

# Cheshire East Council

## Cabinet

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**Date of Meeting:** 9<sup>th</sup> May 2017

**Report of:** Executive Director of Place

**Subject/Title:** Delivery of Town Centre Regeneration Scheme for Congleton – The Mills

**Portfolio Holder:** Cllr Don Stockton, Regeneration

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### 1.0 Report Summary

- 1.1 The importance of protecting the vitality and viability of town centres is well recognised. As the third largest town in Cheshire East, Congleton is key to the economic prosperity of the Borough.
- 1.2 Scarborough Development Group (SDG), and their predecessor Modus Properties, have been negotiating with the Council, and former Congleton Borough Council, for around a decade to acquire two Council land assets in Congleton town centre. These assets being the freehold of the market square (shown edged red on the attached plan) and the leasehold of Princess Street car park (shown edged blue), the freehold of which is owned by SDG. The purpose of these acquisitions is to marry these assets with land already in SDG's ownership to create a single development site.
- 1.3 In December 2013 planning approval (Planning Reference 12/1211C) was granted for a multi-level redevelopment scheme which was anchored by a new food store and created a new public square, car parks, indoor market and servicing (including lifts). This scheme was broadly compatible with the Council's regeneration objectives for Congleton and would transform the Princess Street area and regenerate Mill Street. This permission has now expired. Following a re-evaluation of the retail market, SDG propose to progress a scheme but replace the food store element with a range of retail / leisure units and this will require a fresh planning application.
- 1.4 Negotiations have taken place for the disposal of the land and approval is sought for a conditional sale of the two Council land assets, to facilitate the delivery of a regenerative development. The disposal of the site will result in a mixed use redevelopment scheme providing new town centre retail and leisure accommodation, provision of public toilets, new market square and improved market facility and is estimated to create approximately 250 new full time equivalent jobs (this excludes the market and construction jobs).

- 1.5 The transaction will be a land sale, with a capital receipt obtained at Open Market Value. Assurances around the delivery of actual development can be achieved through 'covenants' that require the land to be developed out in accordance with a specific planning consent. This will bind the land until the scheme is delivered but would allow for SDG adding additional development to the planning consent should this be viable and meet the Council's aspirations for the town centre.
- 1.6 The Council's interests can be further safeguarded with a buy back option which can be exercised if SDG fails to deliver the development within specified timescales.

## **2.0 Recommendation**

- 2.1 It is recommended that the Cabinet delegates authority to the Executive Director of Place in consultation with the Portfolio Holder for Regeneration, the Portfolio Holder for Finance, and the Chief Operating Officer and the Director of Legal Services, to
- Authorise the conditional sale of the land shown edged red and blue on the attached plan, to facilitate the comprehensive development of the town centre site in Congleton and;
  - Complete any ancillary legal documents in conjunction with the disposal of the land and transfer of the market operation for this purpose
  - Advertise any required public open space notices and parking consultations and consider any responses and complete the statutory process
  - Reduce the income targets and assumptions for the Car Parking Service and ANSA to reflect the reduction in annual income from parking charges and market rents once the site transfers.

## **3.0 Other Option Considered**

- 3.1 The main alternative to the approach set out in this report is to not progress the sale to SDG and to seek an alternative regeneration pathway for the town centre. This would potentially be difficult however due to SDG being a key landowner. In addition, prevailing market conditions in the retail sector are challenging at present with relatively low levels of investment in town centre retail schemes outside of the main economic centres. It is believed by the professional team working on this scheme that the proposals from SDG represent the best opportunity for significant investment and regeneration in the current economic cycle.

## **4.0 Reasons for Recommendation**

- 4.1 The objective of the disposal is to enable delivery of a high quality mixed use development to not only provide much needed modern retail and leisure accommodation capable of attracting new occupiers to the town centre and substantially increase footfall, but also to regenerate a rundown area that is

the focus for anti-social behaviour through the provision of a new market and public square that can be used for events throughout the week.

