

<b>8 November 2020</b>		<b>ITEM: 11</b>
<b>Planning, Transport, Regeneration Overview and Scrutiny Committee</b>		
<b>Purfleet Centre Regeneration</b>		
<b>Wards and communities affected:</b> West Thurrock and South Stifford	<b>Key Decision:</b> N/A	
<b>Report of:</b> Rebecca Ellsmore, Projects and Programmes Manager, Place Delivery		
<b>Accountable Assistant Director:</b> David Moore, Assistant Director of Place Delivery		
<b>Accountable Director:</b> Andy Millard, Director of Place		
<b>This report is</b> Public, apart from Appendix 1 and Appendix 2 which are exempt due to information relating to the financial or business affairs of any particular person (including the authority holding that information).		

## **Executive Summary**

Through a series of reports over recent years, Overview & Scrutiny and Cabinet have been updated on the progress of this high profile scheme that is being delivered in conjunction with the Council's development partner Purfleet Centre Regeneration Limited (PCRL). The project will deliver up to 2,650 new homes around a new town centre and vastly improved community infrastructure.

The significant amount of infrastructure included in the scheme has attracted £75.1m in grant funding from the Ministry of Housing, Communities and Local Government's Housing Infrastructure Fund (MHCLG HIF). Thurrock Council is the grant recipient for the scheme but PCRL have been instrumental in supporting the Council in the efforts required to secure the funding. To accept the funding the Council must enter into a Grant Determination Agreement (GDA) with Homes England. The key terms of this agreement are described in Appendix 1 and it will be requested that Cabinet (at the meeting on 9<sup>th</sup> December) delegates approval to enter into this agreement once all terms have been finalised.

HIF is essential to scheme delivery. The announcement that HIF had been secured prompted a further detailed review of the delivery strategy, programme and viability model to ensure that the project could comply with the delivery requirements attached to HIF as grant conditions. This review also considered whether the controls and processes in the Development Agreement (the DA) were fit for purpose and were capable of managing the inclusion of HIF in the scheme.

This report and Appendix 2 describes some proposed changes to the DA that are necessary to ensure that the Council can maintain its contractual obligations under

the HIF Grant Determination Agreement and/or to support the delivery of the scheme. The Cabinet report does not seek approval for PCRL to start on site, the mechanisms for these next steps towards delivery are outlined in section 3. The report does however, confirm that the s.151 Officer is satisfied that Best Consideration is sufficiently evidenced for the Council to commit its land to the scheme.

As per previous reporting, the terms of the DA are commercially sensitive - the appendix outlining the proposed variations is therefore exempt from publication.

Following approval of these variations the Council will document and enter into a deed of variation to amend the existing DA.

The scheme has been in development for a long period but the requested approvals contained within the Cabinet report, in conjunction with the Best Consideration (value for money) sign off from the s.151 officer, are a huge step towards the delivery stage and support PCRL's aspirations to start works on site in the coming months.

## **1. Recommendation(s)**

### **1.1. Overview and Scrutiny Members are asked to comment on the following recommendations that will be presented to Cabinet:**

- a) Note the progress of the scheme in recent months and, in particular, the positive Best Consideration sign off and the success of the HIF application in securing £75.1m of Central Government investment into the Borough;**
- b) Note the key terms of the HIF Grant Determination Agreement and delegate authority to the Director of Place, in consultation with the s.151 Officer and Portfolio holder for Regeneration and Strategic Planning to negotiate final terms and enter into the Grant Determination Agreement with Homes England);**
- c) Approve the proposed variations described in Appendix 2 and delegate authority to the Director of Place, in consultation with the s.151 Officer and Portfolio holder for Regeneration and Strategic Planning to agree any final terms and document and enter into a Deed of Variation to formally amend the Development Agreement in line with these proposals.**

## **2. Introduction and Background**

- 2.1. Purfleet Centre is the largest regeneration programme which the Council is directly responsible for delivering. Following completion of a competitive dialogue process, the Council entered into a Development Agreement (DA) with the selected development partner Purfleet Centre Regeneration Ltd (PCRL) in 2016. The DA sets out the role and contributions of each partner in delivering the scheme.

