

HERTFORDSHIRE COUNTY COUNCIL

CABINET

MONDAY, 18 DECEMBER 2017 AT 2:00PM

JOINT PROMOTION OF LAND OWNED BY HERTFORDSHIRE COUNTY COUNCIL AND BOROUGH OF BROXBOURNE AT BROOKFIELD RIVERSIDE CHESHUNT

Report of the Director of Resources

Author: Mike Evans, Head of Estates Management

Executive Member: David Williams, Leader of the Council (as responsible for the Resources, Property and the Economy portfolio)

Local Member: Mark Mills-Bishop, Flamstead End and Turnford

1. Purpose

- 1.1 To provide Cabinet with an update on the opportunity for the County Council and Broxbourne Council to promote significant land at Cheshunt Park Farm and the adjacent Brookfield retail area.
- 1.2 The report sets out the preferred marketing proposals and seeks Cabinet approval to the joint promotion of the land in the ownership of the two councils at Brookfield with the objective of identifying a development partner capable of bringing forward a development of circa 400,000 sq. ft. of new retail and leisure facilities together with other associated uses, such as 200 new dwellings and infrastructure.

2. Background and Summary

- 2.1 It has been a long standing policy ambition of Broxbourne Council to continue the development of the existing Brookfield Retail Park, a large, established retail area close to the A10 at Cheshunt.
- 2.2 In 2014, Broxbourne Council and the County Council purchased land in equal shares at Cheshunt Park Farm to the north/north east of Brookfield. More recently this land has been promoted for a Garden Village development through Broxbourne's emerging Local Plan.
- 2.3 These two areas are now known as Brookfield Riverside and Brookfield Garden Village. This report focuses on Brookfield Riverside.
- 2.4 For many years Broxbourne Council had a Cooperation Agreement with Bayfordbury Estates Ltd. (BEL) which was essentially an

agreement to jointly promote a retail/leisure development north of the existing Tesco store at Brookfield, a plan is attached at Appendix A for reference. That Cooperation Agreement expired in January of this year. BEL has an option to acquire the land immediately to the north of the New River, part of which is required to secure a new link road from south of the New River to the Turnford interchange.

- 2.5 Negotiations are underway between both councils and BEL about a Land Owners' Agreement which would ensure the public sector land south of the river and BEL's land north of the river can be made available to enable the development.
- 2.6 Both councils have instructed the property advisor, Cushman and Wakefield (C&W), to provide advice on an appropriate form and scale for the scheme to ensure that it meaningfully contributes towards the prosperity and wellbeing of the residents in the Borough of Broxbourne, whilst being commercially viable and attractive to potential investors.
- 2.7 The position has now been reached where the councils are ready to formally seek the procurement and appointment of a development partner for Brookfield Riverside and C&W have been instructed by Broxbourne Council to prepare the necessary documentation.
- 2.8 The County Council has already started dialogue with both its service occupiers about the potential displacements; these are the Gypsy and Traveller team and Transport, Waste & Environmental Management. Both have been receptive about the potential move and recognise the opportunity both at service and corporate levels. The County Council has engaged with families at the Travellers camp and will continue to do that throughout the process.

3. Recommendations

- 3.1 The Resources, Property & the Economy Cabinet panel will consider a report on this item of business at its meeting on 15 December 2017. The Panel will be invited to recommend to Cabinet *"That Cabinet:*
 - (a) *agrees that a joint marketing and procurement exercise between the County Council and Broxbourne is carried out as soon as possible, in accordance with the Public Contract Regulations 2015 using the Official Journal of the European Union in order to identify a suitable development partner for both councils' land holdings at Brookfield;*
 - (b) *delegates to the Director of Resources in consultation with the Executive Member for Resources, Property and the Economy working with appropriate representatives from Broxbourne Council, authority to carry out the procurement process to*

determine which Development Partner is selected, including the necessary detailed negotiations;