- 4.2 The proposal will maximise the probability of the Council generating an appropriate capital receipt and deliver the regeneration benefits for Congleton with the greatest certainty.

## **5.0 Background**

- 5.1 Congleton town centre has suffered from limited retail and leisure provision and has been identified as having demand for substantial retail capacity.
- 5.2 The Congleton Borough Local Plan recognised the need to support vitality in the town centre and allocated the site for a retail scheme. The emerging Local Plan recognises that new investment can recapture a larger share of local consumer expenditure and footfall and that development of this site would increase the town's attractiveness.
- 5.3 The Council has been pursuing the delivery of a high quality mixed use development for more than 10 years to support its regenerative aspirations and the need has become more pressing with the anticipated growth in the town's population resultant from the planned increase in housing in Congleton.
- 5.4 The Council has committed £1.1Million capital expenditure investment in public realm within the town centre and SDG propose to use similar materials for the public realm within their scheme to enhance and improve the overall provision of public realm in the town centre.
- 5.6 SDG has 'Special Purchaser' status as the owner of the key land parcel and having obtained a planning approval for a scheme which is consistent with the Council's own objectives. Providing the Council obtains a financially acceptable offer in line with an independent valuation, the Council will be in a position to treat with SDG.
- 5.7 SDG's proposals include the retention of the existing indoor and outdoor market on the site currently operated by City Markets under a charter granted to the town in 1272 by the Earl of Lincoln, Henry de Lacy and consists of 11 indoor stalls and 84 outdoor stalls. SDG will take a transfer of the land including the market with the operator in situ and propose to ensure the continuity of the market throughout the development process and deliver a new market facility within the scheme. Whilst the Council cannot compel the developer to deliver this objective within the land sale there will be covenants on the land that require the land to be developed out in accordance with the specific planning consent, to include the new market provision. This will bind the land until the scheme is delivered but would allow for SDG adding additional development to the planning consent should this be viable and meet the Council's aspirations for the town centre.

## **6.0 Wards Affected**

- 6.1 The land to be disposed of falls within the Congleton East & Congleton West Wards. Local Ward Members are Cllr. David Brown, Cllr. Glen Williams, Cllr. Paul Bates, Cllr. George Hayes, Cllr. Gordon Baxendale and Cllr. Geoff Baggott.
- 6.2 Pre-planning discussions have taken place with Ward Members. Whilst there is a concern around deliverability with SDG, the majority of members at ward level are appreciative of the renewed approach being taken and are keen to see development delivered in Congleton.

## **7.0 Policy Implications**

- 7.1 The policy implications are significant. Congleton has been identified as a key service town in the emerging Cheshire East Local Plan and the area adjacent to the existing Bridestones shopping centre (in particular, Mill Street, the market square and area surrounding Princess Street) is in need of renewal. With the anticipated increase in housing numbers in Congleton, there is a pressing need to address the vitality of the Town Centre.

## **8.0 Implications for Rural Communities**

- 8.1 Whilst the development is a town centre scheme, it is anticipated that the scheme will also be of benefit to surrounding rural communities.

## **9.0 Financial Implications**

- 9.1 The site is to be disposed of at Open Market Value in line with Section 123 of the Local Government Act 1972. Therefore, the Council will receive a capital receipt for the land sale at open market value.
- 9.2 Records provided by the Car Parking Service suggest an annual income of circa £23,899 from car parking fees and associate expenditure of circa £10,336 giving a net revenue of circa £13,563 from the Princess Street Car Park site. Records provided by ANSA suggest that net income to the Council from the market to be in region of £10,329 per annum.
- 9.3 Therefore, if none of the lost car parking income is recouped from car parking displaced to other Council owned car parks, there could be a loss of revenue to the Council of £23,892 per annum from parking and markets income. The Services income targets should be adjusted to reflect this loss of income accordingly.

