the council with their Stage 1 submission which demonstrates how the Project Criteria can be met (see table below) and recommends proceeding to Stage 2. The Stage 1 Submission. It is included as appendix 1 of this report.

Criteria	Comment
A student accommodation block of up to 220 units	Proposal comprises 178 units.
A design and specification in line with normal market practice and demand, subject to other criteria set out here	The proposals have been developed by organisations experienced in the student accommodation sector. Proposals are in line with schemes developed elsewhere in the sector and have some quality enhancements, principally through provision of a larger communal space on the

	ground floor which can be used for group study, exhibitions and evening / weekend recreation.
A design which is Equality Act compliant and which respects the requirements of students with diverse needs and promotes the wellbeing of all of its residents	Design is Equality Act compliant. In particular, 3 standard and 3 accessible self-contained studio style units for students who prefer to be independent and four accessible cluster rooms. These respond to the College's requirements around the neuro-diversity of their student body and the design is being carefully considered to enhance the welfare of students who would find a cluster flat environment socially difficult but without isolating them. The studio rooms are located on the ground floor but still requiring access through the main Reception so there is a level of interaction with management and on-site staff. Lift access will be provided to all floors.
To achieve the earliest possible completion date to align with the commencement of an academic year	A series of parallel activities are being undertaken on the project. The programme is currently based on a September 2020 occupation date. This is the earliest date that can be achieved. If any of the key activities such as receipt of planning permission or achieving financial close fall behind programme then the programme will slip back to September 2021.
To develop the project in liaison with higher education and further education providers identified by the Council including Hereford College of Arts and NMiTE	Detailed review meetings have been held with Hereford College of Arts (HCA) as the design has been developed. HCA are also providing outline proposals around art work installations that will be incorporated to support the planning application. Discussions have also been held with NMiTE over the potential for them to utilise the building for at least the first year.
To identify funding options for the project	Meetings have been held with potential institutional investors who may be interested in the project. An independent consultant has been jointly engaged by the council and Cityheart to undertake a soft market testing exercise to determine the level of interest from the funding market and indicative terms. This will be reviewed as part of the consideration around the optimum funding solution for the project.
To identify options for the asset management of the accommodation	Cityheart Living manage a number of student accommodation schemes across the UK. This will form the basis of an agreement for managing the completed facility, regardless of the funding structure.
To identify ways to provide active frontage and a commercial viable amenity on the ground floor	Following the relocation of the building to suit the location of the sewer the commercial use for the building will now be provided as a separate kiosk, adjacent to the link road. This will likely be a coffee shop which could also be utilised by people using the station.

To work with the Council to help replace car parking spaces impacted by the scheme	Options for alternative temporary car park spaces have been identified. Proposals for a potential new multi storey car park is being considered on other DRP sites.
To provide a scheme which meets the requirements of BREEAM (Building Research Establishment Environmental Assessment Method) Good or above	An expert BREEAM consultancy have been part of the design team from the outset of the project. This has ensured compliance with BREEAM requirements.
To provide the Council with options for the project to make an enhanced contribution to environmental sustainability, over and above that which would be required by relevant law or existing planning policy	The proposals include measures such as fast charging points for electric cars so that staff and / or students can use these vehicles as they become more widely adopted. Consideration is also being given to PV installations for the roof and other sensible and practical measures will continue to be reviewed. Space and water heating is based on a micro-CHP installation.
To work with the Council to develop the evidential framework by which the Stage 2 Submission can be assessed against the Council's requirement to demonstrate best value and meet all other relevant legal obligations.	From a financial perspective various measures are proposed to demonstrate value for money including an independent assessment of the optimum funding deal and the use of the development appraisal to draw together the various financial aspects of the deal to demonstrate value for money. From the wider social perspective measures that can be demonstrated include support to key Higher Education providers in the Hereford area. The criteria continue to be developed.

