

PRINCIPAL SCRUTINY COMMITTEE

12 November 2008

Attendance:

Councillors:

Chamberlain (Chairman) (P)

Anthony (P)
Baxter (P)
Collin (P)
Cook (P)
Huxstep (P)
Learney (P)

Lipscomb (P)
Maynard (P)
Mitchell (P)
Tait (P)
Worrall (P)
Wright (P)

Others in attendance who addressed the meeting:

Councillor Beckett (Leader)

Others in attendance who did not address the meeting:

Councillor Hiscock

1. **DISCLOSURES OF INTEREST**

The Leader declared a personal and prejudicial interest, due to his involvement as a Cabinet Member in actions taken or proposed in the Report outlined below.

However, the Committee requested that he remain in the meeting, in his capacity as Portfolio Holder, under the provisions of Sections 21(13) (a) of the Local Government Act 2000, in order that he could provide additional information to the Committee and/or answer questions.

2. **CHAIRMAN'S ANNOUNCEMENTS**

The Committee agreed to the Chairman's request that it should hold a special meeting on Wednesday 10 December 2008 to commence at 6.30pm to consider reports on Treasury Management arrangements and strategy. These reports would be considered by Cabinet at its meeting on 18 November.

3. **PUBLIC PARTICIPATION**

Mr John Edwards spoke on behalf of the Winchester Cycle Working Group on matters related to cycling and the Silver Hill development.

In summary, he stated that the Silver Hill development could play a positive role in persuading people to use cars less often and to promote cycling. He had noticed in recent years an increase in cycle use within Winchester, but more could be achieved. The traffic on the streets of Winchester made it intimidating for cyclists and more could be done to improve permeability from central Winchester to its outskirts by improving cycling routes.

Particular attention could be paid to links between High Street, Upper Brook Street and North Walls. This could affect Middle Brook Street, Silver Hill and Tanner Street within the Silver Hill development area.

The Committee were sympathetic to the comments made by Mr Edwards and agreed that the officers should consider them in the work on the Winchester Town Access Plan so that cycling issues were properly addressed and that the issues raised were referred to Cabinet in due course. The Committee asked Cabinet to keep the issue under review as the Silver Hill scheme progressed.

4. **SILVER HILL, WINCHESTER – COMPULSORY PURCHASE ORDER**
(Report CAB 1739 refers)

The Committee noted that the report was being considered at this meeting as it had been previously requested, at its meeting held on 19 November 2007, that the report to Cabinet on the next stage to authorise the making of compulsory purchase order for the Silver Hill development be brought to Principal Scrutiny Committee for comment prior to its consideration at Cabinet.

By way of background, in October 2007, Cabinet had agreed to the making of a compulsory purchase order once certain conditions were met. These conditions were the provision of indemnities by the developer (Thornfield (Winchester) Limited and Thornfield Properties PLC Properties) and the completion of a Section 106 Legal Agreement. The Planning Development Control Committee had also resolved to grant Planning Permission at its meeting on 27 March 2007 subject to the completion of a Section 106 agreement containing certain planning obligations. The Section 106 Agreement was near to signing, subject to the County Council's confirmation on highways matters. The indemnity agreement was now at final draft stage and should be ready to be signed shortly. For the reasons set out in the Report, the Planning Development Control Committee had also approved (subject to conditions and a Section 106 Agreement) the amendments put forward by the applicant in respect of the proposed development at its meeting held on 21 October 2008.

The Corporate Director (Operations) and the Head of Estates outlined the detail of the report for the Committee's consideration.

In answer to Members' questions, the Corporate Director (Operations) explained that it was unlikely that many of the parties involved would agree to sell in advance of the Compulsory Purchase Order. Experience gained from other development schemes was that many of the parties involved would not

wish to negotiate with the Council prior to the formal compulsory purchase order process being progressed. It was acknowledged that at present the financial market was turbulent and the projected valuations for the acquisition costs which had been made by the Council's agents, Drivers Jonas, could be expected to vary; but if the current state of the market continued these could be downwards rather than upwards. Valuations would crystallise when and if the CPO is confirmed and the Council serves notices to take possession. This would be of advantage to the viability of the development and any change in valuation would be reflected in the Development Account. The Council would take a share in any increase in value at the end of the development process. Profits above a certain level would be shared between Thornfield and the City Council. The Council's ground rent was linked to rental income from the units, rather than to freehold values.

Valuations and the cost of finance would continue to be monitored prior to the scheme becoming unconditional. It was noted that despite current market conditions other national schemes that Thornfield were involved with were also proceeding.

With regard to paragraph 3 of the report (Scheme Amendments through Planning), the Committee raised issues relating to negotiations with housing associations on the percentage of affordable housing and the potential impact on the scheme's viability. Questions were asked relating to the procedure that would need to be in place to assess whether market conditions were such that a requirement for 40 per cent of affordable housing could be re assessed; whether shared equity properties were saleable in the current financial market and, if they could not be progressed under shared equity, what triggers were in place of for them to be disposed of on the open market.

