

Performance and Finance Select Committee

3 October 2019

Property development arrangements – update on progress in procurement of a property development enterprise

Report by Executive Director Resource Services

Summary

Members have acknowledged the need to generate financial returns by maximising the income from land in order to invest in the County Council's essential services and considered that property development work should proceed. They have noted in PropCo Panel and Select Committee meetings that the Council does not have the appetite of private investors due to the potential risks involved or the in-house resources to act as sole developer. The approach recommended is a Joint Venture (JV) partnership with a commercial enterprise, operating in a strategic development agreement over multiple-sites, which aligns with the PropCo Policy FIN02(16/17).

At its meeting on 22 May 2019, the Committee considered the proposal of a long-term JV partnership between the Council and a commercial enterprise, to be selected. The objective of the JV would be to carry out speculative property development to maximise financial returns. Advantages include the stability of a long-term approach, standardisation and supply chain efficiencies. The Committee recognised the benefits of this in a JV partnership as set out in the proposal and support was indicated to commence the work outlined in the Cabinet Member Decision. In its support, the Committee noted that detailed information is to be provided by specialist consultants, before planned further Officer Key or Cabinet Member Decisions are taken. This work will enable completing the commercial arrangements and setting up a joint venture partnership, also on details of the land proposed to be re-developed.

The stage now being undertaken is selecting the specialist consultants by competition to advise the County Council, on the detailed further information around the specific arrangements needing to be put in place for the planned JV. This planned advice from specialist consultants would be viewed by the Committee, prior to the Officer Key Decision in December and cover the areas of:-

- The key contracting and company principles needed in a JV partnership agreement between the County Council and a commercial enterprise;
- Governance arrangements to be put in place for effectively operating a JV;
- Commentary on the sites suitable to be included in the JV arrangement and;
- Indication of all financial areas including tax and target cost/benefit outlines.

The focus for scrutiny

The Committee is asked to consider this update to ensure it is satisfied with the progress being made on completing the competitive tender to select leading professional consultants, initially to address the areas of the further work sought

and carrying out high level due diligence on the land being considered. The work will result in a full report and inform the Officer Key Decision on the partnership arrangements and the sites expected in December 2019.

Proposal

1. Background and Context

- 1.1 The Council has proposed an approach towards strategic land development, which is targeted at generating economic benefits to support the wider community. This will involve the Council actively investing in and/or carrying out developments on land, being either surplus to operational needs or acquired to develop, to result in sales for profit for reinvestment in the Council and possibly arranging longer-term income opportunities.
- 1.2 Members have acknowledged the need to maximise the generation of financial returns from such opportunities in order to invest in the Council's essential services and indicated that the proposed property development work should proceed. In doing so they have also noted, in PropCo Panel and Select Committee meetings, that the Council does not have the appetite of private investors, due to the potential risks involved, as well as not having the in-house resources to act as a sole developer.
- 1.3 To enable the property development initiative for financial returns the principle of forming a joint venture partnership, in a commercial agreement with an established and experienced enterprise, was originally outlined as a potential option in the PropCo Policy FIN02(16/17) and now most recently supported by the Committee at its meeting on 22 May 2019.
- 1.4 In noting its support, the Committee requested that a further report be brought before the Committee at an appropriate time before the planned further Officer Key Decision is taken in December on completing the commercial arrangements and setting up the joint venture partnership.
- 1.5 The specific areas of the further information sought, which will be brought before the December Committee, were listed as:-
 - The key contracting and company principles needed in a JV partnership agreement between the County Council and a commercial enterprise;
 - Governance arrangements to be put in place for effectively operating a JV;
 - Commentary on short-term sites proposed suitable for development in the JV arrangement and;
 - Indication of all financial areas including tax and target cost/benefit outlines.
- 1.6 To enable obtaining expert advice needed on the information sought, competitive bids for professional services, from leading property consultants, were invited during August, for return by 9 September.