14. Discussions have taken place with both HCA and NMiTE which confirm that they have an interest in student accommodation on Station Approach. The requirements included as part of the New Project Request were for a facility providing up to 220 units in cluster rooms and a small number of individual studios. The specification was agreed with Hereford College of Arts and is described as a high quality product suitable for the higher education market.
15. During stage 1 of the new project approval process the impact of the main sewer that crosses the site was assessed in detail. Negotiations with Welsh Water were undertaken and it was clear that the sewer was a constraint. It was therefore necessary to ensure that the footprint of the building did not encroach on the path of the sewer and that adequate working space was provided either side of the sewer to support repair and maintenance. The scheme submitted for planning avoids the need to build over the sewer and technical solution to ensure the integrity of the asset and allow access for maintenance and repair is being developed by Engie and validated by Welsh Water.
16. In order to meet Welsh Water requirements the specification of the facility was amended:
 - a. A reduction in the capacity of the facility to 178 due to the reduced footprint of the building; and

- b. Removal of the previously identified ground floor commercial space. Stage 2 will investigate the possibility of provision of commercial space on another part of the site rather than on the ground floor of the accommodation building.
- 17. The 178 units comprise a total of 168 standard and 4 accessible cluster rooms with shared kitchens and communal space and a total of 3 standard and 3 accessible self-contained studio style units for students who prefer to be independent.
- 18. The building would be of modular construction over 4/5 floors. The size of the building and the fact that it is comprised of a series of single rooms, each with a window, inevitably dictate the overall design of the building. Consultation is ongoing with the conservation architect and Historic England about the aesthetics of the design, which is obviously ultimately a matter for planning determination.
- 19. The design of the building allows for art from the students of the HCA to be exhibited on the outside of the building and its environs. The design also contemplates a free-standing commercial unit (for example, a coffee franchise) which may be developed on the site near the traffic light junction, subject to planning and site constraints.
- 20. There is limited parking made available for the residents, and use of other modes of transport are encouraged, through cycle storage and proximity to the train station and planned transport hub.
- 21. The preliminary appraisal of the project (included as appendix 3 of the stage 1 submission) included an assumption that students would be charged £135 per week for a 42 week year (at September 2018 prices). The estimated gross development value of the project of £17,831,000 including a capital receipt to the council reflecting the valuation of the land. A breakdown of the development value is included in appendix 5 of the stage 1 submission (appendix 1).
- 22. Alongside the normal stage 1 activities a multi-disciplinary design team were engaged to support the submission of a detailed planning application at the earliest possible date. The planning application was submitted on 15 October 2018. The application is currently being considered by the planning authority. Subject to securing planning permission in January 2019 an early start on site would enable the accommodation to be open to students in September 2020. It is important for the plans of both the HCA and the new university that the facility is available for the 2020/21 academic year.

Stage 1 approval – request for stage 2 submission

- 23. The stage 1 submission demonstrates that a development providing purpose built student accommodation on the station approach is viable. The project is expected to deliver the following benefits:
 - a. A capital receipt to the council;
 - b. Support for the future viability and growth aspirations of Hereford College of Arts; and
 - c. Support for the initial development of the new university, NMiTE.
- 24. This report, therefore, recommends that the developer partner be commissioned to carry out a detailed appraisal of the project in line with Stage 2 of the New Project Approval

process described in the Overarching Agreement of the development and regeneration programme.

The detailed appraisal – stage 2 criteria and deliverables

25. Stage 2, the detailed appraisal, will deliver the detailed design for the project with detailed costings and final recommendation for the approach to funding the project.
26. The areas considered as part of stage 1 requiring further consideration during Stage 2 are:
 - a. The impact on the displacement of public car parking from the site. During the stage 2 appraisal the development partner will work with the council to ensure sufficient public parking supply is maintained and that this is clearly identified for potential users; and
 - b. The original criteria envisaged active frontage and a commercially viable amenity on the ground floor of the facility. The project will now consider the possibility of providing commercial space elsewhere on the site.
27. The proposed Project Criteria against which the Stage 2 submission of this project will be assessed and the project approved are listed in the recommendations.
28. The Stage 2 services to be undertaken by the developer partner on this particular project will finalise the business case for the project via the detailed development appraisal, complete the development agreement, and recommend the approach to financing the project. The proposed development fee for stage 2 is £752,648. This proposed development fee will be validated as part of the stage 2 process before the final stage 2 Development Programme Fee is approved.
29. The Programme Development Fee is the amount that is underwritten by the council. In the normal course of events, the programme fee will be included in the capital cost of the development. This will only become a revenue cost to the council in the case where the development does not go ahead due to an 'improper rejection' of the stage 2 submission. This is normally when the council decides not to proceed with the project despite the developer meeting all of their obligations.

Project approval – approval of the stage 2 submission

30. This Stage 2 submission is expected to be available in February 2019.
31. The Project Criteria included in this report will be used to assess the stage 2 submission. If the Project Criteria are considered to have been met, the acting Director for Economy and Place in consultation with the Cabinet member for contracts and assets and the chief financial officer will consider whether the project should become an Approved Project.
32. Once approved, the acting Director for Economy and Place will enter into all contracts and agreements required to allow the development to take place.

