

REPORT OF: CHIEF EXECUTIVE
TO: POLICY AND RESOURCES COMMITTEE
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EXTENSION OF LOMESHAYE INDUSTRIAL ESTATE

PURPOSE OF REPORT

1. The purpose of this report is to provide the Committee with an update to the development of the extension of Lomeshaye Industrial Estate and, in particular, to seek agreement on a way forward with the development of Phase 2 of the extension.

RECOMMENDATIONS

2. The Policy and Resources Committee is recommended:-
 - a) note the progress made with the development of Phase 1 of the extension of Lomeshaye Industrial Estate;
 - b) give delegated authority to the Chief Executive, in consultation with the Group Leaders to:-
 - i) subject to (ii) below, enter into a Grant Funding Agreement with the Lancashire Enterprise Partnership (LEP) for Growth Deal grant of £4m;
 - ii) subject to obtaining adequate security to mitigate the risk of grant clawback from the LEP, to enter into a Grant Funding Agreement with Pendle Park Ltd on the basis of the Heads of Terms provided at **Appendix B**.

REASONS FOR RECOMMENDATION

3. To provide the Committee with an update on the development of the Lomeshaye Industrial Estate Phase 1 and to seek agreement on a way forward for the delivery of Phase 2.

Background

4. Councillors have received regular reports in relation to the development of Pendle's Strategic Employment Site at the Lomeshaye Industrial Estate. This report provides an update on progress with both Phases of the development.

Phase 1 of Lomeshaye Industrial Estate

5. Councillors have received various reports relating to the compulsory purchase action for Phase 1 of the extension of Lomeshaye Industrial Estate. This matter was last considered at the meeting of the Policy and Resources Committee on 19th March 2019, when Councillors received a report providing notification that the Secretary of State for the Ministry of Housing, Communities and Local Government (MHCLG) had confirmed the compulsory purchase order for the site (the Phase 1 site is as shown on the Plan at **Appendix A**).
6. Following the conclusion of the statutory objection period and allowing for the minimum 3-month period for the lands to be vested in the Council, the Council's ownership of the site was confirmed on 8th August 2019. As required, negotiations have continued with the various former Owners of the site to agree compensation.
7. As agreed by the Committee, Pendle Enterprise and Regeneration Ltd (2)(PEARL2) is to be appointed as Developer of the site and delegated authority has been given to the Corporate Director to agree the terms of the Development Agreement between the Council and PEARL2 for the development.
8. In the meantime, during September 2019, the Council obtained planning consent to create the road infrastructure for the site along with various industrial units and design work is now underway, in conjunction with Lancashire County Council who will adopt the road once it is constructed, with a view to starting construction of the road in Spring 2020.
9. On the basis of the current timetable, it is envisaged that the road infrastructure will be completed in Autumn 2020 and the development of the individual serviced plots on the site will commence thereafter.

Phase 2 of Lomeshaye Industrial Estate

10. Councillors may recall that at the meeting of the Policy and Resources Committee on 18th September 2018, the Committee gave approval to proceed with the compulsory purchase order for Phase 2 of the Lomeshaye Industrial Estate. This followed unsuccessful attempts to negotiate the acquisition of the site from the Owner.
11. During October 2018, the Council was informed that Phase 2 (and parts of Phase 1) of the extension of the Lomeshaye Industrial Estate has been acquired by Pendle Business Park Ltd (*it should be noted that confirmation of the acquisition was not formally received by the Council until March 2019 when the change in ownership was notified to the Land Registry*). According to Companies House records, Pendle Business Park Ltd was incorporated in February 2018 and, as a result, has no substantial trading history.
12. An initial meeting was held with representatives from Pendle Business Park Ltd who confirmed that it was their intention to undertake the commercial development of the site. As a consequence, given a Land Owner with an intention to develop, the Council paused the process of compulsory purchasing the land on the basis that it would be unlikely to succeed given this change in circumstances. Following confirmation by Pendle Business Park Ltd of their ownership of the land in March 2019, the Council has worked with their representatives to facilitate the development of the site.

