

BARNSLEY METROPOLITAN BOROUGH COUNCIL

This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan.

Report of the Executive Director of PLACE

Housing Infrastructure Funding (HIF) Marginal Fund

1. Purpose of report

- 1.1 To report on the outcome of the Housing Infrastructure Fund – Marginal Fund bid submission and to recommend the Council's acceptance of £2.039m grant funding allocated to enable the accelerated completion of essential infrastructure works (and expediting the delivery of 311 new homes) to Phase 3 of the Seasons (Willow Heights) Housing Development in Thurnscoe.

2. Recommendations

It is recommended that:

- 2.1 Cabinet notes the outcome of the bid submission to the HIF Marginal Fund and the offer of a revised grant allocation following an independent Due Diligence appraisal over summer 2018.
- 2.2 Cabinet authorises BMBC Legal (working in partnership with our appointed Framework Solicitors Walker Morris) to:
- Enter into contract with Homes England to accept the funding and all associated terms and conditions.
 - Enter into a flow down funding agreement with Keepmoat Limited which replicates the terms and conditions of the Homes England contract.
 - Enter into a Development Licence with Keepmoat Limited to enable the completion of the Phase 3 infrastructure works
 - Enter into a Variation to the Development Agreement with Keepmoat Limited relating to the delivery of Phase 3.

3. Introduction

- 3.1 In July 2017, DCLG launched the Housing Infrastructure Fund, a £2.3bn capital grant fund to be awarded to Local Authorities to deliver the infrastructure required to unlock new homes. The fund offered two bidding options; the Forward Fund for longer term, strategic infrastructure requirements over £10m and the Marginal Fund to unlock 'oven ready' developments which have stalled due to viability issues associated with infrastructure costs.
- 3.2 Barnsley MBC submitted bids to both funds at the end of September 2017. The Marginal Fund bid was to secure grant to enable the delivery of Phase 3 (311 homes) of the Seasons (now Willow Heights) housing development in Thurnscoe. The scheme is a former Housing Market Renewal Pathfinder

clearance site, with Phase 1 of the development (160 homes) commencing on site in 2011 and completing in June 2015.

- 3.3 Since this date, the site had remained stalled until spring 2018 when, following robust partnership working between the Council and Keepmoat Homes, a viable scheme solution for Phase 2 was produced. The viability gap was only addressed as a result of significant re-phasing, value engineering and agreement of a significantly reduced land receipt (compared to original development appraisal expectations). Following planning approval, works started on site in spring 2018.
- 3.4 Given the time taken to address the viability issues on Phase 2 (as result of site abnormalities and low house values), there was significant concerns that the remaining phase of development would stall once more, without funding to address the infrastructure requirements on Phase 3. There was also a strong case that the development could deliver accelerated housing growth (improving the desirability of Phase 2 homes) and other 'value' efficiencies, if the infrastructure requirements across the remainder of the whole site could be delivered consecutively.
- 3.5 The bid requested an allocation of £2.72m grant funding to bridge the funding gap and enable the delivery of essential infrastructure requirements (roads, utilities, drainage) for Phase 3 on an accelerated basis.
- 3.6 The scheme will deliver 440 new homes in total (phases 2 & 3); contributing to the Council's housing growth aspirations, stimulating housing delivery and market confidence (increased values) in a less buoyant housing area and completing Housing Regeneration activity in the Village; abruptly stalled in 2011 following the end of HMR funding. The bid was fully supported by our developer partner, Keepmoat Homes.

4. Current Situation

- 4.1 In spring 2018, Homes England (HE) announced that the Council had been successful in its bid to the HIF Marginal Fund, subject to an independent project appraisal and other Due Diligence. Officers worked closely with HE's consultants over the summer and received formal confirmation of the grant allocation in late October 2018. The revised 'gap' grant offer of £2.039m was based on a revision to the Council's assumptions on land value as, for the purposes of appraising the required grant level, Homes England appraised land value on an existing use basis (in this instance agricultural).
- 4.2 Following consultation with Keepmoat Homes, and the Council's Legal team in relation to the terms and conditions of the grant offer, it is envisaged that it is still possible to complete the required infrastructure requirements within the reduced grant envelope.
- 4.3 Whilst the Council had intended to re-coup a higher land value for the site than HE have based their initial appraisal on (existing use agricultural @ £16,060 per hectare), the terms and conditions of the grant allow for the Council to

clawback 100% of any 'overage/surplus' arising from costs savings or an uplift in values (based on an agreed viability appraisal). Any monies clawed-back, up to the loan value (£2.039m), are to be recycled by BMBC into future residential development schemes. Over this value, any 'overage/surplus' will be split 65%:35% between the Council and Keepmoat Limited in line with the over-arching Development Agreement.

- 4.4 As part of the contract requirements, the Council (in consultation with Keepmoat) has provided revised cost estimates for each element of the infrastructure works, a delivery programme and timescales for the drawdown of grant instalments. Homes England will monitor the progress of the works and spend.
- 4.5 As part of the Council's over-arching development agreement for the site with Keepmoat, it is proposed that Keepmoat are contracted to undertake the delivery of the works to Phase 3 under licence and on an 'open book' basis. All works will be tendered on a competitive basis. A flow down contract agreement will tie Keepmoat into the same terms and conditions for delivery/spend/outputs as imposed on the Authority. This will include the delivery of the new homes.

A DRAFT contract is located at Appendix B.

