

Cheltenham Borough Council

30th May 2019

Homes Infrastructure Fund for Portland Street

Accountable member	Cllr Rowena Hay, Cabinet Member for Finance
Accountable officer	Paul Jones, Executive Director Finance and Assets
Ward(s) affected	Pittville Ward
Key/Significant Decision	Yes
Executive summary	<p>A successful Homes Infrastructure Fund (HIF) application for £3,000,000 has been submitted to Homes England to contribute towards the viability of Portland Street in regards to delivering a 150 space car park and to unlock the development of 200 homes of which 40% will be affordable. This report recommends that the Council acts as the Accountable Body by providing the necessary governance arrangements for the drawdown of the HIF bid funding from Homes England.</p>
Recommendations	<p>Subject to agreement of heads of terms Grant Administration Agreement with Freeman in a form acceptable to the Council, that the Council enter into a Grant Funding Agreement with Homes England, to secure the funding that will support the delivery of the 200 homes (of which 40% will be affordable) and 150 space car park.</p> <p>That the Councils Executive Director Finance and Assets (Section 151 Officer), is given the authority to sign any document on the Councils behalf to allow the Council to act as the Accountable Body in this matter.</p>
Financial implications	<p><i>At the request of Homes England, the Council will be required to pay for its own legal costs and any internal resource required managing the funds under its accountable body status.</i></p> <p>Contact officer: Paul Jones, paul.jones@cheltenham.gov.uk, 01242 264365</p>

<p>Legal implications</p>	<p>Devonshires are currently instructed in relation to the Heads of Terms for a grant administration agreement to be entered into between the Council as Accountable Authority and North Place Developments Limited (a subsidiary of Freemans) as landowner and developer.</p> <p>The intention is that the grant administration agreement will dovetail with the Grant Funding Agreement to be entered into between Homes England and the Council, with the obligations imposed on the Council in the Grant Funding Agreement being passed down to Freemans/North Place Developments Limited. Completion of the Grant Administration Agreement will be a condition of drawdown of the grant funding from Homes England.</p> <p>The Grant Administration Agreement will contain provisions to ensure that it binds successors in title to the site. Provisions will also be included in the Grant Administration Agreement to prevent the developer from disposing of the site to a third party with a lesser covenant strength until all of the obligations in the Grant Funding Agreement have been discharged.</p> <p>Devonshires have also been instructed to provide a legal opinion on whether the proposed arrangement complies with EU State Aid Law. This is a condition of drawdown of the grant funding from Homes England.</p> <p>Contact officer: Devonshires</p>
<p>HR implications (including learning and organisational development)</p>	<p>None arising from this report.</p>

<p>Key risks</p>	<p>The form of Grant Funding Agreement initially issued by Homes England assumed that the Council was the owner of the site. We await an updated draft of the Grant Funding Agreement from Homes England, which will be amended to reflect the fact that North Place Developments Limited is the owner and developer. Until we receive the updated draft Grant Funding Agreement we cannot confirm precisely what liabilities the Grant Funding Agreement will place on the Council.</p> <p>The draft Grant Funding Agreement issued by Homes England provides that the Council will procure that various milestones are achieved by specific dates. Whilst these obligations will be passed onto Freeman in the Grant Administration Agreement, the Council is reliant on Freeman's covenant strength to procure that these obligations are complied with.</p> <p>If an Event of Default occurs under the Grant Funding Agreement (which includes Milestones or Outputs being missed), Homes England have the ability to withhold further grant payments and/or recover any grant payments already made (together with costs and expenses) from the Council. These obligations will be covered off in the Grant Administration Agreement. However, as the Council, not Freeman, is entering into the Grant Funding Agreement with Homes England the Council will be primarily liable to Homes England for any grant recovery, even if Freeman is unable to pay.</p> <p>To mitigate the risks of Milestones being missed, the development stalling or, Homes England making a claim for grant recovery, and/or the developer suffering an insolvency event, the Council is seeking to agree step in rights and a security package with Freeman.</p> <p>In the event of default by the developer, the Council would have the option, rather than the obligation, to step in. The security package will need to be sufficient to cover any grant recovery claim from Homes England and any costs incurred by the Council in stepping in to complete the development. However, even if the security package is sufficient to cover all costs that the Council incurs in respect of Homes England's enforcement costs, step in and/or grant recovery, there may be cashflow risks if the Council needs to make payment before the security can be realised. This is particularly relevant if the Council takes security over land where (dependent on market circumstances at the time) it can take some time to liquidate the secured assets.</p> <p>As completion of the Grant Administration Agreement will be a condition of drawdown under the Grant Funding Agreement, the Council would not draw down grant funding until the Council's officers were satisfied with the form of security being provided by the developer.</p>
<p>Corporate and community plan Implications</p>	<ul style="list-style-type: none"> • The housing development will create a new neighbourhood but in a town centre context. • The Fund will help achieve the delivery of a Place Vision which will achieve growth and the community will benefit and prosper from the development. • We are facilitating neighbourhood growth and increased housing supply, 40% of which will be affordable. The local economy will benefit from the increase in homes and the Council will benefit from being able to reinvest it back into the services we provide.

