

REPORT OF: HOUSING, HEALTH AND ECONOMIC DEVELOPMENT SERVICES MANAGER

TO: POLICY AND RESOURCES COMMITTEE

DATE: 27th NOVEMBER, 2018

Report Author: Julie Whittaker
Tel. No: (01282) 661038
E-mail: julie.whittaker@pendle.gov.uk

EXTENSION OF PEARL2 JOINT VENTURE COMPANY

PURPOSE OF REPORT

To seek approval to the extension of the PEARL2 Joint Venture.

RECOMMENDATION

To agree the extension of Pendle Enterprise and Regeneration (2) Limited for a further 5 years or 50% of contract value, whichever is the earliest.

REASON FOR RECOMMENDATION

To continue to deliver regeneration and development projects in the Borough.

BACKGROUND

1. On 25th June 2009 the Executive agreed that Barnfield Investment Properties Ltd would be Pendle's Strategic Development Partner, following a European Compliant (OJEU) process. On 22nd October 2009 the Executive gave approval to proceed with the incorporation of the new Joint Venture Company between the Council and Barnfield Investment Properties, which resulted in the establishment of Pendle Enterprise and Regeneration (2) Ltd (PEARL2) on 11th November 2009.
2. PEARL (Brierfield Mill) Ltd was established in 2012, as a wholly owned subsidiary company to PEARL2, to take ownership of Brierfield Mill and to have responsibility for its regeneration and development. PEARL (Brierfield Mill) Ltd is governed by the same contract timescales as PEARL2.

3. Since PEARL2 was established it has completed, or is on site with, £46m of development schemes and for PEARL (Brierfield Mill) there is £9m of development completed or underway. The completed schemes include:
 - Construction of the ACE centre for office and leisure use
 - 84 new houses built at Quaker Heights, Holden Road, Whitefield, Bunkers Hill and Carry Lane
 - 80 houses and the former Booth Street library refurbished in Whitefield Conservation Area
 - Refurbishment of the listed Shackleton Hall in Colne for offices and retail
 - Provision of 3 new sports pavilions
 - Modernisation and new shopfronts at Colne Shopping Centre (now called Hartley Square)
 - Refurbishments at Northlight to provide a new base of Lancashire Adult Learning and an art facility for InSitu

ISSUE

4. The OJEU notice that was issued as part of the original procurement stated that the contract would last for 120 months (i.e. 10 years) from award. As the Company was established in November 2009 the contractual arrangement will expire in November 2019.
5. By November 2019 it is anticipated that a number of contracts at Brierfield Mill (Northlight) will be underway but there may be others that still need to be let to complete the scheme. There may be some new homes still to sell on the three sites that are currently under development at Clitheroe Road, Brierfield (Foxhills), Oak Mill, Colne (Langroyd Place) and Carry Lane, Colne (Greenfields View). The Lomeshaye Industrial Estate Extension Phase 1 will also be under development, subject to confirmation of the Compulsory Purchase Order. There may also be new opportunities that arise over the coming year that we would wish to progress through PEARL2.
6. The Joint Venture arrangements have proved successful in bringing forward sites that would not have been viable for the private sector alone to bring forward. Having a pipeline of schemes has enabled profits to be reinvested from one scheme into another which has helped to reduce the need for external borrowing and hence the costs of the overall scheme. Due to the success of PEARL2 it is recommended that the Joint Venture arrangements are extended.
7. There is often a long lead in time for the development of projects so it would be helpful to receive a decision from the Committee at an early stage as to whether they wished to continue with the Joint Venture. This would enable better forward planning of projects.

PROCUREMENT

8. Legal advice has been sought from Hill Dickinson about extending the arrangement to ensure that this can be done in line with the Public Contracts Regulations 2015.

9. Regulation 72 (1) (b) allows for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,

provided that any increase in price does not exceed 50% of the value of the original contract

10. If the existing PEARL2 arrangement came to an end and a new procurement exercise was undertaken this would be costly and time consuming for the Council. The existing PEARL2 and PEARL (Brierfield Mill) companies would not be able to let any further contracts to Barnfield and would have to openly procure further works and services. This could become complex on existing schemes such as Northlight if a different contractor was appointed for some elements. On schemes such as Lomeshaye Industrial Estate, where public grant funding has been secured, the delay caused by a new procurement process could jeopardise funding. Pendle Council would also need to find additional loan funding for any new Joint Venture arrangement until the existing schemes with PEARL2 and PEARL (Brierfield Mill) were completed and loans repaid on the sale of all the assets.

11. The extension of the PEARL2 Joint Venture would therefore appear to meet the requirements of Regulation 72 (1) (b) provided that any increase in price does not exceed 50% of the original contract.

12. When PEARL2 was originally procured the Contract Notice did not contain an anticipated contract value. It would therefore be a question of fact as to what the original contract value was.

13. Any contracts that have been let before the expiry of the 10 year period will be considered as part of the original procurement. This relates to contracts that have been let to Barnfield but would not include any profit derived by PEARL2 or land value uplift. This would establish what the initial contract value was and hence what a 50% increase would be. PEARL2 would only be able to let further contracts to Barnfield up to that level. It is assumed that a 5 year extension to PEARL2 (i.e. until November 2024) would generate contracts of around 50% of those within the original 10 year period. This would seem a reasonable length of time to extend the JV but if the 50% threshold was reached before the end of the 5 year period then no further contracts could be let.

14. PEARL (Brierfield Mill) Ltd was not established until 2012, but as it relied on the same procurement could only be extended to November 2024 as well. It is anticipated that any outstanding contracts would have been let well before then.

PUBLICATION OF NOTICE

15. Once the contract has been extended it will be necessary to publish a Contract Award Notice in the Official Journal of the European Union (OJEU).

IMPLICATIONS

Policy: None directly arising from this report

Financial: None directly arising from this report

Legal: The extension of the Joint Venture is permissible under Regulation 72 (1)(b) of the Public Contracts Regulations 2015.

Risk Management: None directly arising from this report

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

APPENDIX

LIST OF BACKGROUND PAPERS

None