
Meeting of the Cabinet – 1st April 2021

Report of the Chief Executive

Regeneration of Portersfield Site

Purpose

1. This report seeks approval to jointly promote a Planning Application with Avenbury (Dudley) Ltd towards the development of the Portersfield site and to fund the necessary costs relating to the development and submission of the Planning Application.

This builds upon the Memorandum of Understanding with Avenbury (Dudley) Ltd approved by Cabinet in July 2020 which set out the principles of a partnership framework to facilitate the regeneration of the site.

Recommendations

2. That Cabinet:
 - Agree to promote a joint planning application with Avenbury(Dudley) Ltd for the development of the Portersfield siteThat Cabinet recommends that Council:
 - Agrees to fund the preparation and submission of the Planning Application at a cost of £420,000

Background

3. As we emerge from lockdown and the impact of the Covid 19 Pandemic it is vital that the Council continues to demonstrate its commitment to the regeneration of the Borough.

A prime example is the Council's developing partnership with Avenbury (Dudley) Ltd – the developers of the Portersfield site in Dudley Town Centre. During the initial lockdown the developers signalled their intent with the demolition of the Cavendish Building.



In July 2020 Cabinet approved that the Council enter into a Memorandum of Understanding (MOU) with Avenbury (Dudley) Ltd as both parties agreed there is considerable benefit to be gained from a comprehensive development in Dudley Town Centre which will make a positive contribution to the economic vitality of the town centre (through job creation, increased turnover and the beneficial use of a large area of land) which will bring with it significant environmental improvements in terms of its design, appearance and the provision of associated infrastructure.

Detailed discussions have continued with Avenbury (Dudley) Ltd since the signing of the MOU.

Avenbury are now proposing a development which comprises:

- 347 residential units for rent
- 200 student units
- Up to 10,000 sq ft of associated retail and leisure space
- A 38,000 sq ft Ice Rink Centre

The Council is undertaking due diligence into the means of delivering this ambitious development

A report will be brought to a future Cabinet meeting.

Avenbury (Dudley) Ltd submitted an outline planning application in April 2019 for a mixed use development of the Portersfield site, ref P18/0590. The application was approved by Development Control Committee subject to completion of a S106 agreement. Whilst they continue to work their way through the outstanding conditions with our Planning Officers, they are also conscious that a new planning application may be required to support the new proposals.

They have requested that the Council as a major landholder of the development site jointly promote a new planning application and that this application is pursued concurrently with officers due diligence of the overall proposal.

They have also proposed that as well as jointly promoting the Planning Application with them that the Council also provides the up-front funding to prepare and submit the Planning Application at an estimated cost of £420,000.

The Council has sought Leading Counsel opinion on both of these issues. Counsel concluded that

“ as the Council owns a significant part of the Land, the purpose is not to help a private landowner to redevelop one site and thereby avoid the need to implement a different planning permission to redevelop another site. The purpose is instead to secure the regeneration of the Land, which is a critical policy objective in the Area Action Plan. It is envisaged that the Council will ultimately own all of that Land. In



those circumstances, in my view it would be lawful, and not unusual, for the Council to be a joint applicant for planning permission together with the other major landowner, Avenbury.

It would also be lawful, in principle, for the Council enter into a funding arrangement with Avenbury whereby, as part of that arrangement, the Council provides the up-front funding to prepare and submit the application.”

It is therefore proposed that the Council jointly promotes the Planning Application for the regeneration of the Portersfield site with Avenbury(Dudley) Ltd and that the Council funds the cost of preparing and submitting the Planning Application

Finance

4. The details and financial impact of this ambitious development are still subject to due diligence. In the event that the project is considered to be viable, the total costs of the development, including planning costs, will count as capital expenditure. This will be the subject of future reports and will require Cabinet and Full Council approval. In the event that the Council are unable to proceed with the development, abortive planning costs would become an immediate charge to revenue.

Law

5. Section 111 of the Local Government Act 1972 provides the Council with power to do anything which is calculated to facilitate or is conducive or incidental to, the discharge of any of their functions.

Pursuant to Section 1 of the Localism Act 2011 a local authority has a general power of competence to do anything that individuals generally may do.

The MOU sets out the principles of a partnership framework to facilitate the comprehensive redevelopment of the Portersfield site in Dudley Town Centre, and can be terminated by either the Council or the Developer on notice. The MOU is intended to be in place until 2022 or until a formal legal agreement is in place.

The Council has taken extensive advice on the legal issues contained in this report so that it complies with the Council's requirements to adhere to the law



Equality Impact

6. The Council's Equality and Diversity policies will be applied throughout the delivery of this project.

No equality impacts have been identified. There are no no specific impacts that will affect children / young people.

Human Resources/Organisational Development

7. The proposals contained in this report will not impact on either the Council's current Human Resources or required future resources.

Commercial/Procurement

8. Any due diligence into the means of delivering the overall development of the Portersfield site should include robust public procurement advice to ensure that the Project is fully compliant with the rules laid down within Public Contracts Regulation 2015.

The proposals contained in this report do not have any Commercial implications, although any future development of the site requires commercial review

Health, Wellbeing and Safety

9. The Proposals contained in this report are consistent with the Council's policies on Health, Wellbeing and Safety.



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