13. Councillors will recall that the Council has secured £4m of Growth Deal grant funding from the Lancashire Enterprise Partnership (LEP) for the development of the site (primarily for the acquisition of the site and site infrastructure). The award of the grant was based on a business case and state aid opinion produced by the Council that assumed delivery of the development by PEARL2 (as with Phase 1).
14. The award of the grant is conditional on the delivery of a range of outputs arising from the development including, for example, job creation, additional commercial floorspace and provision of infrastructure. Whilst the grant must be claimed in full by March 2021 (requiring that expenditure is incurred before the grant can be drawn down), the delivery of the outputs is spread over the period to 2025. If the outputs are not delivered, under the terms of a Grant Funding Agreement (GFA), the LEP can clawback grant funding in full. In addition, there are further 'Events of Default' that could result in grant being clawed back, such as insolvency of the applicant or substantial disposal of assets.
15. Pendle Business Park Ltd consider this grant essential to the delivery of the Scheme. Given their willingness to develop the site and, as a consequence, there being no need for the Council to undertake a development role, discussions were held with the LEP to establish whether it is possible to transfer the grant funding award (and obligations for the delivery of the outputs) to Pendle Business Park Ltd. However, the LEP is unwilling to do this preferring that the GFA remains with the Council as the original applicant for the funds and acknowledging that the delivery model is likely to be different from that assumed in the original application for the funding.
16. Further discussions have therefore taken place between the LEP, the Council and Pendle Business Park Ltd to find an arrangement acceptable to all parties that will ultimately result in the delivery of the site and the outputs referred to above.
17. The LEP requested both an updated Business Plan and State Aid opinion to reflect the changes in how the site will be delivered. The Council has worked with Pendle Business Park Ltd to commission these; the updated Business Plan has been submitted to the LEP and, whilst the State Aid opinion has been completed, at the time of writing it had not been received by the Council and therefore submitted to the LEP. An update on this will be provided to the Committee at the meeting.
18. It is clear from the discussions held that Pendle Business Park Ltd require a developer partner to develop the site and over recent months, they have been in negotiation with a number of developers. According to the latest discussions with Pendle Business Park Ltd, it is their intention to act as Developer of the site but they are to establish a joint venture arrangement (being a separate entity from Pendle Park Ltd) with R&M Developments through which the site will be delivered.
19. The LEP is clear that the Council, as applicant, should be the recipient of the grant and should, therefore, enter into the GFA accepting all the obligations including the delivery of the outputs. In turn, the Council would enter into a similar GFA with Pendle Business Park Ltd (as Developer) passporting any and all obligations to them for the delivery of the site. To that end, the draft Heads of Terms provided at **Appendix B** have been developed and will (with the GFA) form the basis of an agreement between the Council and Pendle Business Park Ltd. *It should be noted that the Council is awaiting feedback from Pendle Park Ltd on the Heads of Terms (and related GFA) so a verbal update shall be provided at the meeting if there are any significant matters arising from this.*

20. Under such an arrangement, Councillors will appreciate that the risks to the Council are potentially significant. In particular, the Council will have no direct control over the delivery of the site and, therefore, no control over whether the obligations placed on it by the LEP will be achieved, either within the necessary timescales or at all. This means that the Council could be potentially exposed to grant clawback of up to £4m unless adequate security can be given by Pendle Business Park Ltd.
21. In this context, as part of the discussions with Pendle Business Park Ltd, the Council has outlined what options for security would be acceptable. These options and the response from Pendle Park are shown below:-

- **Charges on corporately owned assets** (which, in this instance, would be the Phase 2 Land) to the value of any claw back claim. These assets would be in the ownership of the Pendle Business Park Ltd, the developer partner or the individual shareholders/directors. Again, an assessment of the asset values would be required.

Pendle Business Park Ltd have indicated that it is not possible to place a charge on the land as it would not be acceptable to their main funder.

- **Bank guarantee taken out for the benefit of the Council** in the name of either the 3rd party itself or a group / parent company – this would need to be relatively broadly drafted such that the trigger to claim on it would be tied back to the grant flowing through the LEP to the Council and then on to the 3rd party (eg claw back provisions / any other liability provisions).

