

CABINET

12 DECEMBER 2005

PRINCIPAL SCRUTINY COMMITTEE

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SILVER HILL DEVELOPMENT LANDOWNER'S APPROVAL

REPORT OF CHIEF ESTATES OFFICER

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RECENT REFERENCES:

PS210 Silver Hill Development Milestones Report 5/12/05

CAB1140 Silver Hill Timetable 16/11/05

PS202 Silver Hill Development Update Report 17/10/05

CAB1030 Broadway Friarsgate - Development Agreement 8/2/05

EXECUTIVE SUMMARY:

This report considers an application by Thornfield Properties (Winchester) Limited made under the Silver Hill development agreement for the Council's approval, as landowner, to the submission of a planning application for the Silver Hill development. For the avoidance of doubt the decision to be made is not a town planning decision but one to be made by the Council as landowner.

The report considers a number of changes to the initial designs of the development, as set out in the development agreement, which have come about as a result of consultation and the working up of a detailed development proposal.

The set of criteria against which the application must be tested is set out in the development agreement and these are examined. As some of the criteria relate to commercially sensitive matters these are considered in the exempt appendix.

The recommendations agreed by Cabinet will proceed for a decision by full Council at a special meeting to be held on 1 February 2006.

**RECOMMENDATIONS:**To CabinetRecommendation to Council (subject to any issues agreed in the exempt report)

1. That the Council gives its agreement to the submission of a planning application by Thornfield Properties (Winchester) Ltd in the form of the submitted plans, subject to the Chief Estates Officer being authorised to agree any minor amendments.
2. That the Broadway Friarsgate development agreement is varied to reduce the minimum number of residential units from 364 to 285 units.
3. That the Council reserves its position with regards to its requirement for a market compactor compound until the conclusion of a scheme wide waste and recycling plan.
4. That Cabinet be authorised to agree, or otherwise, any subsequent requests for changes in the minimum required elements or material variations.

To Principal Scrutiny

That taking into account the outcome of Cabinet's consideration of this report, the Committee identifies any areas that it considers require additional deliberation by Cabinet before the matter is presented to Council.

CABINET12 DECEMBER 2005PRINCIPAL SCRUTINY COMMITTEE12 DECEMBER 2005SILVER HILL DEVELOPMENT LANDOWNER'S APPROVALREPORT OF CHIEF ESTATES OFFICERDETAIL1 Introduction

- 1.1 The Council's development agreement with Thornfield Properties (Winchester) Ltd provides that before the submission of a planning application for the Silver Hill development the company must first obtain the Council's consent by way of a 'landowner's approval'. In early November 2005 Thornfield submitted a draft application, with supporting information, together with a request for the Council's approval. They also requested a variation in the terms of the development agreement to take account of a reduction in the number of residential units.
- 1.2 It must be stressed that the agreement requested is from the Council in its capacity as a landowner and NOT in its capacity as the local planning authority. In order that there would be clarity over any potential conflict of interests the City Secretary and Solicitor has advised all Councillors that no Member who anticipates being involved with the consideration of the planning application should take part or attend meetings of Cabinet, Principal Scrutiny Committee or full Council when the landowner's application is being considered.
- 1.3 Plans and background reports, which form the basis of the draft application, have been placed in the Member's library. As part of the verification and checking process there have been some minor amendments and these will be brought together in a set of documents by the Chief Estates Officer to record the details upon which a decision was made. For reference a ground floor block plan of the development is attached as Appendix 1.

2 Criteria for determining the landowner's approval

- 2.1 The development agreement clearly states how the Council should approach the matter and the criteria it is required to consider. The following is the relevant extract from the agreement;

*Not less than two months before submission of the Application the Developer shall supply to the Council for approval (**in its capacity as landowner only**) a draft of the Application together with all supporting documents and financial information demonstrating the financial viability of the proposed development as described in the Financial Viability Condition.*

*The Council shall not unreasonably withhold approval to the draft Application provided that:-*

- 1) - *it substantially conforms to the requirements of the Planning Brief for the Site adopted by the Local Planning Authority in July 2003;*
- 2) - *it is for a development containing the broad principles of the Developer's proposals in response to the Developer's Brief as revised in December 2003;*
- 3) - *it includes the Required Elements;*

4) - *in the reasonable opinion of the Council (as landowner) it is supportable in planning policy terms;*

5) - *the proposed development is financially viable as described in the Financial Viability Condition.*

2.2 The question for the Council is therefore whether the draft application does meet these criteria and, if not, whether the Council is willing to amend its requirements.