Financing the project

33. The overall value of the scheme to develop student accommodation on station approach is approximately £17.8m. There are a number of ways that the scheme can be funded:

- a. Council's own finances
 - b. Council borrowing from Public Works Loan Board
 - c. Private investment - which can take a number of forms.
34. The financing options have been developed and appraised by the Council in consultation with Engie Regeneration Ltd and Cityheart Ltd.
35. GVA consultancy has produced a study to validate the demand for student accommodation, and provide assurance to the Council and its developer partners as well as any potential third party investors. The Council will be concluding its own financial and legal due diligence on all partners and any potential investors prior to recommending a preferred option to Cabinet for decision.
36. The component parts of the Council's scheme, however it is structured, are:
- d. Construction contract;
 - e. Funding agreement;
 - f. Grant of property rights to occupiers;
 - g. Nominations obligations secured from HCA and NMiTE; and
 - h. Servicing and maintenance of the building and facilities.
37. The financial aspects of the deal can be thought of as having two dimensions: structure – organisation and ownership; and financing – source and nature of the funds. There are a number of ways in which the scheme can be delivered which are summarised in the tables below.
38. A special purpose vehicle (SPV) referred to in the table is an overarching term which refers to a legal entity (usually a private company limited by shares) created for the special purpose of holding an asset or a debt, or delivering a service or a project. If the scheme were to be funded by private investment then it is very likely that the investor would establish an SPV to undertake all aspects of the scheme's delivery, from construction through to operation. There are also options for the Council to establish an SPV itself. The relative advantages and disadvantages of all options are outlined in the tables.

Structure of the Deal

Structure	Advantages	Disadvantages
Council sell the site to a private sector specialist student accommodation provider	No development or occupation risk to the Council No call on the Council to finance the building	No current appetite from the private sector providers to develop in Hereford No guarantee of delivery or quality

Council contract direct with Engie under a Design and Build contract and then own the building in the long term	Simple contract structure, relatively easy to implement Council retain full control of development and management of the building	Council take all the construction and development risk Council take full responsibility for managing and letting the building and voids risk probably via an arms' length company ("SPV") Funding sits on the Council balance sheet Not a Council core activity
Special Purpose Vehicle ("SPV") established which is wholly owned by the Council	Ring fences activities away from other Council role/duties Council would benefit from the rental income Facilitates the potential to dispose of the building in the future	Council take ultimate risk for construction, programme, occupation, payment of rent and management of the building Funding sits on the Council balance sheet Not a Council core activity Requires Council approval to establish and get operational which could be time consuming and a risk to the programme milestones
Special Purpose Vehicle established and owned by a private sector organisation with the Council providing funding support	All construction and development risk taken by the SPV SPV incentivised to perform Council input is solely around providing finance or contingent finance support Quick to establish because recognised by investors as a tried and tested route	No operational control An element of the financing may sit on the Council's balance sheet via contingent guarantee (to be reviewed) Long term arrangement (c35-50 years) which could be expensive to break

Financing of the Deal

Finance Option	Advantages	Disadvantages
Council use their own capital reserves	Cheapest form of finance Council gets the benefit of the rental income	Council resources are limited in terms of overall economic ambition

	Fully flexible term of investment - Council would be free to subsequently sell on the asset at any time	Council takes the investment risk Construction and delivery risks would ultimately sit with the council if contractor defaults or fails
Council borrow funds via Public Works Loan Board	Likely to be second cheapest form of finance Potential to earn revenue mark up by on lending Council gets the benefit of the rental income Council could decide to subsequently sell on the asset to an external investor	Adds to Council's overall borrowing levels Council takes the investment risk Early years repayments not covered by income but over time rental income increases with inflation and repayments remain the same Long term arrangement (c35-50 years) unless Council sold it on
Utilise institutional investment with a Council covenant	Significant appetite from funders Number of similar projects elsewhere funded this way Potential for initial capital receipt to Council and gain share mechanism Use of the covenant enables cheapest form of institutional finance resulting in lower rent levels and mitigates occupation risk	Rents rise via agreed index each year to keep pace with lease payments Council required to provide contingent guarantee over lease payments on ultimate default (with alternative options) but mitigated via series of step in rights from funder and security packages Long term arrangement (c35-50 years) which would be expensive to break
Utilise institutional investment with a private sector covenant	No recourse to Council if project fails	Most expensive form of finance Higher finance yield results in higher rents charged, all other things being equal

