
Meeting of the Council – 19th April, 2021

Report of the Cabinet

Regeneration of Portersfield Site

Purpose

1. This report seeks approval to the recommendations of the Cabinet in relation to the regeneration of the Portersfield site. This builds upon a Memorandum of Understanding (MOU) with Avenbury (Dudley) Ltd approved by the Cabinet in July 2020 which set out the principles of a partnership framework to facilitate the regeneration of the site.

Recommendations

2. That the Council:
 - Agree to fund detailed Ground Investigation Surveys across the Portersfield site at a cost of £105,000.
 - Establish a budget of £150,000 per annum for each of the next two years to fund the Council's project management of the development and delivery of the Portersfield project.
 - Agree to fund the preparation and submission of a joint planning application with Avenbury (Dudley) Ltd. for the development of the Portersfield site 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.



4. 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 House Building.
5. In July 2020, the 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.
6. 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
7. The Council is undertaking due diligence into the means of delivering this ambitious development. A report will be submitted to a future Cabinet meeting.
 8. In the meantime, it is important that the Council fully understands the Ground Conditions at the development site. The Council is required to undertake Ground Investigations across that part of the Portersfield site required for the new roads infrastructure. It is therefore proposed that the opportunity is taken to investigate Ground Conditions across the whole of the Portersfield site at an estimated additional cost of £105,000.
 9. Given the importance and scale of the Portersfield development, it is vital that the Council has robust project governance in place. This will include the establishment of a Project Governance Board with members drawn from the Council's Strategic Executive Board; a Programme Board made up of senior officers in relevant disciplines; and the establishment of a Project Management resource of £150,000 per annum over each of the next two years to ensure that the Council's interests are best served during the development and delivery of the Portersfield development.



10. Avenbury (Dudley) Ltd submitted an outline planning application in April 2019 for a mixed use development of the Portersfield site (reference P18/0590). The application was approved by the Development Control Committee subject to completion of a Section 106 agreement. Whilst they continue to work their way through the outstanding conditions with our Planning Officers, Avenbury are also conscious that a new planning application may be required to support the new proposals.
11. Avenbury (Dudley) Ltd. 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.
12. Avenbury have also proposed, 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.
13. 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.”

14. 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.
15. The Cabinet considered the regeneration of the Portersfield site at its meetings on 15th March and 1st April, 2021. The Cabinet noted the progress and agreed to promote a joint planning application with Avenbury (Dudley) Ltd. for the development of the Portersfield site. The recommendations set out in paragraph 2 above are subject to the approval of Full Council.



Finance

16. 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

17. 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

18. The Council's Equality and Diversity policies will be applied throughout the delivery of this project, including the identification of any specific equality impacts.

Human Resources/Organisational Development

19. The proposals contained in this report will require the Council to engage additional interim project management resources.

Commercial/Procurement

20. 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

21. The proposals contained in this report are consistent with the Council's policies on Health, Wellbeing and Safety. There are considerable benefits to be gained from a comprehensive development in Dudley Town Centre which will make a positive contribution to economic vitality of the town centre, bringing with it significant environmental improvements in terms of its design, appearance and the provision of associated infrastructure.



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Leader of the Council