- 4.6 In March 2019, the Council appointed Walker Morris to provide external Legal Advice via the BMBC - Legal Services Framework Agreement Lot 6 - Public Law & Corporate Governance. Walker Morris was commissioned to review both the Homes England contract and the existing Development Agreement between Barnsley Council and Keepmoat Limited to:
- Confirm that the existing Development Agreement allows Barnsley Council to work directly with Keepmoat Limited to deliver the infrastructure works using the grant.
 - Provide a State Aid response on behalf of the Council regarding the acceptance of grant funding.
 - Prepare a flow down agreement to issue to Keepmoat Limited tying them to all associated terms and conditions of the Homes England grant, and;
 - Prepare a licence agreement and variation to the Development Agreement for Phase 3 of the development.

This advice/suite of documents will ensure that the Council can comply with the terms and conditions of the Homes England contract; tie Keepmoat Limited into the grant terms and conditions and ensure that the Development Agreement is updated to reflect the delivery mechanisms for Phase 3. The Legal Fees (£4750) have been funded from the Housing Investment Programme (HIP) Feasibility Pot. This was agreed via ODR on 22nd March 2019.

5. Proposal and justification

- 5.1 It is proposed that Cabinet approve the recommendation to enter into contract with Homes England to enable the drawdown of grant funding up to a total of £2.039m; for the purpose of accelerating the delivery of essential infrastructure works at Phase 3 Seasons (Willow Heights), Thurnscoe.
- 5.2 Without grant funding, the site is not considered to be viable and it is thus assumed that it is unlikely to come forward for delivery following the completion of Phase 2 without intervention. There are cost (not to mention reputational) implications for the Council/developer if sites are shut down and effectively mothballed between phases – thus impacting further on scheme viability. The delivery of the infrastructure works on an accelerated basis will enable the delivery of new homes at greater pace and may well improve the desirability of Phase 2 properties as potential purchasers will see a commitment to the completion of the site as a whole.
- 5.3 The Council will benefit from any ‘overage/surplus’ generated from cost savings and/or uplift in value.

6. Implications for local people / service users

- 6.1 Local people will benefit from the provision of new ‘market sale’ and affordable homes in a key growth/regeneration zone within Barnsley.
- 6.2 Due to viability issues, there was a 3 year delay between the completion of Phase 1 at Seasons and the commencement of build at Phase 2. This created:
- Additional cost to the contractor (closing and re-opening their compound and site mobilisation costs etc.).
 - A management liability for the Council (in maintain and clearing the site whilst it stood empty), and;
 - Uncertainty/some issues of ASB for residents who had anticipated the delivery of Phase 2 (and its associated infrastructure/POS) much sooner.

7. Financial implications

- 7.1 Consultations have taken place with representatives of the Service Director – Finance (S151 Officer).
- 7.2 This report seeks approval to accept grant funding from the Housing Infrastructure Fund issued by the DCLG. The funding will be used to unlock the Phase 3 Seasons (Willow Heights), Thurnscoe new build site and deliver 311 new build homes.
- 7.3 Total grant funding of £2.039M has been awarded to BMBC to fund the infrastructure works required to make the site viable for a new build development.

- 7.4 The Council will commission Keepmoat to deliver these infrastructure works under the original site development agreement terms. These works are estimated by Keepmoat to total £2.039M.
- 7.5 Following completion of the works, an independent valuation of the Keepmoat development will be undertaken. Any increase to the estimated profits generated from the original project plan will be payable to BMBC, up to the value of the grant £2.039M.
- 7.6 Any additional profits over the £2.039M will be split 65:35 in favour of BMBC to allow the Local Authority to receive a satisfactory proportion of any Funding or Receipts that are surplus to the costs of delivering the Project, in order to re-invest these funds in the delivery of additional housing.
- 7.7 The development land will be sold to Keepmoat at the land's agricultural valuation of £0.176M.
- 7.8 The capital receipt received by the Council will be earmarked to cover any potential overspend, up to the maximum value of £0.176M as per the terms of the contract.
- 7.9 Keepmoat will supply valuations of works completed on an open book basis. These costs will be checked and verified by an appointed Quantity Surveyor before payment is released.
- 7.10 Consultations have taken place with the Council's legal advisors as to whether the proposed funding of the Project is compatible with EU rules on state aid. The opinion received is that the project does not meet State Aid conditions and is therefore eligible to proceed. See appendix C.
- 7.11 Under the terms of the agreement, the development must be completed by 2026.
- 7.12 It should be noted that the expected Council Tax and New Homes Bonus generated from this proposal has already been considered within the Council's Medium Term Financial Strategy.

Employee implications

- 8.1 There are no issues arising directly from this report.

9. Communications implications

- 9.1 Homes England publically announced the allocation of the funding earlier this year. At that time, officers worked with internal/external media to share the good news with Members and the Local Community following national announcements. Subject to the approval and drawdown of grant, there will be a number of publicity events to promote the acceptance of the grant and accelerated delivery of the works.

10. Consultations

- 10.1 Consultation has been undertaken with Keepmoat and BMBC Planning, Legal, Finance, Assets and Procurement to understand the terms and conditions of the grant. Given requirements in the Homes England contract (for external legal advice) and the complexity of the existing Development Agreement, Walker Morris were appointed to prepare all associated legal agreements on behalf of the Council and to negotiate with Legal representatives at Homes England and Keepmoat Limited. .

11. Tackling Health Inequalities

- 11.1 The regeneration of this site will provide new, high quality homes for rent/sale to local people. The homes will be highly energy efficient, benefit from high quality POS and are sustainably located closed to shops, doctors and other local amenities.

12. Climate Change & Sustainable Energy Act 2006

- 12.1 There are no issues arising from this report.

13. Background Papers

- Appendix A – Finance
- Appendix B – Grant DRAFT contract.
- Appendix C – State Aid

Sarah Cartwright: 17/04/2019.