39. The council is undertaking a market testing exercise to confirm that private investment is a viable option for the scheme. The market tested terms will be used to assess the financing options and identify the option that represents the best value solution which meets the Project Criteria. The Chief Finance Officer, working with legal and financial advisers, will ensure that an appropriate methodology for assessing best value is in place as part of the Stage 2 Submission.
40. The criteria against which the private investment options will be assessed are that this funding model delivers for the council:

- b. a capital receipt for the leasehold interest in the site that reflects the best consideration that can reasonably be obtained; and
 - a. a best value solution for the project which meets the Project Criteria.
- 41. If the institutional investor model is adopted, then an SPV established by Cityheart (Engie developer partner) will take a lease of the freehold of the site from the council and enter into the legal agreements to secure the funding and undertake the construction of the scheme. The Council's role will be to act as guarantor of last resort in the event that the SPV defaults on its obligations to the institutional investor. The Council will receive an upfront capital receipt for the value of the leasehold of its site to the SPV.
- 42. As part of the financing of the scheme the HCA will be required to enter into a long term nominations agreement with the operator of the scheme. The HCA would be obliged to nominate students into the scheme in order to secure the scheme's financial viability throughout the duration of the funding period. In the event that there is a future downturn in demand from students which is beyond the reasonable control of the HCA the council will work with the HCA and other partners to ensure that alternative sources of tenants are found.
- 43. The current programme assumes that financial due diligence on institutional investors will be completed by the end of February 2019 at the latest. This is to allow sufficient time to enter into all necessary project agreements and secure a start on site by May. If acceptable terms cannot be agreed with an institutional investor then the council may choose to fund the scheme itself. The council would then have to decide whether to use its own funds or draw down Public Works Loan Board borrowing. The operation of the facility would be subcontracted to a specialist operator. The council could, in addition, decide whether to set up an arms' length company ("special purpose vehicle") to hold the construction contract and asset.
- 44. Substantive progress has already been made in scoping and costing the project and clear parameters for decision have been set out in this report. It is proposed that, in view of the constraints on the programme timetable, authority to determine which funding solution represents a best value solution be delegated to the Chief Finance Officer.

Community impact

- 45. The council's corporate plan 2016-2020 includes supporting the growth of our economy as a strategic priority. The wider Herefordshire economic vision sets out an ambitious framework for economic growth within the county and is supported by the core strategy. Delivery of the core strategy and economic vision will rely on significant investment in a variety of developments across the county.
- 46. Supporting the corporate plan and economic vision, the council's property strategy for 2016 to 2020 includes the objectives to maximise the economic benefits of the council's property asset base and to support economic development.
- 47. Successful implementation of the project has the potential to significantly contribute to the corporate plan, through support for the economic vision and core strategy, and the corporate property strategy by supporting the growth of HCA and NMiTE and allowing the council to maximise the financial benefits that it receives from its development sites.
- 48. The project will contribute directly to the invest Herefordshire objective to make Herefordshire a great place to study.

Equality duty

49. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
50. A public authority must, in the exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
51. 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. Our providers will be made aware of their contractual requirements in regards to equality legislation. An equality impact assessment will be made during the project appraisal.

Resource implications

52. Pre-development costs of £415,740 were underwritten in the stage 1 proposal, Engie has confirmed that all costs have been incurred and if the project was not to continue at this stage these would be the costs liable to the council to fund from revenue reserves as long as they have delivered on all the requirements.
53. The project is now looking to move onto stage 2 which requires a further underwritten value of £752,648 to deliver stage 2 of the project and therefore the council are underwriting a total value of £1,168,388 at this stage. A breakdown of these costs can be seen in appendix 3 of the submission report provided from Engie. If the project does not continue after the stage 2 work has been completed then this would need to be funded from revenue reserves. A contingency of £151k has been requested on top of this to enable the Director of Economy and Place to deal with any additional unforeseen requirements that may occur during this phase of the project, therefore the total underwritten value is £1,319,388.