- (c) delegates to the Director of Resources in consultation with the Executive Member for Resources, Property and the Economy and the Chief Legal Officer, authority to agree the terms of any agreements required between the County Council and Broxbourne and/or the identified Development Partner and/or any third parties;*
- (d) notes the intention to make a planning application for Garden Village;*
- (e) delegates to the Director of Resources in consultation with the Executive Member for Resources, Property and the Economy, to produce the necessary business case with regards the relocation of the County Council's household waste recycling centre (HWRC) and traveller's site at Halfhide Lane, Cheshunt, with consideration being given on the necessary County Council budget to support this scheme, all in accordance with the agreed masterplan for the Garden Village.*
- (f) approves of the marketing of the HWRC and travellers site, and delegates to the Director of Resources in consultation with the Executive Member for Resources, Property and the Economy and the Chief Legal Officer authority to agree the terms of this disposal (including the required legal documentation) ensuring compliance with section 123 (best consideration) under the Local Government Act 1972, as well as to consider the displacement of the services carrying out the required consultation process applicable, subject to (g) below;*
- g) notes a further report will be presented to Cabinet for approval to appoint the preferred Development Partner and terms of the agreed disposals as set out in these recommendations, including and other relevant recommendations/approvals to enable the Greater Brookfield development opportunity to be awarded and proceed."*

3.2 The Cabinet Panel's recommendation/s to Cabinet will be reported orally at the Cabinet meeting and circulated to Members in the Order of Business sheet.

4. Options available to the County Council

4.1 The County Council has three options as to how it participates in the identification of a preferred development partner at Brookfield Riverside.

4.2 **Option 1 – Do nothing.** The County Council's assets at Brookfield are a traveller's site and a HWRC. Both of these are functioning at acceptable levels, but there is an opportunity to re-provide the assets in the urban extension and in doing so release the development potential at Greater Brookfield. By allowing the displacement of the services, the County Council is assisting in the economic regeneration of the

area as well as redeveloping improved assets. Given the opportunities available and the County Council's role in the master planning of the urban extension, the potential displacement of the services has been promoted.

- 4.3 **Option 2 – Do not participate in the marketing of Greater Brookfield** – the lead partners in the vision for Greater Brookfield have been BEL and Broxbourne Council, hence their Cooperation Agreement (now expired), but they have failed to work together and identify a way of delivering the vision. The County Council could take the view that the County Council's existing assets are acceptable and wait for the development proposals and any financial offer for the development of the area to come into focus from Broxbourne Council and BEL. Subject to the financial offer available at that time, the County Council could then consider the value of displacing the travellers and HWRC. Such a stance is not considered appropriate, as the market will expect a unified approach from the land owners. The level of private sector investment anticipated in this project is likely to be in excess of £175 million, as such it is considered appropriate for the landowning partners to demonstrate their willingness to participate which will give increased confidence in the deliverability of the of the project.
- 4.4 **Option 3 – Participate in the promotion of the Greater Brookfield opportunity** – even though there is a financial cost (estimated at £60k to the County Council) and a significant resourcing impact with the County Council project participation, the overall feeling is the market will respond more positively with all land owning partners participating in the promotion. By being involved in the promotion, the County Council will also have better clarity on the delivery of key infrastructure that is needed to access the urban extension. The delivery of the infrastructure needed for the urban extension means receipts can begin to flow from that project.

5. Brief Update on the Garden Village

- 5.1 WYG has been appointed by both councils to produce a masterplan to guide the form of development to be implemented at the emerging Garden Village. WYG have also been instructed to prepare a planning application, including the associated studies. It is anticipated that the application will be ready for submission in the early part of 2018.
- 5.2 No decisions about the delivery method have been made with regard to the Garden Village area at this stage, but subject to Broxbourne Councils comments the development could be managed by the County Council's property company, Herts Living Limited, and this will be explored by the County Council with Broxbourne.

6. The Way Forward for Brookfield Riverside

- 6.1 As there are benefits in the County Council participating in the promotion of Brookfield Riverside, option 3 is recommended. As such, subject to Cabinet's agreement, the intention is to market this through the Official Journal of the European Journal (OJEU). Not only has the stage been reached where both councils are ready to do so but it is anticipated that the Examination in Public of the Broxbourne Local Plan will take place in the early part of the summer next year. It would therefore be helpful for a credible and experienced retail/leisure development partner to have been chosen by that time. Such a partner would be able to confirm to a Local Plan Inspector that the scheme was real and deliverable.

7. Marketing of Brookfield Riverside

Cushman & Wakefield have been commissioned by the Councils' to consider and then implement the most appropriate delivery and procurement strategy for this development opportunity.