- 2.2. In 2017, MHCLG and Homes England (HE) announced a nation-wide Housing Infrastructure Fund to support the cost of infrastructure required to unlock the delivery of new homes. Local authorities were invited to submit Expressions of Interest for grants of up to £250m noting that funds would be allocated on a competitive basis.
- 2.3. Thurrock Council submitted an Expression of Interest for the Purfleet scheme in September 2017, the project was shortlisted for the co-development phase and submitted a full business case in December 2018. The announcement that the scheme had been successful in securing funding came in March 2020.
- 2.4. The Council is working closely with Homes England to negotiate the terms of a HIF Grant Determination Agreement that will formally secure and manage the HIF funding. The key terms of this agreement, demonstrating what is still under discussion with Homes England, are included at Appendix 1 (exempt). The Council will be the grant recipient for this funding and will only draw it down when viability and value for money to the Council has been confirmed to the satisfaction of the s.151 Officer (further details in section 3.8 below). This sign off has been secured for Phase 1a but will be reconfirmed at each future approval point.
- 2.5. The intention is to input the funding into the current contractual arrangement in place with PCRL. This arrangement is governed by a Development Agreement. To ensure the current DA and the provisions in the Grant Determination Agreement with Homes England are aligned some changes need to be made to the DA. These are described in section 3 and Appendix 2 (exempt). A further funding agreement between the Council and PCRL will also be required to govern this transfer and to ensure that all risks and obligations contained within the Grant Determination Agreement are passed to (see section 3.4 below).
- 2.6. PCRL and the Council have jointly reviewed the delivery strategy for the scheme and the control and approval mechanisms included in the DA. To ensure that the scheme can progress whilst protecting the interests of all parties a number of amendments to the DA are proposed. These amendments are described in section three and Appendix 2 (exempt).
- 2.7. The announcement on HIF joins other positive milestones for the project including:
  - Securing outline planning consent for the whole masterplan area.
  - Securing full planning consent for the first 61 homes.
  - Completing key land acquisitions to support phase 1 of the scheme.
  - Completing the appropriations process for Phase 1a of the scheme.
  - Agreeing an outline brief and commencing stakeholder consultation on both the Integrated Medical Centre (IMC) and the new Primary School.
  - Confirmation from the s.151 Officer that the requirement of Best Consideration has been met.

### **3. Issues, Options and Analysis of Options**

#### **Housing Infrastructure Fund**

- 3.1. As part of the HIF contracting process, Homes England provided the Council with a number of pre and post contract conditions and a draft Grant Determination Agreement. HE expect all pre contract conditions to be discharged and the Council to be in a position to enter into the Grant Determination Agreement by the end of December 2020.
- 3.2. The Council has worked with its professional advisors and PCRL to provide the required information to satisfy those conditions. Most of the conditions related to a transfer of information to ensure that Homes England understood the project and the relevant controls that are in place via the DA, as well as updating them on progress with the scheme in the period between submitting the application and the funding being announced.
- 3.3. However, some of the conditions required new information to be collated or new controls to the way the project financing is structured. As public funding is coming into the scheme HE requires, where scheme receipts allow, HIF funding to be recovered to the Council and recycled into future housing developments. This has increased the Council's share of any future profits and will require a change to the DA to ensure this is a contractual commitment.
- 3.4. Thurrock Council will be the grant recipient for HIF. Subject to final s.151 Officer sign off at each stage as referenced previously, the intention is to put this funding into the PCRL scheme and a legal agreement is being documented to ensure that any change to the liability or risk profile of the Council as a result of accepting HIF is passed to PCRL. This agreement will make PCRL legally responsible for delivery of the funded outputs and will ensure that if HE consider a fundamental default to have been triggered by the actions of PCRL the DA between the Council and PCRL will terminate so that the Council can work with HE to agree an alternative way of delivering the outputs.

#### **Promoting Scheme Delivery**

- 3.5. The DA was negotiated with PCRL at the end of the competitive dialogue process and was signed in 2016. It has served to govern the project through its early milestones including the granting of outline planning consent for the entire masterplan area.
- 3.6. Since the announcement of a HIF award, substantial work has been undertaken to optimise the design, phasing and delivery strategy for the scheme. The DA was written without the benefit of this detailed knowledge and, with the requirement to complete a deed of variation to enable HIF to be inputted in the scheme, it is a sensible point in time to look at other variations that would ensure that the DA aligns with the optimal delivery strategy and

actively supports scheme delivery whilst still protecting the interests of the Council. A number of proposed variations are therefore described in Appendix 2 (exempt).

