



SHEFFIELD CITY COUNCIL Cabinet Report

Report of: Executive Director, Place

Date: 18th September 2013

Subject: Negotiation of a new lease to allow the redevelopment of the Fox Hill site

Author of Report: Christine Rose 2734373

Reasons for Recommendations:

SCC wants to ensure that a new developer is secured who can deliver high quality housing for Fox Hill.

We are working with KPMG, who have been testing the market to identify developer interest.

This report requests that officers are authorised to continue with the negotiations and agree either a new lease or a variation of the existing lease to allow a scheme of development which will still maintain the high quality standards required.

Recommendations:

1 That the Director of Capital and Major Projects and the Director of Regeneration and Development Services in conjunction with the Director of Finance be authorised to negotiate the terms of a new lease or to amend the existing lease, whichever is more appropriate, as are considered necessary for the provision good quality housing at Fox Hill.

2 That the Cabinet members for Homes and Neighbourhoods and Business, Skills and Development are delegated the authority to consider the developer's final proposals and whether they meet SCC's

requirements and make a decision as to whether or not to proceed with those proposals.

3 That, subject to the decision being made to proceed with the proposals the Director of Capital and Major Projects be authorised to instruct the Director of Legal Services to complete all the necessary legal documentation.

Background Papers:

Category of Report: OPEN part 1 CLOSED part 2*

If Closed add – ‘Not for publication because it contains exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).’

* Delete as appropriate

Statutory and Council Policy Checklist

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|---|
| Financial Implications |
| YES/Cleared by |
| Legal Implications |
| YES Cleared by: David Sellars |
| Equality of Opportunity Implications |
| NO Cleared by: |
| Tackling Health Inequalities Implications |
| NO |
| Human rights Implications |
| NO: |
| Environmental and Sustainability implications |
| No |
| Economic impact |
| NO |
| Community safety implications |
| NO |
| Human resources implications |
| NO |
| Property implications |
| YES |
| Area(s) affected |
| Fox Hill |
| Relevant Cabinet Portfolio Leader |
| Harry Harpham |
| Relevant Scrutiny Committee if decision called in |
| Safer homes and communities |
| Is the item a matter which is reserved for approval by the City Council? |
| NO |
| Press release |
| YES |

Redevelopment of Fox Hill site

1.0 SUMMARY

- 1.1 On 21.09.2005 Cabinet noted that Artisan H Ltd was selected as the successful developer following a competition process for the Fox Hill redevelopment site. The Council entered into a lease with Artisan H Ltd dated 28 April 2008. However, in December 2011 Artisan H Ltd went into administration and KPMG were appointed as administrators by the Bank of Ireland who hold a charge over the lease. SCC is still the freeholder of the land which is the subject of the lease and as such has a major role in how the redevelopment of the site is taken forwards. This report recommends that officers are given the authority to negotiate a way forwards and either enter into a new lease or vary the existing lease as required in order to ensure the delivery of high quality housing at Fox Hill.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

- 2.1 The delivery of new housing at Fox Hill effectively stopped in late 2011 as the developer, Artisan H Ltd had been placed into administration. 6 apartments have been completed and sold and 23 units were under construction.
- 2.2 SCC is the freeholder for this site. This report authorises officers to negotiate a way forwards with KPMG, the administrators, and any suitable developer to ensure that approximately 160 units of good quality housing is developed on the site.

3.0 OUTCOME AND SUSTAINABILITY

- 3.1 The anticipated outcome of the negotiations would be that a new developer who has been identified by KPMG will be able to deliver good quality housing on the site. Since the original lease was drawn up many of the housing standards required by it have been incorporated into planning regulations and building standards. However, there may be different requirements which we wish to include in a new or amended lease.

As matters currently stand any developer who acquires the lease takes on the obligations to provide good quality housing. They are obliged to use the existing planning application.

However given the changes in planning regulations and building standards as well as the need to revisit the timescales involved it is felt that it would be better from a drafting point of view to amend these requirements in the lease or if needs be take a surrender of the old lease with a simultaneous re grant of a "clean" lease incorporating whatever amendments are required.

- 3.2 The contract with Artisan H Ltd provided that the grant of the lease would be conditional on the grant of planning permission which was based on a planning application approved by SCC as landowner. This condition will be contained in the new lease. In addition to the planning regulations and building standards the lease will reflect the need for 100% of dwellings to meet Lifetime Homes standard if this is feasible and that level 3 of the code for sustainable homes is to be met by the fabric-first approach, i.e. high insulation levels.

In addition there will be a planning requirement for affordable housing. There is currently an agreement with Great Places housing association that they will acquire 21 units, comprising of 10 x 1bed dwellings and 11 x 2 bed dwellings. A new planning application may result in a different layout and build out plan, and so officers may need to renegotiate the types of property whilst ensuring that a similar quantum is delivered.

4.0 BACKGROUND

- 4.1 The Fox Hill site formed part of the North Area Development Framework and was a key opportunity for SCC's Housing Market Renewal programme to significantly regenerate and support the housing market through improved housing quality and choice.

- 4.2 Fox Hill is a visible site along a ridge line overlooking the city and is located in the north west corner of Southey Owlerton area of North Sheffield, adjacent to surrounding farm land, countryside and the popular areas of Old Fox Hill and Birley Carr. The site consists of 3 separate plots of land as referred to on the plans to the lease

In 2005 an open market competition was held to identify a developer who could deliver to the requirements set out in a market brief.