- 7.1 There are a number of issues which need to be determined before the marketing exercise takes place. These include agreeing:
- selection criteria and weightings for the initial selection stage of the procedure
 - the project objectives and relative weightings, which will be used for the award criteria
 - the commercial basis of deal/disposal
 - a decision making process
- 7.2 The proposals are set out below, with a document outlining the process and related documents is set out in a separate Marketing Report.

8. Selection Criteria

- 8.1 A Selection Questionnaire (previously known as a Pre-Qualification Questionnaire or PQQ) is being prepared in connection with the Councils' requirements for the procurement of a Development Partner. The purpose of this stage of the procurement process is to shortlist potential suppliers for subsequent invitation by the Councils' to participate in the next stage of the procurement process.
- 8.2 To participate in the procurement, bidders must demonstrate that the specified exclusion grounds do not apply and that they have the necessary economic and financial strength and technical and professional ability to meet the contract requirement. The document will set out the exclusion and selection criteria which the Councils' will apply for this tender.

9. Project Objectives & Weightings

9.1 The aims of the Councils for Brookfield Riverside are:

- i. to secure the development of a high quality mixed use retail-led scheme in accordance with the policies set out in the emerging Broxbourne Local Plan;
- ii. to secure a significant ongoing revenue stream for both councils.

9.2 Expanding on these aims, detailed draft Project Objectives have been drawn up for Brookfield Riverside. The Councils are seeking an approach to the delivery of this redevelopment opportunity that provides the optimal balance across the Councils' project objectives. These draft project objectives have been set out and will be used to construct the evaluation criteria. The project objectives are grouped and weighted under the three main topic areas, as set out in the table below:

Ref	Project Objectives
Concept & Quality (60%)	
Masterplan	
1	Sense of Place and Identity
2	Cohesive Planning, Linkages & Connectivity
Uses	
3	Retail
4	Leisure
5	Other Ancillary Uses – inc Offices, Residential
6	Civic Hub
Design & Sustainability	
7	Design Quality (building and public realm)
8	Environmental Sustainability
9	Long Term Structure
10	Transport
Delivery (20%)	
11	Resources & Timing

Commerciality (20%)	
12	Viability & Funding
13	Financial Structure
14	Contract & Partnering

10. The commercial basis of a deal/disposal

- 10.1 A full report considering the most appropriate delivery and procurement strategy for Brookfield Riverside has been prepared. The preferred delivery options were identified as either the Contractual Partnership (Master Development Agreement) or the Joint Venture Partnership (JVCo). These options will be further analysed in greater detail to conclude a strong argument for one approach, but on balance the contractual partnership is recommended to be the Councils' starting position.
- 10.2 C&W have drafted proposed key terms for both an Agreement between Broxbourne Council and the County Council, and an Agreement between the Councils' and the relevant third party landowners, for example the Harvey family and BEL. These will be used as a basis to progress negotiations with these parties.

11. Selection, Dialogue & Final Tender - Decision making process

- 11.1 The overall evaluation and recommendation process will be carried out by a team comprising officers from both councils advised by C&W. This team will make the decision about which developer provides the best all round offer to the councils strictly in accordance with the detailed selection criteria. This project team from both councils will include:
- Project lead
 - Property lead
 - Economic regeneration lead
 - Finance lead
 - Legal lead (in house)
 - Procurement lead
- 11.2 It is anticipated that 3-4 bidders will be shortlisted following an initial evaluation by the Project Team. Given the scale of the development opportunity a presentation will be made to members of both councils, providing a summary of the initial discussions undertaken up to this point and an update on progress.
- 11.3 Following the evaluation of the shortlisted parties' bids, a further presentation will be made to the members providing a summary of the

bids submitted by the shortlisted parties and the evaluation undertaken.

- 11.4 The Project Team will then report to their respective Cabinets the outcome of the Final Tender process and their recommendations.

12. Other matters

12.1 Asset Relocations

- 12.1.1 In order to implement the proposals, it will be necessary for both councils to agree the relocation of their respective operational assets, namely Broxbourne Council's allotments and depot and the county council's household waste recycling centre and gypsy site at Halfhide Lane.

- 12.1.2 The phasing and funding of this needs to be finalised however it may require a Council budget to forward fund the displacement costs, with a mechanism within the Development Agreement that such costs are captured later on in the transaction, either by improved capital land payments or maybe by access to a long term revenue stream.