### 3 Criterion 1) Substantial Conformity to the Planning Brief

3.1 The planning brief adopted in July 2003 set out the Council's development objectives for the site including a planning vision and a design framework. The brief was endorsed as a background document to the Local Plan Review, rather than as supplementary planning guidance. With a complex major scheme such as this, which has been drawn up over a period of time, it would be unreasonable to expect any proposal to be able to precisely match every requirement of the planning brief. Indeed, were the Council to adopt a brief today it might not be identical to that produced over two years ago. The test to be considered is therefore one of substantial conformity, especially with key objectives.

3.2 The Silver Hill renaissance proposal offers a comprehensive development which meets all of the components of the planning vision (section 2.1 of the brief) in that it resolves *'a number of longstanding problems in the area and provide new and upgraded facilities to improve the appearance and vibrancy of the town's centre'* including;

- providing a modern bus station
- removal of eyesores and unsightly buildings
- providing a range of shops and services
- strengthening Winchester's niche within the retail hierarchy
- creating more attractive public realm
- providing spaces for public use and activity
- providing housing to meet local need in a sustainable location
- provide dwellings of a mixed tenure with a substantial component of affordable housing
- providing a boost to local economy and creating jobs
- incorporating leisure provisions, particularly for young people

3.3 The following list includes other specific facilities and features identified in the planning brief and provided for in the development;

- no reduction in the flood plain storage capacity
- some opening up of culverted waterways
- active frontages at ground floor level
- buses removed from the High Street and highway works to Friarsgate
- relocation for two doctors surgeries
- residential car parking provision not exceeding 1 space per 2 dwellings
- archaeological investigations and an outline mitigation scheme
- a range of house types and at least 50% units being 2 bed or less
- New Shopmobility and community transport accommodation
- the reuse of Woolstaplers Hall
- the relocation of the Post Office and Council car park office and CCTV suite
- a new and well laid out replacement public car park
- a reformation of the Broadway into a more pedestrian friendly environment and location for the weekly and Farmers' markets
- a commitment to public art
- a phasing plan and commitment to the considerate contactor scheme
- evidence of good practice in public and community consultation and involvement in the selection of the architect.

- a contribution to off site open space
- 3.4 The application does conform with the majority of the elements of the brief. It is, however, necessary to look in more detail at a number of areas where the draft application and supporting details do not match specific components of the brief, or which warrant further comment. The current assessment is not a full planning assessment carried out to the level of detail that would be expected for a planning application. In particular, detailed design issues cannot be considered and are not directly relevant to the question before Cabinet. This can only be done by the local planning authority both through pre-application advice from planning officers and consideration by Members once the full application is presented to it. The assessment that has been carried out does not seek to respond in detail to the preliminary Environmental Statement that has been prepared. This will require views to be sought from various statutory and technical consultees.
- 3.5 The areas in question have been drawn to the attention of Thornfield and are as follows. The resolution of these matters are properly those for the Planning Development Control Committee.
- 3.5.1 The planning brief identified the site as having the potential to be an exemplar of sustainability principles. Whilst there are elements of the development that score highly in the SPEaR sustainability assessment other areas are only average. Thornfield have been informed that more work is needed in this area. Their design team has the combined experience to be able to redress this shortfall and the Council will expect a clear commitment from Thornfield.
- 3.5.2 The planning brief suggests a concept of a series of linked public spaces which in main the proposals reflect. The main exception is the area where Middle Brook Street meets Silver Hill. The potential loss of a plane tree in this location also highlights shortcomings in the landscape proposals. There are also concerns that the treatment of some hard surfaced areas is not appropriate (e.g. changes of level in Middle Brook Street) or over-complicated (e.g. in the Broadway). These concerns have been passed on to the developer.
- 3.5.3 The archaeological evaluation to date has been based upon desk top studies and discussions with the Council's archaeology team. This needs to be supplemented by field investigations and trial excavations particularly in the eastern end of the site, in order to fully inform the mitigation strategy and accord with good practice.
- 3.5.4 Thornfield have not proposed either a night club or a hotel within the site, both uses having been suggested in the brief as possibilities, but not requirements. They have however provided for a youth venue which following the public consultation appears to have a higher priority in a scheme where space is at a premium. A further report on the delivery of this facility will be prepared once more details are available.
- 3.5.5 The scheme has been designed on the assumption that part of the streets and open areas area might flood in the one in a hundred year flood event. Thornfield are in continuing discussions with the Environmental Agency over flood alleviation, which the brief suggests may be appropriate. The Council needs to be aware of the possibility of flooding of the streets around the development (although the buildings themselves are designed to be above the predicted level of flood waters). The Environment Agency is drawing up proposals for a flood alleviation scheme, to which a contribution may be sought from developments in the area. At the present time the approach adopted by Thornfield is the only realistic response to flooding issues, other than relying on third party actions beyond their control.
- 3.5.6 The scheme provides for a modest 2,658 sq m, (gross internal), of new office space responding to representations from the business community about the