Pendle Park have confirmed that a Bank Guarantee cannot be provided

- a **Parent Company Guarantee (PCG)** carrying sufficient monetary value to cover off any potential claw back by the LEP. This would require due diligence to be undertaken on the Company providing the PCG to determine whether they would be able to stand behind any such guarantee;

Pendle Business Park Ltd is single entity with no parent company. It is also not considered that Pendle Business Park Ltd has sufficient financial strength to provide a Company Guarantee, not least because the Company's valuation appears to derive directly from the land which is charged by the main funder.

- **Personal guarantees from individual shareholders / directors** if they have significant amounts of assets. Again, due diligence would be required to ensure that sufficient (liquid) assets exists to meet the potential obligations;

No personal guarantees have been offered.

- some form of **Performance Bond** taken out by Pendle Business Park Ltd and/or their developer partner for the benefit of the Council. This is similar to bank guarantee, underwriting the performance of obligations by Pendle Business Park Ltd.

Pendle Business Park Ltd have indicated that they will explore the scope to provide a Performance Bond.

22. As Councillors may be aware, part of the Phase 1 Lands have been acquired from Pendle Business Park Ltd by way of compulsory purchase order. Whilst negotiations on the value of compensation payable to Pendle Business Park Ltd have yet to conclude, they have suggested that the Council retain this compensation in lieu of the security. In the absence of an agreed valuation, it is not possible to say definitively that this would be adequate but, based on the Council's valuation of their claim, it is unlikely to be sufficient security.
23. At the time of writing, therefore, we are awaiting further details on proposals from Pendle Business Park Ltd on an acceptable form of security to the Council against the risk of non-delivery of the outputs required by the LEP. A verbal update on this matter will be provided at the meeting of the Committee should any further proposals come forward.
24. Given the deadline for defraying the grant funding, there is a need to conclude this matter in the near future. Pendle Business Park Ltd have submitted a planning application for the site which is expected to be determined at the meeting of Policy and Resources Committee in February 2020. Likewise, the LEP are pressing the Council to enter into the GFA so that delivery of the project can commence.
25. To that end, Councillors are asked to give delegated authority to the Chief Executive, in consultation with the Group Leaders to:-
 - i) subject to (ii) below, enter into a Grant Funding Agreement with the Lancashire Enterprise Partnership (LEP) for Growth Deal grant of £4m;
 - ii) subject to obtaining adequate security to mitigate the risk of grant clawback from the LEP, to enter into a Grant Funding Agreement with Pendle Park Ltd on the basis of the Heads of Terms provided at **Appendix B**.

IMPLICATIONS

Policy

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

Financial

27. The financial implications are generally as set out in the report.
28. In particular, the Council has access to a grant of £4m from the LEP which, in turn, is proposed to be transferred to Pendle Business Park Ltd under an agreement reflecting the GFA between the Council and the LEP. As the Council will not have direct control over the delivery of outputs under the GFA, it is seeking adequate security to protect against the clawback of funding if Pendle Business Park Ltd does not deliver the outputs agreed with the LEP.

Legal

29. The arrangements outlined in this report will be captured in a Grant Funding Agreement between the LEP and the Council and between the Council and Pendle Business Park Ltd.

Risk Management

30. The delivery of Phase 2 of the extension to Lomeshaye Industrial Park is a key part of the Council's Jobs and Growth Strategy. The Council consider that the site has the potential to deliver at least 36,000sqm (390,000 sqft) of commercial floorspace leading to the creation of 840 jobs (or an additional c3% of jobs for the Borough). Pendle Park have submitted a planning application for 55,000sqm of floorspace, which is under consideration
31. Given the structure of the arrangement for the delivery of the site, there is a risk to the Council that the grant may be subject to clawback if outputs are not delivered or there are other events of default. As delivery of the outputs is out with the Council's control, the Council is seeking security to mitigate the financial risk of grant clawback.

Health and Safety

32. There are no health and safety implications arising directly from this report.

Sustainability

33. There are no sustainability implications arising directly from this report.

Community Safety

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

Equality and Diversity

35. No specific issues arise from the savings currently proposed.

APPENDICES

Appendix A – Plan of the proposed Extension of Lomeshaye Industrial Estate
Appendix B – Draft 1 13.12.2019 - Heads of Terms

LIST OF BACKGROUND PAPERS:

Reports to Policy and Resources Committee 18th September 2018