
Performance and Finance Scrutiny Committee

13 September 2021

Update on progress in the Joint Venture Partnership for County Council in Property Development

Report by the Director of Property and Assets

Summary

At its meeting in March 2021 the committee previewed the decision to award the contract for the Joint Venture Partnership for County Council Property Development. The committee supported the decision and requested that an up-date report be provided to the committee to review progress in establishing the Partnership.

The procurement process has now completed with Lovell Partnership appointed to act as joint venture partner for the Joint Venture Limited Liability Partnership. Advisers have also been, or are being, appointed to take forward the Partnership and begin work.

The attached report sets out in detail the progress being made and the governance structure in place as previously reported to the Committee.

Proposal

1 Background and context

- 1.1 A successful procurement process to secure a joint venture (JV) partner to enable property development on land that the County Council has an interest in has been completed. To commence trading, the Joint Venture Partnership Agreement and associated documents of Options Agreement and Financial Instruments were signed and completed on 16 July 2021.
- 1.2 The arrangements followed key decision OKD 20/21, effective 26 March 2021, to award the contract to Morgan Sindall Group plc. The entire procurement process and supporting professional advice was achieved within the budget approved by the key decision FR5 19/20 June 2019.
- 1.3 Lovell Partnerships Limited is a wholly owned subsidiary of Morgan Sindall Group plc and has been appointed in the 50/50 partnership, with the County Council, to operate the Joint Venture Limited Liability Partnership (JV LLP).
- 1.4 The JV LLP (named West Sussex Property Development LLP on a temporary basis) will comprise the new partner and the Council's wholly owned company Edes Estates Limited (the WOC).

- 1.5 Lovell will now undertake the process of design, planning and business case development. This will test commercial viability of the plans for the land already identified for the joint venture project. The JV LLP is required to carry out the land due diligence work to confirm the ability to securely develop on Council land in accordance with the business cases.
- 1.6 Edes Estates Limited was set up as a commercial vehicle having the ability to carry out property development. There is work underway for the articles of association and Shareholder Agreement to be completed and checked to align with the joint venture arrangements. This is progressing to complete by October. Edes Estates Limited will report to the Council's Shareholder Group comprising the Leader and Cabinet Member for Finance advised by the Chief Executive, Executive Director for Place Services, Director of Law and Assurance and Director of Finance and Support Services. Decisions will be taken by the Cabinet Member for Finance on behalf of the County Council.
- 1.7 On-going legal advice will be required for running the JV LLP, which is at its expense, and will be costed into the development appraisals. The tender for a legal adviser will be conducted in September/October. The legal work for the LLP includes due diligence for land within project scope, contracts for subcontractors and house sales from the developments which emerge.

2 Proposal details

- 2.1 The JV LLP is now in a good position to begin work immediately as a considerable amount of preparatory work has already been completed. This was concluded on time to coincide with signing the agreements and all the appointment fees have been completed within the allowed budget in the early development appraisals.
- 2.2 Competitive tenders were held to appoint the construction professional advisers. All practices have been carefully selected on the basis of demonstrating a substantial base and forward-thinking approach.
- 2.3 Two internationally important architects have been appointed, AHMM and Allies & Morrison, both multiple shortlist/winners on the RIBA Stirling Prize lists.
 - AHMM has a lead partner appointed in July to the advisory board of the new office for Place to develop the National Model Design Code in the National Planning Policy Framework.
 - Allies & Morrison has a lead partner on the design advisory board to the South Downs National Park and has close links to West Sussex.
- 2.4 Two large and nationally renowned consultant planning specialists have been selected, Quod and Nexus. Both have substantial experience in West Sussex.
- 2.5 Other appointments cover all the support design services such as surveying, civil and structural, environmental and transport advice.
- 2.6 The remaining large appointments in the general development work and now for tender are Joint Venture Adviser (JVA) and Cost Manager. These advisers will work to protect the investment and provide assurance as to best financial consideration.