loss of existing capacity which includes offices in Kings Walk and Coitbury House. A further 781 sq m of live/work space is provided in 13 units. The brief did not envisage the site as the location for major office development but did recognise the need for some re provision for displaced activities. Current planning policies would allow for only a modest increase over existing office floorspace levels so the level of provision proposed is unlikely to raise any planning policy issues.

- 3.5.7 The brief identified the Antiques Market as one of the oldest buildings in the conservation area, the demolition of which would only be permitted if its retention seriously compromised the redevelopment. The draft application assumes that the Antiques Market will be demolished but the case for this must be made to the local planning authority.
- 3.5.8 Whilst generally the proposal meets the public transport, parking and highway aspirations of the brief at the street level there is concern over proposed steps on the corner of Middle Brook St and Silver Hill (see 3.5.2 above). These have been introduced because the floor levels within the building have been set to meet the flood levels agreed with the Environment Agency. The steps present a significant access impediment and are not 'pedestrian friendly'. Design solutions are being sought to remove the need for steps including using ramps within the retail areas.
- 3.5.9 The brief suggests that building heights should vary over the site and respond and be sympathetic to adjacent development. The heights of a number of buildings in the draft application exceed this guidance. The scale and massing of the buildings is, therefore, a potentially major planning issue, especially having regard to the need to avoid harmful impacts on views within and across the town centre. The site is within the Conservation Area, where particular regard must be had to conserving and enhancing the area's character, and in places adjoins listed buildings or impacts on their setting.
- 3.5.10 The planning brief set general principles on the height of buildings, in the absence of a specific architectural solution. Now that a detailed scheme is being developed, it will be possible to test the detailed impact of the proposed development. This testing will need to consider the effect of the buildings on views, spaces, and existing buildings and the overall 'feel' of the scheme. The appropriate place for detailed testing of these issues is through the planning process and the consultations that will take place in conjunction with the application. The considerations for the local planning authority are far more complex than a simple assumption that certain heights are acceptable and other unacceptable. Therefore, whilst reservations may be expressed about the impact of the development, it would not be reasonable for the Council to prevent the scheme proceeding to a planning application, as this would prevent the detailed testing that needs to occur.
- 3.6 The most significant variance to the Planning Brief is in relation to the height and mass considered above. This issue, along the others raised above are not insoluble and are capable of being addressed through further modification, or amendment, of the scheme's detailed design. It is to be expected that work will continue to develop the scheme to address these. It is, however, possible that meeting the requirements of the local planning authority could have an impact on financial viability. Were this to be the case both Thornfield and the Council, as landowner, have to reconsider their respective position and this is a risk which Members should be aware of.
- 3.7 In conclusion, taking into account the complexity of the site, it is your officer's view that Thornfield's proposal substantially conforms with the planning brief. and that Thornfield should be encouraged to address the matters which are highlighted above before submitting a planning application.

4 Criterion 2) Contains the Broad Principles of Developer's Proposal

4.1 Due to the commercially sensitive nature of this information consideration of this criterion is contained in the exempt appendix.

5 Criterion 3) Includes the Required Elements

5.1 The minimum required elements are set out below;

1. a minimum of 90,000 square feet of Gross Internal Area of Retail Units;
2. a minimum of 364 residential units 35% of which are Affordable Housing and 15% of the Affordable Housing or if greater 20 such units to be Social Rented Housing;
3. a minimum of 279 public car parking spaces (unless such number is reduced due to a change in the car parking policy of the Council acting as the local authority);
4. a civic square in the form of the square approved by the Council in accordance with clause 4.3 of the Agreement;
5. a bus station incorporating no fewer than 12 bus bays three layover bays public toilets and other facilities as more particularly described in the Stagecoach Agreement;
6. premises for and the reprovision of the Council's closed circuit television equipment (including any necessary additional equipment) and parking offices as provided for in the Planning Brief;
7. premises for a new shop mobility unit and Dial-a Ride service as provided for in the Planning Brief;
8. an area for the relocation of the daily Middle Brook Street market and the Farmers' Market including re-provision of the market store and waste compactor;
9. provision of public art in a form agreed with the Council but costing not more than £336,000.