12.2 Infrastructure Solution

- 12.2.1 Broxbourne Council and the County Council have been working on an infrastructure solution to provide a road layout that delivers both the long term strategic requirements of the borough of Broxbourne that also creates a large single land parcel for a retail-led scheme to come forward. Both Councils are focusing on options, however, any comments from the development market on or improvements to this proposed route are welcome and bidders will be encouraged to consider all the transport options presented plus any other which may be suitable.

12.3 Landowners Agreement

- 12.3.1 At the present time it is anticipated that a suitable agreement will be reached with BEL about its interests in the land over which the link road needs to be constructed. It is also anticipated that any land not in either councils' ownership in the vicinity of the Turnford interchange or which is required for access to both the Garden Village and Riverside will be provided through agreement with the relevant interested parties, these negotiations are underway. However, in order to provide comfort to potential investors it will be necessary to confirm that, as a last resort, Broxbourne Council will be willing to use compulsory purchase powers to secure the comprehensive development of the area. Broxbourne Council has Cabinet approval to use its compulsory purchase powers, if this becomes necessary.

13. Financial, legal and risk management implications

- 13.1 The property advisor cost of carrying out a marketing exercise of Brookfield Riverside is estimated to be £75,000 - £120,000 over a 9 month period and will be split 50:50 between the two councils. The councils are also seeking OPE funding of £60k, as this project is a good example of joint working across the public sector and has the potential to deliver significant outputs. The fee is a current estimate as it depends on the number of the bids received, and the extent of their content and the ultimate detail and complexity of the bidding process. At this stage the County Council's fees can be met from existing Feasibility and ITT budgets. Alongside this there will also be a fee of circa £9,000 for the design and production of marketing material, which will again be split 50:50 between the two Councils.
- 13.2 In addition to property and procurement support from Cushman's Broxbourne has appointed Bond Dickenson to advise them on the legal aspects of the procurement process, it is considered that the County Council should participate in these fees, again on a 50/50 basis, but also we should have our own procurement legal support. As such Sharpe Pritchard has been retained to ensure the legal interests of the County Council are protected. Funding for such fees will be met from the Feasibility budget.
- 13.3 The procurement will be carried out in accordance with Public Contract Regulations 2015. The regulations apply when public authorities seek to award contracts of a value exceeding set thresholds. Contracts which exceed the threshold must follow the procedures set out in the regulations, firstly ensuring fair and open competition by placing a Contract Notice in the Official Journal of the European Union (OJEU).
- 13.4 The key risks associated with the procurement process are failure to set clear contract specifications leading to insufficient or inappropriate responses to the OJEU Notice delaying the project. In addition, a legal challenge from an unsuccessful bidder, perhaps alleging failures in the procurement process, again causing delay, which could also prove costly if found to have merit. The best mitigation to the risk is to ensure we receive robust procurement advice from experienced professionals.
- 13.5 The use of compulsory purchase powers, if necessary, would be pursuant to The Town Country Planning Act 1990, which provides that a local authority may (with the consent of the secretary of state) compulsorily acquire land in their area, if they think the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to land, or is required for a purpose necessary to achieve the proper planning of an area. However, this power is only exercisable if the authority considers the development or re-development will promote or improve one or more of the following:-
- the economic

- social or
 - Environmental well-being of their area.
- 13.6 The compulsory purchase powers should only be used if expedient and as a last resort, after taking all reasonable steps to acquire the land by agreement, taking account of equalities impact assessments and human rights legislation.

14. Equalities Impact Assessment (EqIA)

- 14.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the equalities implications of the decision that they are taking.
- 14.2 Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EqIA) produced by officers.
- 14.3 The Equality Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.
- 14.4 The displacement of the Travellers camp will be undertaken sensitively and with open communication with the group. An EqIA is currently being undertaken.

15. Conclusions

- 15.1 The comprehensive development of Brookfield Riverside and the Garden Village will bring a variety of benefits to both councils and their residents and it is therefore recommended that the marketing and procurement exercise for Brookfield Riverside proceeds in accordance with the principles set out in this report. Further reports will be provided to Cabinet in due course to set out and recommend the wider terms of the development, such as the Landowners Agreement with BEL (including the Harvey family); the funding and timings of the public asset relocations, together with the supporting business case for doing so, and the identification of the developer shortlist and ultimately the preferred developer.

Background papers

Report to the Resources, Property and the Economy Cabinet Panel,
December 2017

<http://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/767/Committee/104/Default.aspx>