On 21.09.05 Cabinet noted that Artisan H Ltd was selected as the successful developer following the competition process for the Fox Hill redevelopment site

The Council entered into a long lease with Artisan H Ltd on 28 April 2008. Artisan H Ltd obtained funding from the Bank of Ireland to help develop the site. The Bank secured the funding by way of a legal charge over the lease. Artisan H Limited paid the value for the site based on the conditions of the quality scheme. The lease also contained an overage clause and profit sharing agreement.

Construction at the site continued until late 2011. However, during the months prior to this, lack of available cash meant that several suppliers were not paid to terms. Discussions between Artisan H Ltd and key stakeholders were ongoing but Artisan H Ltd was unable to fund construction. As a result, construction work ceased at the Development in November 2011. Shortly thereafter the Bank of Ireland appointed KPMG as Administrators pursuant to the powers under their charge.

Since then SCC has been working with KPMG and a cabinet report of May 2012 set out a previous proposal to unblock the site. Unfortunately this was not successful and we now need to identify a different way forwards.

4.4 Legal Implications

KPMG initially made contact with parties who have expressed an interest in acquiring the site, with the view to continuing and completing the development. The Joint Administrators continue to liaise with the key stakeholders – namely the Bank, the Homes and Communities Agency (both of whom have previously helped with funding), and SCC in seeking a resolution for the development.

In the meantime since the date of the appointment of KPMG Artisan H Ltd has breached at least one of its obligations under the lease in that it failed to complete 50 homes by 31 December 2011. Under the terms of the lease this breach triggers a process by which SCC can serve a series of notices on Artisan H Ltd requiring it to remedy the breach within a reasonable period of time or if the breaches are not remedied then the Bank of Ireland can ultimately elect to either remedy the breaches itself or dispose of the lease to a third party. In order to protect the Council's position notices have been served in accordance with the terms of the lease. The first notice was served on 5 January 2012 requiring the 50 homes to be built within 6 months. That obligation has not been complied with but the Bank of Ireland has served its own notice electing to find a purchaser of the lease. If the Bank is unable to find a purchaser or that purchaser does not comply with the obligations in the lease then ultimately SCC will be in a position to re purchase the lease for £1.00 (One pound). It is envisaged that the process would take approximately 24 months from service of the notice i.e. till January 2014.

Although a developer has been identified it is clear that they do not consider the scheme as it stands to be practicable both logistically and economically. The developer wishes to explore in more detail the possibilities for an alternative scheme that whilst viable would maintain the high building standards required by SCC.

If SCC is to agree to an amendment to the scheme this will require consequential amendments to the terms of the lease. It is also possible that if the scheme proposed by the developer and accepted by SCC is materially different from that first proposed and accepted then an application for Secretary of State's consent may be required.

4.5 Financial Implications

This is covered in the closed part 2

5.0 ALTERNATIVE OPTIONS CONSIDERED

5.1 SCC has been cooperating with KPMG to allow them to secure a new developer. They have carried out some extensive market testing but interest in the site with the present obligations under the lease has been weak, resulting in only one positive expression of interest in 2012. Unfortunately this did not result in an acquisition of the land. Therefore we have continued to work with KPMG to identify further interest.

5.2 If the Bank of Ireland do not find a purchaser for the lease or the purchaser does not comply with the obligations in the lease SCC could require that the lease is assigned to it for £1 and could seek to identify another developer. However, following the market testing already carried out, this is unlikely to result in any further interest. In the mean time SCC would be responsible for all security and health and safety costs and no funding is available for this.

6.0 RISK

There is a reputational risk to SCC if this project is not taken forwards in a timely manner. Currently, SCC is cooperating with KPMG and an interested developer in order to get best value and high quality design for the site.

7.0 REASONS FOR RECOMMENDATIONS

7.1 SCC wants to ensure that a new developer is secured who can deliver high quality housing for Fox Hill.

7.2 We are working with KPMG, who have been testing the market to identify developer interest.

7.3 This report requests that officers are authorised to continue with the negotiations and agree either a new lease or a variation of the existing lease to allow a scheme of development which will still maintain the high quality standards required.

8:0 REASONS FOR EXEMPTION (if a Closed report)

8.1 This report is presented as an exempt item because it contains exempt information under paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended). The reasons for its exemption are that it refers to items covered in the cabinet report of 28/4/2008 which were closed then and still remain confidential.

9.0 RECOMMENDATIONS

- 9.1 That the Director of Capital and Major Projects and the Director of Regeneration and Development Services in conjunction with the Director of Finance be authorised to negotiate the terms of a new lease or to amend the existing lease, whichever is more appropriate, as are considered necessary for the provision good quality housing at Fox Hill.
- 9.2 That the Cabinet members for Homes and Neighbourhoods and Business, Skills and Development are delegated the authority to consider the developers final proposals and whether they meet SCC's requirements and make a decision as to whether or not to proceed with those proposals.
- 9.3 That, subject to the decision being made to proceed with the proposals the Director of Capital and Major Projects be authorised to instruct the Director of Legal Services to complete all the necessary legal documentation.