5.2 The only requirement that the draft application does not achieve is providing 364 housing units. The draft application has 285 units. The percentage of affordable housing still equal 35% and there is a minimum of 20 units of socially rented units. The reduction in unit numbers has come about following alterations to the initial designs following public consultation and pre application discussions with the planning department. The reduction is mainly as a result of reducing the mass of the scheme but to a lesser extent it also reflects the introduction of additional offices.

5.3 This departure from the minimum stated in the agreements is considered reasonable in the circumstances. The planning brief set a target of at least 100 dwellings and so that planning requirement is met. The recommendation is that the development agreement is varied to adopt the lower number of units, as the best outcome for the scheme.

5.4 There are some ongoing discussions surrounding the precise location of a number of the Council relocations and these are anticipated to be resolved before an application is submitted, and will be documented in the agreed plans. The Council is also proposing to reserve its right to have a dedicated market compactor compound until detailed proposals for trade waste and recycling have been formulated.

6 Criterion 4) Supportable in Planning Policy Terms

6.1 In seeking to assess whether this criterion is met it first worth assessing what is meant by the caveat "*in the reasonable opinion of the Council (as landowner)*". It is suggested that the full spectrum of planning policies both national and local should be considered and a conclusion drawn based upon a balanced view. In saying this Council cannot be expected to support an application which is manifestly in conflict with a significant policy or where a precedent would be set which would have a wide scale implication.

- 6.2 National and local planning policies encourage new retail and other development which will attract large numbers of visitors to be located in town centres. High density housing is also encouraged in such sustainable locations. The Winchester Retail Study identified a need for further retail floorspace in Winchester. The nature of the uses proposed therefore confirms with policy aims on sustainable development, the reuse of previously developed land, and regeneration of run-down urban sites.
- 6.3 Structure and Local Plans contain policies promoting high quality design and layout, especially in historic environments. However, subject to detailed design issues being resolved, the scheme will result in a major improvement to the environment of this run down part of the town centre, and boost the vitality and commercial viability of the town. It is, therefore, recommended that the appropriate approach would be for the Council to consent to a planning application being submitted, on the basis that this would allow full testing of design and other issues.
- 6.4 The planning brief adopted in July 2003 remains generally up to date. The only significant change to the Local Plan Review as it affects this proposed development relates to affordable housing provision. At the time of the planning brief the Local Plan sought a proportion of 35% affordable housing. The Council subsequently agreed a Pre-Inquiry Change to seek a proportion of 40% and the Winchester District Local Plan Inspector's Report supports the application of this proportion. Accordingly, the Council is currently operating this proportion and it can be expected to be included in the adopted Local Plan Review, to be adopted in the summer of 2006.
- 6.5 It is, therefore, an unfortunate consequence of evolving planning policy that the scheme has been developed on the basis of provision of 35% of affordable housing, which would conform with the brief, but the requirement that will apply at the time a planning application is determined will be 40%. The Local Plan Review carries more weight as a material consideration than the planning brief, which was not adopted as supplementary planning guidance.
- 6.6 There therefore is a difference in policy guidance on the percentage of affordable housing that the scheme should provide. Thornfield are intending to submit their application based upon a 35% provision and will be supporting that submission based upon the previous planning brief guidance and evidence that the scheme cannot carry the additional costs that a 40% provision would lead to.
- 6.7 Although a very important issue, it is recommended that Thornfield be given the opportunity to amend their proposals through a planning application rather than refusing consent for the scheme to be submitted as an application. This will allow Thornfield to either incorporate the new affordable housing proportion, or to submit evidence to demonstrate other material considerations to suggest that this proportion need not be provided.
- 6.8 The only other significant area of policy conflict relates to Proposal W.11 of the Winchester District Local Plan 1998. This specifically presumes against the development of "further significant shopping development in or around Winchester" unless on an allocated site. This was on the basis of an earlier retail needs study, and has been superseded by the findings of the latest retail study. Therefore, while the development is technically a 'departure' from the statutory Local Plan, the Plan is out of date in this respect and it will not be difficult for the applicant to demonstrate a need for additional retail floorspace in this sequentially-preferable location. The 1998 Local Plan may have been superseded by the adoption of the Local Plan Review when the application is determined (the Local Plan Review allocates the site for mixed use development, including retail). If not, the 'departure' process may need to be followed, requiring the Deputy Prime Minister to be notified of the Council's intention to permit the planning application and allowing the opportunity for him to call in the scheme. A call-in is therefore technically possible but it is difficult to see any good reason why it should occur.