1.7 The position planned for the end of September 2019 is that the property expert consultant will be appointed to commence work in time to inform the Officer Key Decision proposed in December 2019.

2. Proposal

2.1 Overall, the procurement of a joint venture partner is being conducted in two main stages:-

- Stage One; the competitive selection of leading professional consultants that will advise the Council on the proposed joint venture. The consultant's work will produce a report as the basis of the Officer Key Decision, which is planned to be taken in December, confirming the partnership arrangements in commercial and legal principles, governance, market strength, financial and tax implications and cost benefit. This information from the consultants will include recommendations on the most efficient procurement route to select the joint venture partner. The Officer Key Decision will also list the sites that are proposed to be included in the joint venture, including commentary from the professional consultants and an outline of value return estimates.
- Stage Two; after the Officer Key Decision planned for December is completed, work will commence in the formal tendering process, on an OJEU basis, for a joint venture partner. On completion of the tender, a final report, again from the appointed professional consultants, will confirm the recommended partner, the proposed commercial arrangements and include all legal and financial advice, the targeted returns from the list of initial sites proposed to be re-developed. The report will inform the proposed Cabinet Member Decision, following which it is proposed to commence the JV partnership.

2.2 The Committee should note that at this early stage there are variations in the overall period, needed to select a partnering enterprise, which are due to the range of OJEU alternatives available in the procurement route. Part of the consultant's initial reporting work will be in recommending the shortest and most appropriate route and from that an estimate of gateway stages with a timeline to completion will emerge. This will accompany the report for the December Officer Key Decision.

2.3 The progress at September is:-

- A formal tender has been completed to select the property skilled professional consultant and after a 'stand-still' period an award is anticipated week 23 September;
- A tender to select a specialist legal adviser is in progress to complete 2 October, early work planned will include advice on the principles needed to create a successful commercial partnership such as forming a Limited Liability Partnership (LLP) operated by the Council;

- Financial and tax advice will be sought through the legal and property advisers to ensure the specialist areas of this expertise in property and land transfer are incorporated in the recommendations and;
- A list of sites, some of which have already been declared surplus to requirement, is being considered by the Propco Panel ready for review by professional consultants.

3. Resources

- 3.1 The 22 May 2019 Committee noted and supported the budget to work within £700k, which had been informed by professional guidance and the experience of other local authorities.
- 3.2 The Committee is asked to note that land held by the Council and proposed for re-development, therefore potentially suitable for the joint venture, has been targeted below in two criteria groups, the first suitable for starting within five years, then the second more likely to be within ten years. The latter group has longer availability and/or land likely to require promotion in local development plans towards planning achieving status. The mechanism for valuing any land, at the point of being developed in the joint venture, will be identified by the legal and property consultants and clearly set out in the partnership agreement. This will be specifically aimed at protecting the Council's financial and tax interests and to retain value for the Council when increases are gained from promotional work in planning. This will be part of the further information to be available in December.

3.2.1 Short-term sites within 5 years

Sites declared surplus to operational use and for disposal that are capable of starting development within a 1 to 5 years programme will be proposed to be named in the JV partner tender. All the sites will have been named in Cabinet Decisions as surplus to operational use and for disposal before being placed in the tender information. The planned developable area will be approximately 20 ha.

3.2.2 Medium term sites within 10 years

These may well require promotional work in local development plans and have an expected availability to commence early design work within 1 to 10 years, although any start on site works is likely to be after the short-term sites period. These sites might be named in location only, during the JV partner selection, to indicate scale of work planned as they do not have surplus declarations confirmed at present. The planned developable area will be approximately 15 - 20ha.

3.2.3 For the Longer term

During the short/medium-term periods further sites are expected to be proposed to be considered for re-development in the joint venture over the longer term period of 10 to 15 years, but not yet identified. For the purpose of scoping the size of a potential JV partner and length of partnership

agreement it is likely that the target development area will be similar to the preceding lots.