2.7 Branding and market positioning is an important next stage. An initial tender to select an agency has been completed. The market facing housing products will have expert advice and the architects and brand designers will be brought together from the initial creative stages. It is considered particularly important, post pandemic, to create market attractive developments that are aware of the future changing living styles. Typical driving influences are: -

- West Sussex facing vernacular style with an inclusive approach to create homes that are welcoming towards creating communities and engendering residents' pride and care.
- Communities that are safe and inspire confidence to join in and move through.
- Communities with inclusive outlooks, creating a future of place for West Sussex for families and business prosperity to grow with the market.

This is only a small part of the work that will develop with leading designers and market experts to ensure the products and image meets the future. The costs of these services will be borne by the LLP. A report on joint venture running costs will be submitted to the Board of the LLP within the first three months.

2.8 For sustainable working practice, biodiversity net gain will be a feature of the calculations and design. The Morgan Sindall Group counts lowering carbon and creating sustainable construction at the highest level of its commitments.

3 Other options considered (and reasons for not proposing)

3.1 Not relevant for this updating report.

4 Consultation, engagement and advice – Joint Venture Governance

4.1 The usual process for approval of a site to progress in the future: -

- 1) A potential site will be assessed by the JV LLP, working with the Council and its Estates/Assets team, to carry out an options appraisal on land considered likely to become operationally surplus in the near future.
- 2) The resulting strategic Business Case will be put forward by the JV LLP. If this shows that a site appears to have a commercial return level potential, which is confirmed at the time by professional advisers as 'an appropriate profit level' in the current market and is considered an acceptable risk, then the potential of development can be added as an option to the key decision report, declaring the land surplus to operational requirement. Provided the returns continue to meet the appropriate commercial market returns, the site could then continue to towards development, through design and testing, in the business cases and planning approval. All reports confirming value, would be verified by professional advisers. The decision to proceed with any Council land being declared surplus will be for the Cabinet Member for Finance and Property through the Council's usual governance process.

4.2 An officer working panel chaired by the Director of Property and comprising Executive Director for Place, Directors of Finance and Law and the project lead meets bi-monthly to review reports and oversee progress.

4.3 The currently appointed advisers are Sharpe Pritchard legal services, Carter Jonas land and property value, Gardiner & Theobald construction and cost advice, Farrells architectural advice.

4.4 New appointments underway are for: -

- Joint Venture Advisor to oversee the venture in terms of best practice, value and secure contracting
- Cost Manager to oversee all construction costs
- Valuation Surveyor to carry out RICS Red Book values of Council land being proposed for development

5 Finance related to the Joint Venture Partnership

5.1 The operational method of development has been confirmed in the previous key decisions and was fully described in the completed procurement exercise. The Council puts in land it has an interest in, usually operationally surplus land, as the investment. The value is assessed as open market, by a registered valuer with a duty of care to the Council and matched in value by Lovell in funding the design, construction and sales/aftercare costs.

5.2 Any additional funding can be offered by the Council or provided by the partner Lovell. Interest on additional funding is at prevailing market rates from competitive bids sought.

5.3 The emerging business cases for each site to be developed will inform the budgeting proposals and commercial viability assessment of sites proposed in the business development. Overall, this individual site information will feed into the business plans for the JV LLP and Edes Estates Limited. At present, the only information available is based on the tendered outline, which sought to measure return potential in tender to compare the profit and costs under competitive tension. This relates to the sites already included in the project and which were described as part of the procurement exercise. To progress into a viable development stage, each site will need optimising in built layout to achieve the market maximum, thereby raising the values for each of the business cases.

5.4 The effect of the proposal:

(a) How the proposal represents good value

The JV LLP will appoint, and fund, a construction professional expert consultant adviser as cost manager with a duty of care to the Council. This consultant will scrutinise and audit all costs in design, construction and general development for competitive tension in subcontracted work, benchmarking comparisons and cash flow modelling. The adviser selection process will take place late September. This will provide the assured value evidence to both the Council and the partner Lovell as it provides the finance to design and construct.

In addition, a registered valuer will be appointed, on a site-by-site basis, to assess the Council's land value on the open market, which will then be matched by Lovell in development cost funding.

Overall, a Joint Venture Adviser, also with a duty of care to the Council, will oversee the entire operation to report on best practice, quality assurance and general operational efficiency.