## 7 Transport Policy Issues

- 7.1 As the development site is located in a declared Air Quality Management Area any additional traffic generated will have a detrimental effect on the ambient air quality. To date the draft Transport Assessment contains insufficient information on sustainable travel and the ways in which the development will seek to encourage non-car based travel.
- 7.2 The parking provided is in line with that set out in the planning brief. The availability, pricing and control of car parking spaces is a key policy tool in transport planning, therefore the replacement public car parking should be controlled to support these objectives. The development agreement provides that the charging policy is in line with other car parks in the area.
- 7.3 The proposed scheme includes the provision of a new bus station in accordance with the brief. The County Council as highway authority still have some reservations over the removal all buses from the semi-pedestrianised areas of the High Street, Middle Brook Street and St George's Street. The development will place additional servicing pressures on the existing High Street rather than serve a number of units from within the development itself. There will be a need for modification of traffic regulations to restrict servicing control times and the removal of buses from the semi-pedestrianised streets.

## 8 Criterion 5) Financial Viability

- 8.1 Due to the commercially sensitive nature of this information consideration of this criterion is contained in the exempt appendix.

## 9 Variations to the Application Post Landowner's Approval

- 9.1 If landowner's approval is given the development agreement provides some necessary and practical flexibility for Thornfield to make minor variations to the planning application and the scheme. However, the 'required elements' and any 'material variations' can only be amended with the Council's approval, (as landowner). Material variations would include; changes to the external elevations and massing, the number of shop units, cost and standard of construction greater than a 10% variance of any element, changes to the public areas, servicing and delivery arrangements, highway access arrangement, and the number and size of shop units,
- 9.2 If the material variations arise as a result of a local planning authority requirement the Council (as landowner) must act reasonably in making a decision. In all other cases the Council has an absolute discretion whether to approve a material variation.
- 9.3 The Council needs to deal with requests for variations as expeditiously as possible and to give a written decision within 15 working days. In view of this timetable it is recommended that Cabinet determine any such requests, by special meeting if necessary. In any event all future decisions on the scheme, as a matter of law, rest with Cabinet unless they come outside the scope of the Council's approved budget and policy framework.
- 9.4 In the event that the parties do not agree a material variation there is provision for an independent determination run in accordance with the disputes clause in the agreement.

## 10 Woolstaplers Hall

- 10.1 There has been serious interest in using Woolstaplers Hall as a new base for cultural and creative business and activities in the city. A number of agencies in the city have been keen to promote this and preliminary talks have taken place, which have identified the first and second floors as having potential. There is no specific provision in the planning brief, developer brief or the draft scheme for these uses but Thornfield and the Council have indicated that a proposal would be entertained provided it did not have an adverse financial impact on the scheme.

## 11 Risk Assessment

- 11.1 A risk assessment of the scheme is attached as an appendix to report PS210 which was considered at Principal Scrutiny Committee on 5<sup>th</sup> December and is on the agenda for this meeting of Cabinet. This considers the risk from the perspective of the Council but it is recognised that the success or otherwise of the scheme will have a wider impact on the local economy and an initial assessment of this is included as appendix 2.

## 12 Conclusion

- 12.1 Cabinet is asked to consider whether the draft application presented by Thornfield meets the pre-determined criteria set in the development agreement to be acceptable for submission as a planning application. On one specific issue, that of the number dwellings, the scheme is not compliant and for good reasons Cabinet is recommended to vary the Council's requirements in this respect. On all other matters the draft application is considered to be compliant. The scheme will however require further analysis, explanation and possible modification on design, transportation and other matters as it goes through the planning process. There is the potential for such modifications to impact on the financial aspects of the scheme and if this were the case a further assessment and reports to Cabinet may be required.

## OTHER CONSIDERATIONS

None

## CORPORATE STRATEGY (RELEVANCE TO):

The mixed-use development will have a significant impact in revitalising the Silver Hill area and the local economy as well as bringing forward decent affordable and market homes in a sustainable location, the youth venue would provide an additional recreational and cultural facility specifically for young people.

## RESOURCE IMPLICATIONS:

The scheme appraisal is considered in the exempt appendix.

## BACKGROUND DOCUMENTS:

Broadway Friarsgate Planning Brief July 2003

Draft Environment Statement and Traffic Assessment Arups November 2005

Scheme concept plans - Allies and Morrison - P9 Technical submission November 2005

Landscape concept plans Christopher Bradley-Hole - 9 November 2005

## APPENDICES:

- 1 Silver Hill Development Block Plan (on yellow paper) and individual Floor Level Plans (on white paper)
- 2 Silver Hill Risk Analysis – Local Economy Perspective
- 3 Silver Hill Landowner's Approval (Exempt Appendix)

CAB1179