Environmental and climate change implications	The developer Freemans have adopted a MF Freeman Group sustainability initiative and are focused on how to use environmental, social and economic goals to better balance business objectives, programs and projects while reducing negative impacts. Freemans value green credentials and seek to individualise a sites needs in terms of its situation and environment.
Property/Asset Implications	Contact officer: Abigail.Marshall@cheltenham.gov.uk

1. Background

- 1.1 Portland Street has been earmarked for residential development and the Council has played an active role in trying to bring this site forward for residential development since 2010.
- 1.2 The Council has continued to endeavour to secure an Affordable Housing provision on the Portland Street site of 40%, and the site is subject to a restrictive covenant to that effect.
- 1.3 Since the sale of the site in 2012, the site is in the hands of its third owner. The site's financial viability in terms of a developer successfully bringing the site forward for development has been tight, whilst the covenant to deliver 40% affordable housing remained in place.
- 1.4 To protect this 40% affordable provision and to help secure the delivery of the site by closing the viability funding gap, the Council in conjunction with the developer applied to Homes England for the Homes Infrastructure Fund (marginal viability fund), which takes the form of a Grant.
- 1.5 The Grant that was applied for was £3,000,000. The Council has been successful in its application but to continue the Council must enter into the Grant Funding Agreement.
- 1.6 The Grant Funding agreement will be subject to the requirements therein, to allow the Council to draw down the money, when the developer reaches certain pre-agreed milestones. The Council will then, subject to checking the milestone have been sufficiently reached, apply to Homes England for the pre-agreed proportion of the Grant Funding Money and immediately pass it on to the developer.
- 1.7 The Council will therefore be the Accountable body; the Council's primary role will be limited to management and administration of the developer's applications for grant funding. It is expected that these costs would be claimed intermittently subject to the pre-agreed milestones and subject to checks and controls. In the event that the Developer defaulted on its obligations, the Council could be exposed to costs in respect of Homes England investigating any event of default and/or making a grant recovery claim. The intention is that these risks will be mitigated by the developer providing acceptable security in relation to its obligations.
- 1.8 The Council will appoint 3rd party Surveyors to monitor the developer's performance of the obligations imposed in the Grant Administration Agreement and to validate the developer's works against the milestones. The cost for the 3rd party surveyor will be paid for out of the £3,000,000 HIF Grant fund.
- 1.9 The Grant funding payments are dependent on the developer delivering 200 homes and appropriate car parking. Subject to Homes England's and the developer's agreement, it is intended that the first Milestone will relate to procurement of the infrastructure works and the final milestone will be completion of the development.
- 1.10 To deliver the volume of homes required the scheme will consist of flats / apartments situated over a car park area. The original consented scheme which has now lapsed was for 143 units. The current scheme based upon densification aims to achieve a minimum target of 200 units; however there is an ambition to achieve an even higher number of units, subject to planning.
- 1.11 The Council continue to work with the developer to set achievable milestones and outputs, to ensure the funding is not put at risk and therefore threatening the deliverability of the scheme.

2. Reasons for recommendations

- 2.1 Accepting the Central Government Grant will allow Cheltenham Borough Council to finally unlock Portland Street for housing including much needed affordable housing.

3. Alternative options considered

- 3.1 Buy the site back, but this assumes a willing seller and our understanding is that MF Freeman wishes to develop out the site.

4. Consultation and feedback

- 4.1 The scheme through its previous emanation was subject to significant public scrutiny as part of the planning process. The housing element was not deemed to be controversial and the whole scheme secured planning approval. Clearly any new scheme will be subject to planning and therefore a further opportunity for public scrutiny.
- 4.2 It is a long held ambition of the Council to deliver this site and equally it has the support of the Cheltenham MP.
- 4.3 The HIF bid application was supported by the Leader and the Section 151 Officer.

5. Performance management – monitoring and review

- 5.1 The milestones and 3rd party independent surveyor will provide a monitoring and a review process which will be in-line with the Grant Funding Agreement.
- 5.2 Further security is provided by using independent solicitors acting on the Council behalf, who add another layer of monitoring.

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Appendices	1. Risk Assessment
Background information	

The risk			Managing risk								
Risk ref.	Risk description	Risk Owner	Date raised	Original risk score (impact x likelihood)	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register	
				Impact 1-5	Likelihood 1-6						
1.	If milestones are not met then this threatens the deliverability of the scheme		24.05.19	4	2	8		Work with the developer to set achievable milestones.	14 th June 2019	DS	
2.	If an Event of Default occurs under the Grant Funding Agreement (which includes Milestones or Outputs being missed), Homes England have the ability to withhold further grant payments and/or recover any grant payments already made (together with costs and expenses) from the Council. These obligations will be covered off in the Grant Administration Agreement. However, as the Council, not Freeman, is entering into the Grant Funding Agreement with Homes England the Council will be primarily liable to Homes England for any grant recovery, even if Freeman is unable to pay		24.05.19	3	2	6		Work with the developer to set achievable milestones	1 st January 2023	DS	
Explanatory notes											
Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)											
Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)											
Control - Either: Reduce / Accept / Transfer to 3rd party / Close											

