

REPORT OF: FINANCIAL SERVICES MANAGER

TO: EXECUTIVE

DATES: 25th AUGUST 2016

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HOUSING DEVELOPMENT - CLITHEROE ROAD, BRIERFIELD

PURPOSE OF REPORT

The purpose of this report is to request approval for the Council to act as first guarantor in relation to loan funding from the Homes and Community Agency (HCA) under the Builders Finance Fund. Loan funding is required to enable the planned housing development by PEARL 2 to proceed.

RECOMMENDATIONS

The Executive is recommended to:

- (a) agree that the Council provides a parent guarantee to the Homes and Communities Agency in respect of the Builders Finance Fund credit facility of £1,510,050 for the housing development by PEARL 2 at Clitheroe Road, Brierfield *subject* to the completion of the counter indemnity at (c) below;
- (b) authorise officers to conclude the required loan documentation in conjunction with the HCA and PEARL 2;
- (c) note the intention to enter in to an agreement with the Barnfield Group Ltd whereby it provides the Council with a 70% counter indemnity in the event that the guarantee under (a) above is called upon;

REASON FOR RECOMMENDATIONS

To seek approval from the Executive on a matter that has financial implications for the Council.

ISSUE

1. The Executive has previously agreed to the disposal of the Council owned Clitheroe Road site in Brierfield to PEARL2 for a new housing development and the entering into of a Development Agreement with PEARL2 for the scheme. Full planning consent was granted in April 2015 for the 36 new homes as part of first phase of development and outline planning consent for a second phase.

2. To help finance the housing development PEARL 2 submitted a bid to the Homes and Communities Agency (HCA) for loan funding under the Builders Finance Fund (BFF). The BFF is a loan fund that has been made available by HCA to support the delivery of housing by private developers. The fund is intended to address difficulties in accessing development finance faced by some house builders and to help speed up and restart small housing developments that have slowed down or stalled completely.
3. The HCA have confirmed in principle that they are willing to provide PEARL 2 with a credit facility of up to £1,510,050 subject to agreement on heads of terms setting out the terms and conditions on which the credit will be provided.
4. At its meeting in March 2016, the Executive approved a funding guarantee for £1,510,050 with the Council ranked as the 'third' guarantor behind PEARL 2 and Barnfield Investment Properties.
5. Since this meeting there have been further discussions with the HCA which have led to a revised loan proposal being developed under which a more favourable loan margin (i.e. % uplift added to EC Reference Rate) can be obtained. This requires the Council to provide a full parental guarantee to the HCA i.e. the Council would rank as the sole guarantor and not the third guarantor as previously reported to and agreed by the Executive in March. The reduction in margin proposed is 2.8%. In the absence of this guarantee from the Council the loan would attract a higher margin (5%) and require a cost overrun guarantee from Barnfield Construction Limited as the main contractor.
6. For the Council to provide such a guarantee the HCA need to be satisfied that:
 - (i) the appropriate authority is obtained within the Council;
 - (ii) the Council evidence independent legal advice that they can provide the guarantee; and
 - (iii) the HCA Panel Solicitor confirms the Agency being granted a guarantee from a Local Authority is State Aid compliant.
7. Subject to compliance with the above and other loan conditions the credit facility should convert to a formal credit approval in due course and would remain available for utilisation until 30th November 2017. The loan must be repaid from disposal proceeds arising on the sale of properties and be cleared by no later than the 28th February 2019.
8. The main risk to the Council acting as guarantor would appear to stem from delays in selling the properties leading to insufficient sale receipts to clear the loan by the repayment deadline above. Actions to mitigate this risk will entail a controlled development programme within agreed timescales and budget and an active marketing campaign flexed as required to adjust to prevailing market conditions.
9. In addition the Council intends to obtain a counter indemnity from the Barnfield Group Limited under which, in the event of the Council's guarantee to the HCA being called upon, the Barnfield Group would indemnify the Council for 70% (in line with our respective shares in the Pearl joint ventures). The HCA have stressed that the Council's guarantee to the Agency must not be linked or dependent on the counter indemnity and it must be unconditional in that respect. However, for the Council's purposes, such a guarantee to the HCA would only be given once the counter indemnity from the Barnfield Group has been satisfactorily completed.
10. Once completed this indemnity will ensure the Council is no worse off than it would have been under the original proposal approved by the Executive in March. Under that proposal PEARL 2 (70:30 split Barnfield / Council) ranked as first guarantor with Barnfield second and the Council third.

11. Accordingly, the Executive is now recommended to approve the Council acting as first guarantor and authorise officers to conclude the necessary loan documentation in conjunction with the HCA and PEARL 2.

IMPLICATIONS

Policy

There are no new policy implications arising from the contents of this report.

Financial

The financial implications are generally as provided in the report.

Legal

The credit loan facility will be subject to acceptance of heads of terms determined by the HCA. The Council's guarantee in favour of the HCA must be unconditional of any counter indemnity agreed with the Barnfield Group albeit that this separate indemnity is intended to ensure the Council is no worse off than under the guarantee arrangement approved by the Executive in March this year.

Risk Management

As outlined in the report.

Health and Safety

There are no health and safety implications arising from the contents of this report.

Climate Change

There are no climate change implications arising directly from the contents of this report.

Community Safety

There are no community safety issues arising from the contents of this report.

Equality and Diversity

There are no equality and diversity issues arising from the contents of this report.

APPENDICES

None

LIST OF BACKGROUND PAPERS

None