Factors taken into account

4. Issues for consideration by the Select Committee

- 4.1 The Committee should be aware of the progress to date in selecting consultants to work with the Council and of the planned further reporting on listed information outlined above in paragraph 1.5. This work is targeted at leading to the proposed Officer Key Decision in December 2019 to cover the recommended principles/governance arrangements/returns for the joint venture and details of early proposed sites. Completing the Officer Key Decision will enable formal tendering for selecting a joint venture partnering enterprise to commence early in 2020.

5. Consultation

- 5.1 The PropCo Panel met on 5 September 2019 and noted its continued support for the planned programme up to the proposed Officer Key Decision in December 2019 and for the list of sites recommended.

6. Risk Implications and Mitigations

- 6.1 A full list of risks and mitigations was appended to the report that the 22nd May Committee considered. Principal risks to the first stage of procurement are listed as:-

Risk	Mitigating Action (in place or planned)
Low standard of advice	National and leading consultants with demonstrable and established experience in property, legal, tax and finance, in specifically working with local authorities, on the procurement of joint venture partners will be selected
Programme uncertainty	The initial work required from the procurement stage consultants will be in carrying out a complete review and establish the shortest timing of the work needed to achieve all stages to completion, relative to OJEU procurement regulations
Budget	The work from consultants up to recommending a joint venture will be priced in competition and agreed overall to be within budget before commencing
Market erosion	No work will be recommended in a development until the overall business plan and site specific returns are considered positive by consultants' expertise – also noting that the commercial joint venture enterprise will be cautious in employing its own capital and exposing itself to risks affecting company gearing
Do nothing or sell land resulting delay and/or lost opportunity	Creating flexibility in exploring maximising returns, particularly in targeting wider avenues of returns that can be channelled to the Council's 'Revenue' budget, rather than just 'Capital' receipts and thereby provide long-term investment

	opportunities in essential services to secure the future of the Council
--	---

7. Other Options Considered

7.1 The proposed work being undertaken now is concerned with obtaining leading specialist advice up to the procurement of a joint venture partner that will link with the Council and provide the property development skills, strength in resources and the pace of a commercial enterprise on a list of larger sites. In any partnering arrangement progressed, the agreement will retain an ability for the Council to pursue alternatives on land, additional re-development ventures or to withdraw from the procurement or a partnering agreement if appropriate.

8. Equality Duty

8.1 This is an interim up-dating report and the equality implications will be part of the work provided by the procurement consultants before final decisions are taken.

9. Social Value

9.1 This is an interim up-dating report and identifying the social value benefits will be part of the work provided by the procurement consultants before final decisions are taken.

10. Crime and Disorder Implications

10.1 No implications

11. Human Rights Implications

11.1 No implications

Richard Ennis

Executive Director Resource Services (Interim)

Contact: Malcolm Mayo malcolm.mayo@westsussex.gov.uk 07912 597198

Appendix one – Indication of target programme

Appendix One – Indication of target programme (please note – timing is subject to advise from professional consultants and OJEU on shortest procedure)

Stages of work anticipated to procure a joint venture partnering enterprise	2019				2020				
	September	October	November	December	January	Jan-March	April-June	July-Sept	Oct-Dec
Stage One									
Complete mini-comp to select advising consultants									
Consultants commence work to report and advise on company structure, partnership agreement and land for development									
P&F Report and Officer Key Decision on commencing tender and land that could be offered to joint venture									
Stage Two (OJEU time to be minimised)									
Commence work on the OJEU tender to procure a commercial enterprise as JV partner									
Preparation of tender documents, issue OJEU notices and commence tender									
Tendering period (this will be confirmed by specialist advice)									
P&F Report and Cabinet Decision to accept tender and complete the partnership agreement									
Site selection confirmation, award process to partner and start-up of joint venture									

Subject to OJEU times