Capital cost of project	2018/19	2019/20	2020/21	Future Years	Total
	£000	£000	£000	£000	£000
<i>Legal Costs</i>	50				50
<i>Additional design works for sewer</i>	35				35
<i>Stage 1 underwritten fees</i>	416				416
<i>Stage 2 underwritten fees</i>	753				753

<i>Contingency</i>	<i>151</i>				<i>151</i>
TOTAL	1,405				1,405

Funding streams (base budget / external / grant / capital borrowing)	2018/19	2019/20	2020/21	Future Years	Total
	£000	£000	£000	£000	£000
<i>DRP Capital Budget</i>	85				85
<i>DRP Capital Budget, External Finance or Revenue Reserves</i>	1,320				1,320
TOTAL	1,405				1,405

Revenue budget implications	2018/19	2019/20	2020/21	2021/22	Total
	£000	£000	£000	£000	£000
<i>Loss of Revenue Car Park Income</i>		(120)	(120)	(120)	(360)
TOTAL		(120)	(120)	(120)	(360)

54. It is expected the council will incur capital spend of £50k for legal fees and so far have funded £35k from revenue which was as a result of the issues with the sewer. Therefore to ensure all relevant costs are capitalised it has been recommended to approve this £85k from the DRP capital budget. Of the £40.3m budget in the capital programme so far to date £1.2m has been requested for Essex Arms site development so this would commit a total of £1.285m from this budget.
55. The development of student accommodation on Station Approach is a project that offers a potential investment opportunity.
56. It will provide long term returns that justify the up front development costs, whether the investor is the council or an external investor. However the long term nature of the investment means that, for the first few years of the project, the SPV will not cover the cost of borrowing, with the returns to the investor materialising towards the end of the life of the project.
57. The council has access to funds at a rate that is lower than would be available from the market. So in the long term, if the council provided the funds, the financial returns to the council could be higher, subject to the occupancy rates and rent levels.

58. On the one hand, external funding, if this can be obtained on suitable terms, offers a number of advantages:
- a. The funder will assure the operational risk management of the project
 - b. The council will not be involved in funding the project
 - c. The council will get a capital receipt reflective of the overall value of the investment
59. On the other hand, the council will remain the ultimate guarantor for the project. If the whole scheme fails, the asset and its funding will revert to the council. Also, the council is foregoing the opportunity to derive a potential revenue stream from this asset.
60. The magnitude of capital receipt for the council will depend on the length of investment: normally the longer the investment period, the higher the capital receipt. However, the shorter the investment period, the sooner the asset will revert to council ownership. The council will then have the benefit of the asset in that period.
61. Both funding options could therefore be viewed as attractive to the council. However given the council's ambitions for the development of Herefordshire over the next few years, the preferred option is for the council to introduce an external investor to the project in order that the council can then direct its efforts and resources to other projects. This will increase the council's capacity for development.
62. There has been no decision yet as to whether this project will be funded by an external funder or council borrowing, repaid then through the rental income to be received once built. If an external funder is used then the only costs incurred by the council will be £85k as all the underwritten development costs would be covered within the overall project funding. Indicative figures included within appendix 5 of the Engie submission report show a capital receipt to the council reflecting the valuation of the land.
63. The Station Approach site has generated net income from public car parking of on average £120k over the last three years. Alternative public car parks are available and the stage 2 assessment of alternative supply will identify the likely impact on overall parking income to the Council.

Legal implications

64. The council has procured its development partner Engie Regeneration through a Public Contract Regulations compliant procurement process. The council has entered into a legally binding overarching agreement with the developer and this report explains how the Station Approach project is being progressed in accordance with the process set out in that overarching agreement.
65. This report identifies the Stages through which the project is proceeding, subject to approval by the Executive, at each Stage. It is important to note the separation between executive and non-executive functions for a DRP project such as the one described in this report. The submission of a planning application by the developer does not oblige the council to proceed with this project. The Executive will determine whether or not the project should proceed. The determination of the planning application is a non-executive function and solely a matter for the council in its capacity as Local Planning Authority to determine in accordance with planning law and ordinary legal principles.