## **10.0 Legal Implications**

- 10.1 Counsel advice has been obtained as part of the Council's ongoing Due Diligence activities, which determined that the previous disposal contract between the Council, as landowner, and SDG, may not be linked to delivery or timing of specific development milestones. Terms such as construction of the

infrastructure with the Council retaining liability (culvert, retaining wall, etc.) or specification as to the provision of the various anticipated public benefits (public square, street market, indoor market, lay-by parking and service lifts) cannot be included.

- 10.2 This advice has resulted in the simplified conditional land disposal subject to a 'covenant' to provide assurances around delivery of the development proposed by SDG.
- 10.3 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.
- 10.4 The General Disposal Consent 2003 authorises the disposal of land at less than best consideration if the undervalue is £2million or less, if the undervalue is higher than £2million consent to the disposal is required from the Secretary of State. However the Council still has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way which is accountable to the local people.
- 10.5 All disposals must comply with the European Commission's State aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and the amount of the subsidy complies with State aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £155,000 (200,000 Euros) in state aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).
- 10.6 Contractual arrangements will be included in the sale agreement to ensure that liability for remediating the site transfers to the purchaser. The Council cannot use the sale contract and land transfer to obligate the Buyer to remediate the land or to implement the proposed development as to do so would amount to a development agreement which is subject to the Public Contracts Regulations 2015. The Council would therefore be in breach of these regulations by failing to undertake an EU compliant procurement and would be at risk of challenge.
- 10.7 Continued legal advice will be required to ensure that the disposal is structured in such a way as to ensure that the arrangement remains outside the scope of the Regulations and proceeds without risk of challenge to the Council.

## **11.0 Implications for Human Resources**

- 11.1 The sale will create sustainable employment in the town centre which will act as a catalyst for attracting more take up in the town centre and more sustainable employment in the retail and leisure sector.
- 11.2 There are no staffing or TUPE implications for the Council in the transfer of the land or market operation.

## **12.0 Implications for Public Health**

- 12.1 The sale will facilitate a regenerative benefit for Congleton town centre and redevelop a site that is a focus for anti-social behaviour. The scheme will be designed in a sensitive way to deter such behaviour. Public Health and Local Policing implications would be considered in detail as part of the planning process, to be undertaken by SDG once terms of sale are agreed.

## **13.0 Risk Management**

- 13.1 The sale of the land would necessarily be dependent upon SDG securing full planning consent for the proposed development. There is a risk with such developments that there would be unforeseen challenges at the planning application stage but this risk is, in part, mitigated by the precedent set by the previous scheme having secured planning consent and the pre-application consultations undertaken by SDG which suggests broad support for the scheme proposed.
- 13.2 Extensive ground and environmental surveys have previously been undertaken by SDG and, therefore, they have a good understanding of the site constraints. That the proposed scheme does not involve subterranean levels and relocation of the Howty Brook reduces the risk that adverse ground conditions would impact on the viability of the scheme.
- 13.3 SDG's ability to deliver a scheme in an expedient timescale is central to the Council's aspirations. After planning consent is secured, the principal risk on delivery is SDG securing a sufficient number of tenant 'pre-lets' to commence build-out of the scheme. The Council has received assurances from SDG that their funder has approved the development proposals and that their agents are confident that the scheme, as proposed, would be attractive to the occupier market. The risk associated with occupier demand is intrinsic to any development proposal such as this. This must, therefore, be acknowledged as a material risk to delivery, as would be the case for any similar regeneration scheme.
- 13.4 SDG's proposals include the retention of the existing indoor and outdoor market on the site and propose to ensure the continuity of the market throughout the development process and deliver a new market facility within the scheme. Whilst the Council cannot compel the developer to deliver this objective within the land sale there will be covenants on the land that require the land to be developed out in accordance with the specific planning consent.

This will bind the land until the scheme is delivered but would allow for SDG adding additional development to the planning consent should this be viable and meet the Council's aspirations for the town centre.

#### **14.0 Access to Information**

- 14.1 The background papers relating to this report can be inspected by contacting the report writer:

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