(b) Future savings/efficiencies being delivered

The Council's role is to curate land and development value, also support services within Edes Estates Limited and the JV LLP, to align with the ambitions of the Council for ensuring best value is returned. Corporate finance and taxation expertise will be required as the values and cashflow information emerge. Also, of vital importance will be to establish good practice and an audit trail over all areas of accounting.

(c) Human Resources, IT and Assets Impact

This contract is an outsourced arrangement. The assets impact has been described in the reports which authorised the joint venture project.

6 Risk implications and mitigations

Risk	Mitigation
Development	
Inefficient Cash Management process – investment returns do not match outgoings resulting in an unfunded cash need.	Robust financial modelling and management of the property portfolio in a business case model that does not proceed until evidence in market and costs are confirmed and phased through pro-active management.
Property sector exposure – failure in ensuring/assessing that only a well-balanced portfolio is progressed.	JV run by development expertise. The partners will ensure the products are appropriate to the Council's financial returns of best consideration and ambitions.
Planning	
JV Company not obtaining planning permission or planning permission not being obtained on a timely basis.	Pre-application planning advice will ensure only sites likely to achieve planning are taken forward and a detailed programme is in place to, informed by the local planners.
Construction	
Risk of unforeseen ground / site conditions which may delay demolition or construction.	Ground investigation prior to tender process and a mitigations/actions schedule prepared and monitored. This risk is carried by the construction contract.
Construction delays/costs higher than anticipated –	Ensure there is a buffer / contingency available in business plan to cover any overall price increases. No sites to progress

Risk	Mitigation
impacting the profitability and cash flow.	without firm delivery of materials and prices in contract commitments.
Legal title issues may affect development costs and timescales.	Early title review for all sites proposed in the development.
Risk in overpaying in the procurement/building process.	The Council and JV will use the expertise in-house, but also will use independent cost advisers and valuers.
Defective design and/or construction causing delays and additional construction costs.	Appropriate warranties/performance bonds will be written into subcontracts. Effective contract management processes will be put in place.
Insolvency of a contractor in the development process.	Financial checks performed as part of procurement process and guarantees taken out where required.
Operating	
Estimated sale price may not be achieved.	Undertake sensitivity analysis to assess impact of demand changes on the JV Company's accounts and build in contingency safety to each business case.
Inability to sell properties leading.	Use expert agent to market properties and only progress in agreed safe phases. Incorporate contingencies of additional time in business cases.
Capacity & Capability	
The Council is unable to support the overall management or specific support resource.	The governance process has been set up to ensure strong compatibility and an operation that is strategically overseen by the Council but carried out by the JV Company. Internal resource needs will be regularly reviewed
Failure to source or maintain appropriate Directors to Board.	Governance structures are via the Shareholder group, the top level of Council management, which will review annually.
Financial	
Treatment of financial reporting may be challenged.	External advice will be sought on financial/tax treatment.
Securing financing.	Debt is optional to the Council and can be provided by the JV Partnering Company, Lovell. The build cost is funded to the land value by the JV Partnering Company, Lovell.

Risk	Mitigation
Changes in base tax rates and capital allowances that impact negatively on the financial position.	Sensitivity assessment will be conducted to assess the impact on the accounts informed by information at the point of a decision.
S123 value not achieved.	The land will be valued at open market rates to RICS Red Book formula overseen by the Joint Venture Adviser.
Legal	
State Aid (subsidy control) with regards to the structure of the loan and land transfer arrangements.	The Business Plan shows that land will be invested in / sold at market value and any loans provided at commercial rates, where required.
Relevant consents cannot be gained for transfer of land.	The Council will manage this risk and legal/planning advice will be sought as appropriate as consents obtained/rejected.
Systemic	
Changes in wider circumstances affects viability	These trends / issues will be monitored and discussed with the Shareholder Group/officer board through the regular interactions/reporting as an ongoing basis.

7 Policy alignment and compliance

7.1 Outlined in key decision FR5 19/20 and PropCo Policy key decision FIN02 16/17 July 2016

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Appendices

None

Background papers

None