### **Future approval mechanism**

3.7. As referenced earlier, this report does not give PCRL approval to start development works on site. Approval under the DA is conditional on PCRL meeting seven Phase Pre-Development Conditions that are designed to give the Council confidence that at the point of approval the phase of works being proposed are:

- Consented (phase planning condition) and (planning agreement condition)
- In alignment with the approved Concept Scheme, have agreed timelines and the delivery approach is understood (phase proposal condition)
- On land which is in the Council's ownership and available for development (site assembly condition)
- Deliverable from a financial point of view (financial appraisal condition for phase 1, viability condition or all other phases)
- Not affected (cost or time) by ground conditions capable of being understood by survey work (site survey condition)
- Fully funded/financed with appropriate evidence of funds provided to the Council (funding condition)

It should be noted that PCRL are allowed to do a range of survey and enabling works under licence in advance of these conditions being satisfied.

3.8. Satisfying the conditions above will make the DA 'unconditional' on that particular phase and allow PCRL to draw down the Council land for that phase by way of a building lease. Currently, whilst PCRL are well advanced in preparing the documentation required to seek the final approvals and take the DA to an unconditional status on Phase 1, the Council has not yet given approval to the full set of Phase Pre-Development Conditions.

3.9. In addition to the DA mechanisms, the Council has a legal obligation to ensure that the principle of 'best consideration' is also applied. This final approval is confirmation from the s.151 Officer that the use of public funds (in this case committing the Council's land) represents value for money for the public sector set against the forecasted financial returns and the outputs (housing and infrastructure) being delivered by the scheme. The s.151 Officer has confirmed that on the information presented to date best consideration is achieved for Phase 1a. As this project is a long term development, the best consideration analysis will be reviewed at each point where the Council commits its land to the scheme.

### **Risk Management**

3.10. Significant work has been dedicated to understanding the likely financial output of the scheme. PCRL have provided a financial model that is

supported by evidence from external consultants. On behalf of the Council CBRE have challenged the inputs and assumptions that are included in the model and have prepared a version that they feel reflects an achievable position for the scheme.

- 3.11. Whilst the model currently doesn't suggest a break even position in terms of financial return, sensitivity analysis shows that inputs (such as house price HIF funded elements of the scheme with the Council's contribution being limited to the value of the land drawn down by the scheme and the capital contribution to the school. The DA does allow the Council, at its absolute discretion, to become a funder to the scheme should it feel that this is a viable investment opportunity that will provide a beneficial return.
- 3.12. The proposal to give approvals on a sub phase basis tightens the contractual controls with the Council releasing land in smaller parcels and being able to consider the performance of PCRL on previous sub phases before allowing further land to be drawn down. In addition, learning lessons from the A13 project, the Council's Major Project Board will have clear and regular oversight of scheme performance.

### **Summary**

- 3.13. In summary house price growth does not have to increase significantly for the real life situation to outperform the model and deliver a recovery of the Council's land value and capital contribution. Furthermore, the scheme is delivering wider benefits such as c.£245m of infrastructure (including the Purfleet Integrated Medical Centre and the closure of the level crossing) and the delivery of up to 2,850 homes on a brownfield site. The total benefit to Thurrock and the Council is therefore much wider than the pure financial return.
- 3.14. Any liability that the Council has for cost overruns on the HIF funded infrastructure is passed to PCRL by way of a legal agreement that runs back-to-back with the HIF GDA. Responsibility for cost overruns on the HIF funded and developer funded works legally rests with the developer. For clarity, the following needs to occur in order for the Council to accept HIF and input it into the Purfleet Centre scheme:

#### Acceptance of HIF

- Cabinet Approval to accept HIF.
- GDA with Homes England entered into by the Council.

#### Input of HIF into DA

- Cabinet approval to amend the DA.
- Deed of Variation executed.
- PCRL and the Council enter into a supplementary agreement to govern the input of HIF into the PCRL scheme.
- PCRL satisfy all remaining conditions - DA becomes unconditional.

- Claim and appropriate evidence submitted to HE and funding drawn down by the Council.
- Not until then would funding be transferred to PCRL.

