

REPORT FROM: CORPORATE DIRECTOR

TO: POLICY AND RESOURCES COMMITTEE

DATE: 26th June 2018

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LOMESHAYE INDUSTRIAL ESTATE EXTENSION PHASE 1

PURPOSE OF REPORT

To provide Members with an update on discussions with the landowner who has requested to act as developer for the scheme.

RECOMMENDATIONS

The Committee is asked to:

- (1) Note the proposals put forward by the landowner to act as developer.
- (2) Agree to the submission of a further report when the outcome of the Compulsory Purchase is Known.

REASONS FOR RECOMMENDATIONS

- (1) To consider a representation made as part of the Compulsory Purchase process.
- (2) To minimise risk to the Council.

ISSUE

Background

1. The Executive agreed at its meeting on 15th March 2018 that PEARL2 would be the developer for the Lomeshaye Extension Phase 1, subject to the successful outcome of the Borough of Pendle (Lomeshaye Industrial Estate Extension, Phase 1) Compulsory Purchase Order 2018 (CPO). A developer needed to be in place to support the CPO process.
2. At the meeting of the Policy & Resources Committee on 24th May 2018 it was reported that one of the landowners affected by the CPO had requested to act as developer for the site. At the time of writing the report for that meeting the objector had confirmed that he did not

have experience as a developer, only as a contractor. His agent attended the meeting and stated that his client now had a developer to partner with. The Committee resolved that discussions continue with the landowner and his agent and the outcome of these discussions be submitted to the next meeting of this Committee.

Proposal

3. Since the last Committee two meetings have been held with the landowner and his agent, one of which also included his developer partner. Following these meetings a proposal has been submitted by the landowner.
4. The landowner has made a without prejudice offer to acquire the developable land after it has been serviced (and by implication after the Council has completed the Compulsory Purchase of the land).
5. The landowner is proposing two options for development:

Option 1 – Act as developer for the whole site in partnership with a developer
Option 2 – Act as developer for part of the site (area to be determined) in partnership with a developer
6. The landowner's chosen developer partner is currently undertaking an industrial development in Clitheroe on a site covering around 6.5 acres (2.6 hectares), which is a similar size to the developable area of Lomeshaye Extension Phase 1. He is putting in the infrastructure and developing speculative units between 2,000 and 4,000sq ft with the option for larger units if required. Due to the level of demand the units are being sold with minimal amount of marketing.
7. The landowner/developer would use private finance to develop industrial units at Lomeshaye and would build out the units in a timescale acceptable to the Council. The units would be developed speculatively but with flexibility of design to meet the needs of various end users, dependent upon the space requirements, as the units would have the ability to be linked.
8. The landowner/developer would be prepared to have a reversion covenant built into the land sale such that the lands would vest back in to the Council's control if no meaningful progress is made within an agreed timescale.

Consideration of Proposed Options

Option1

9. Lancashire County Council (LCC) is providing £1.5m of funding to support the acquisition and servicing of the land. This was approved on the understanding that PEARL2 would be the developer and LCC have stated that if Pendle wanted to use an alternative developer it would need to be referred back to their Cabinet.
10. The funding is subject to the signing of a funding agreement (currently being drafted) where there will be an obligation on Pendle Council to complete the development within an agreed timescale. If development is not achieved in the agreed timescales then there is a risk of clawback of the LCC funding. As Pendle Council are also putting £1.5m into the scheme then the Council would want to ensure that this investment resulted in the development of industrial units.

11. If the serviced land is sold to PEARL2 the Council has significant control over the development through their existing Joint Venture arrangements but would still wish to transfer any development obligations to PEARL2. If it was agreed to sell to another developer then the Council would wish to do this under a development agreement. This would include passing on any clawback risk to the developer to protect the Council.
12. The principle of clawback was discussed at the meeting with the landowner and the developer but the expression of interest from the landowner has only agreed to a reversion of the land to Pendle Council.
13. If the Council wished to dispose of serviced land at market value with no development obligations then this is not subject to the European OJEU procurement regulations. On the basis that the land would be disposed of for specific uses, with development obligations (i.e. a development agreement) and the value of development of the full site is above the financial threshold for works (currently £4,551,413) then it is likely that the OJEU procurement regulations would apply. This is a complex area and formal legal advice would be required on this which it has not been possible to obtain within the timescales.
14. The PEARL2 Joint Venture was established following an OJEU compliant procurement process. If a new OJEU process was required and it is not possible to precisely specify the requirements (as the size and design of units will be subject to end user requirements) it is likely that one of the procedures including negotiation/dialogue would be the most suitable. This process is likely to take several months and there would also be a need to draft and agree a development agreement with the chosen developer.
15. Fundamentally, there is no guarantee that the landowner would be successful in the procurement as it would be an open process. The delay in going through an OJEU process could put the LCC funding at risk.

Option 2

16. If the works costs were below the OJEU threshold there would be no need to follow the OJEU regulations. However, the Public Contracts Regulations 2015 specify that all economic operators should be treated equally so there is an expectation of competition. There are no nationally set processes or timescales for this so it would be carried out in line with the Council's Contract Procedure Rules. The Council could be open to challenge if it did not open up the process to some form of competition.
17. As with Option 1, there is no guarantee that the landowner would be successful in an open procurement. The timescales for going through a procurement process would be less than an OJEU process.
18. Having two developers on one site could potentially reduce the flexibility to accommodate a range of different users with different size requirements as a decision would need to be made on how to split the site between the developers at an early stage.

Timescales

19. A Public Inquiry is being held on 26th-28th June to consider objections to the CPO and it is likely to be some weeks after that before a decision is made. Subject to the decision being to confirm the CPO, there will be a further period of several months before the land vests with the Council and any work can begin on the site. During this time more detailed design work will take place on the road layout and any relevant permissions sought to allow these works to take place. The earliest that a developer would be able to start work on the site is

estimated to be the middle of 2019, although once a decision had been made on the CPO we would wish the developer to begin marketing the site.

Conclusion

20. If the Committee wish to consider the landowner as developer for some, or all, of the site there would still be a requirement for a procurement process to be undertaken, the type of process depending upon the value of the development. This would add a time delay, which may impact on the ability to complete the development in line with LCC requirements. It would be necessary to pass on any development obligations to a developer to minimise any risk to the Council, such as clawback of LCC funding. As the funding agreement is still being drafted the full development obligations have yet to be established.
21. There is no guarantee that the landowner would be successful in any procurement process as there would be open competition.
22. The Executive have previously agreed that PEARL2 should be the developer for the Phase 1 Extension to support the CPO. It is not necessary for a decision to be made at this stage on whether an alternative developer will be considered.
23. It is recommended that Committee wait until the outcome of the CPO is known before making a decision. By this stage the funding agreement with LCC will have been signed and the full requirements of LCC will be known which will enable a more detailed discussion with the landowner about development obligations.

IMPLICATIONS

Policy: None directly arising from this report

Financial: None directly arising from this report

Legal: If an alternative developer is to be procured this would need to be done in line with any applicable procurement law

Risk Management: There is a risk of clawback of LCC funding if there is a delay in delivering the development

Health and Safety: None directly arising from this report

Sustainability: None directly arising from this report.

Community Safety: None directly arising from this report

Equality and Diversity: None directly arising from this report

APPENDICES

None

LIST OF BACKGROUND PAPERS

Report to Policy & Resources Committee 24th May 2018 – Lomeshaye Industrial Estate Phase 1 Extension