66. The overarching agreement provides a contractual framework within which the developer will incur costs and deliver services which enable the council's Executive to assess whether a project should proceed. The overarching agreement requires the developer to set out its expected costs for each Stage and essentially the council is required to underwrite these costs in the event that the council subsequently refuses to proceed with the project despite the developer demonstrably meeting the Council Criteria (termed an "improperly rejected project" in the overarching agreement).
67. The council has legal powers to enter into this project under section 1-4 of the Localism Act 2011 and other enabling legislation. This includes the power to provide funding, to give guarantees or other forms of security and to enter into all necessary legal agreements to give effect to the project in the terms described in this report. In addition, s1-4 of the Localism Act enables the council to establish a company for commercial purposes should it wish to do so (the "SPV" described in this report). As well as its general fiduciary duty, in exercising its powers the council must always have regard to its duty under s3 of the Local Government Act 1999 to secure best value, which requires consideration of all relevant social, economic and environmental matters. The council does not have a statutory duty to provide student accommodation but the social, economic and environmental benefits of the project are outlined in this report and form the basis of the council's Project Criteria.
68. Any disposal of land by the council (including a lease of more than 7 years) must satisfy the requirements of s123 Local Government Act 1972 and provide the best consideration reasonably obtainable. This is ordinarily supported by valuation advice.
69. The extent to which the council is required to enter into legal agreements to deliver this project depends upon the role the council plays, particularly in respect of funding, as described above. The suite of project agreements required by each funding model is illustrated in Appendix 2. The council will be supported by specialist legal advice in reviewing and negotiating any suite of project agreements.

Risk management

70. A summary of the key risks for this project, during the different stages of its delivery, is attached as Appendix 3.

Risk / opportunity	Mitigation
The council improperly rejects the project	<p>The council's exposure to cost is limited to properly incurred costs of the approved programme development fee</p> <p>The reputational cost of not providing the facility required by HCA will be mitigated through early discussion with HCA management</p> <p>The council will seek to minimise the negative impact on NMiTE by providing facilities elsewhere</p>

Planning permission cannot be obtained	<p>The programme assumes that the construction contract will not be let until planning permission is granted</p> <p>The developer has submitted a scheme which it considers is planning policy compliant and takes account of consultation and feedback. However, there is a residual risk that planning conditions cannot be met</p>
The September 2020 deadline is not met	<p>The programme is tight and does not allow for any delays. The risk to the deadline is, therefore, real. Any delays, together with their impact must be communicated to stakeholders. A communications plan will be developed to help ensure that this happens.</p> <p>The construction contract will encourage the contractor to complete on time through an industry standard set of incentives and liquidated damages</p> <p>There will be a significant reputational risk to the council of late delivery. This will be mitigated by early communication and management of any issues. The council will assess and work with the contractor to mitigate the risks in the delivery programme</p>
The costs are higher than anticipated due to the complexity of the project	Any increase in the programme fee will have to be approved by the Cabinet member.
The Welsh Water sewer running under the site impacts the development	A technical solution to the sewer is being discussed with Welsh Water. While the solution is yet to be agreed, WW are aware of the importance and urgency of the project.
HCA may decide that they no longer require this scheme as part of their accommodation offer	The nominations agreement will be put in place before the construction contract is signed
NMiTE may not require any capacity in this scheme	NMiTE's participation is not crucial to the success of the scheme. The nominations agreement will be with HCA alone
External funding cannot be obtained or is too expensive	The council has the option of funding the project or the project could be halted, leaving the council to fund the costs that it has underwritten so far

Reduction in public car parking capacity in this location cannot be accommodated in suitable alternative locations in the vicinity.

The stage 2 appraisal requires the development partner to work with the council to ensure that sufficient public parking supply is maintained and clearly identified for potential users.

71. Risks are managed according to the council's performance, risk and opportunity management framework, and recorded on a service risk register, being escalated to the directorate or corporate risk register according to the significance of the risk.

Consultees

72. The local ward member has expressed support for the proposal to provide student accommodation on Station Approach, but requested reassurance that any impact on the availability of parking would be managed. The ward member also expressed concerns about the potential scale of the building and suggested ways in which this could be mitigated. Hereford College of Arts have been closely involved in the development of the building specifications and discussions have also taken place with the NMiTE team, who are supportive of the project and have stated their interest in using some of the rooms for the academic year 2020/21.
73. Political groups have been consulted and the Independent Group provided the following statement. They will evaluate the project fully in light of the full business case which will be available at the end of stage 2:
- a. Thank you for the notification of this consultation. Having considered what is currently available on the planning website, and any other publicly available material, it is impossible to fully and properly evaluate this project without considerably more information as to the costs, projections as to future returns and contingencies.
 - b. Only with access to a full business plan and the necessary time to consider same, can the Independent Group endorse this project. The proposed scheme is genuinely causing us considerable concern.

Appendices

Appendix 1 Station Approach stage 1 submission

Appendix 2 Financing options and project agreements

Appendix 3 Key Risks

Appendix 4 Letters of support

Appendix 5 Site option appraisal

Background papers

None