#### **4. Reasons for Recommendation**

- 4.1. The HIF grant will greatly assist the delivery of the project but in order to enter the delivery phase the Council needs to enter into the Grant Determination Agreement with Homes England.
- 4.2. The inclusion of HIF requires some amendments to the DA in order to ensure that the Council and PCRL can comply with the terms of the GDA. Furthermore, the maturity of the scheme and the detailed work undertaken following the announcement of HIF award warrants a review of the DA to ensure that it supports scheme delivery and that the controls it includes are relevant to the current scheme position.
- 4.3. The inclusion of HIF and the changes to the DA are key to the S151 sign off on both Best Consideration and Financial Viability.

#### **5. Consultation - Overview and Scrutiny**

- 5.1. This report is presented to Overview and Scrutiny in advance of the Cabinet meeting on the 9<sup>th</sup> December. Due to the close proximity of the meetings feedback will be given to Cabinet verbally.
- 5.2. General progress has been reported regularly to the Purfleet Community Forum and PCRL continue to maintain the ourpurfleet.com website to keep the wider community updated on progress. PCRL have also re-instigated the Purfleet Community Design panel (as a virtual group during Covid-19 restrictions).

#### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1. Purfleet Centre is referenced in the Council's Economic Development and Regeneration Strategies and the Local Plan. The receipt of HIF will make a significant contribution to achieving the Council's vision for Purfleet and will be of great benefit in bringing the programme forward.

#### **7. Implications**

##### **7.1. Financial**

Implications verified by: **Sean Clark**  
**Corporate Director of Finance, Property and Governance**

The DA has clear mechanisms and thresholds for assessing financial viability. The changes expected by Homes England aim to facilitate the recovery of public funding back to the public sector for reuse in other housing schemes. If successful this will provide a positive benefit to the Council in delivering its wider housing aspirations. Funding will only be recovered where returns allow so the overall viability of the Purfleet scheme will remain intact.

The S151 Officer has considered financial viability, best consideration and any risks relating to the HIF agreement with Homes England. Best consideration/value for money sign off has been secured for the first decision point (Phase 1a). A full financial assessment will be undertaken at future decision points within the DA ensuring that viability and value for money to the Council is confirmed again before further Council owned land is committed. Value for money will consider financial and infrastructure benefits as well as contributions to the Council's housing targets. Risks have also been managed down within the HIF agreement with Homes England.

## **7.2. Legal**

Implications verified by: **Tim Hallam**  
**Deputy Head of Law and Deputy Monitoring Officer**

The main legal implications specifically relevant to this report are summarised in the main body of the report. Eversheds Sutherland have advised on all aspects of the DA to date. The principal external lawyer advising the Council on the DA has now moved from Eversheds Sutherland to Gowlings WLG and to ensure there is consistency of advice and approach the contract has been moved to Gowlings. Changes to the clauses of the DA have been reviewed assessed by Gowlings and will also require review verified by internal legal for compliance with the Council's own protocols including its procurement rules.

## **7.3. Diversity and Equality**

Implications verified by: **Becky Lee**  
**Team Manager – Community Development and Equalities**

The Development Proposals for this phase of the Project support long-term achievement of the Council's equality objectives and specifically those associated with residents' access to services in addition to supporting community integration and cohesion. Through construction to delivery, employment opportunities will be introduced along with the provision of new community facilities and a diverse mixture of housing types in Purfleet.

The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and

- other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups.

The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies and the delivery of services.

7.4. **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

- Not Applicable

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- March 2020 – Cabinet – Purfleet Centre Regeneration  
<https://democracy.thurrock.gov.uk/ieListDocuments.aspx?CIId=129&MIId=5584#AI11402>
- November 2018 - PTR O&S – Briefing: Purfleet Centre Update  
<https://democracy.thurrock.gov.uk/ieListDocuments.aspx?CIId=170&MIId=5464&Ver=4>
- March 2018 – Cabinet – Purfleet Centre Update  
<https://democracy.thurrock.gov.uk/ieListDocuments.aspx?CIId=129&MIId=5212&Ver=4>
- January 2018 – PTR O&S - Purfleet Centre Update  
<https://democracy.thurrock.gov.uk/ieListDocuments.aspx?CIId=170&MIId=5197&Ver=4>
- October 2015 – Cabinet – Purfleet Centre: Award of Contract  
<https://democracy.thurrock.gov.uk/ieListDocuments.aspx?CIId=129&MIId=2566#AI3285>

9. **Appendices to the report**

- Appendix 1 – Key terms of the HIF Grant Determination Agreement (Exempt)
- Appendix 2 – Heads of Terms for Proposed Variations to the Development Agreement (Exempt)

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