The Corporate Director (Operations) responded that where possible these were issues addressed in the Section 106 Agreement. A minimum viable offer would be required from a Registered Social Landlord to provide a financially viable scheme. This amount was flexible so that the housing element did not bear an unacceptable amount of the total scheme's costs. Registered Social Landlords were also affected by the current turbulent financial market conditions which impacted upon their funding and could affect the amount of affordable units and the proportion of those for shared equity purchase that could be achieved. If a minimum viable offer could not be made, taking account of housing grant, then Thornfield might not be able proceed with the affordable housing element as required by the planning consent and this matter would have to be reconsidered by the Council.

The Corporate Director (Operations) continued that there was also provision in the latest Supplementary Planning Document for off-site contributions for affordable housing if the Council's housing objectives could be better met by this route. This approach could be applied to all development sites, and Silver Hill was not being treated differently. The presumptions remained in favour of on-site provision. If Thornfield found it necessary to seek a revised planning consent for less than 35 per cent affordable housing provision, then this would also require a variation to the Development Agreement and would need to come back to the Cabinet for consideration. As required by Planning

Development Control Committee the Section 106 Agreement provided for the “Three Dragon's” viability assessment model to be re-run if and when the Secretary of State confirms the Compulsory Purchase Order to determine whether the provision of 40 per cent affordable housing could be reinstated.

It was clarified that the wording in paragraph 3.6 of the Report should have the words: “should be social rented units” inserted after “or 20 units if greater”. The Corporate Director (Operations) continued that it was true of any scheme that the developer could come back to the City Council as Planning Authority and as a landowner and ask for the affordable housing element to be reconsidered. He was aware of certain schemes were being reconsidered due to the amount of affordable housing that was required. A minimum of 15 per cent of the units (or 20 units, if this figure was to be higher) would need to be affordable rented units.

The Committee remained concerned at the possible future effect on the Council's affordable housing policies following the agreed reduction from 40 per cent affordable housing to 35 per cent and the provision which could allow consideration of an offsite financial contribution.

An element of risk remained in the amount of housing grant that could be obtained by a Registered Social Landlord to provide the element of affordable housing that was envisaged for the scheme. However it could be some time until the Registered Social Landlord would have to apply for housing grant and financial market conditions may be more stable at that point in time.

It was also a requirement of the planning permission that the affordable units would have to comply with the minimum standards for sustainability.

In respect of Section 4, the development proposals, it was noted that the Thornfield proposal was the only wholly comprehensive scheme put forward for the Silver Hill development. An alternative scheme, which the Planning Development Control Committee had agreed would have been refused had it not been subject to appeal for non-determination, was only for the part of the site that was in one organisation's ownership and was not, therefore, a fully comprehensive scheme.

The Section 106 Agreement with Thornfield would include a contribution of £300,000 to Hampshire County Council towards the implementation of the Winchester Town Access Plan or successor transport strategy (possibly relating to Park and Ride facilities) relevant to Winchester and traffic management arrangements. In respect of Section 5, the Order Lands, it was clarified that no one lived within the area of land proposed to be compulsorily purchased. The Head of Estates confirmed that the small area of land to the rear of 154 High Street was to be excluded from the land to be acquired, as it was not required for the scheme, was only a backyard and was insignificant to the scheme. Land adjacent to The Brooks in Middle Brook Street had now been included in order that a comprehensive paving scheme could be achieved.

In respect of Section 6 - Cabinet Pre - Conditions, the Corporate Director (Operations) explained that the Indemnity Agreement would include the parent company Thornfield Properties PLC and not with just Thornfield Winchester. The funding for the full scheme was not in place at this stage in the development process but the scheme was sufficiently robust for Thornfield to sign the full Indemnity Agreement for the reimbursement of the costs that the Council would incur in relation to the making of the Compulsory Purchase Order, this included dealing with any Public Inquiry into the Order. As well as a guarantee from the parent company, a Bond in the sum of £1mn from a major lending institution would be required.

The Corporate Director (Operations) explained that a critical milestone came at the time when Thornfield asked the Council to proceed with acquiring the site, the point at which the scheme becomes unconditional. At this point, Thornfield would be required to pay the Council the estimated amount of compensation for the acquisition of all rights not already bought in. The compensation payable (which had currently been estimated to be of the order of £30 million), would need to be invested by the Council short-term; but 90 per cent of this total would be paid out almost immediately to those due to be compensated, with the remaining 10 per cent retained for final settlement following the Land Tribunal's conclusions in any contested cases.

In respect of Future Milestones (Section 7) the Head of Estates explained that a long lease could control the use of the land but future changes/redevelopment would be controlled through the planning process rather than detailed controls in the lease. However, changing commercial practice at the time of any redevelopment could mean that it would be necessary to renegotiate other terms of the lease. The Corporate Director (Governance) confirmed that such a practice was now normal in the commercial market and was different from the time that the Brooks development took place in Winchester in the 1980s.

In respect of Section 8 – Lease Arrangements, the Corporate Director (Operations) confirmed that all the Council's external costs, including those for legal work, were included contained within the Development Account and would need to be minimised to ensure viability of the scheme. The Head of Estates added that the new structure for the legal documentation would allow Stamp Duty Land Tax to be based on the site's undeveloped value and that the bus station and shopmobility would be transferred back to Council ownership at an appropriate time. The officers confirmed that advice had been obtained from the Council's external solicitors (Berwin Leighton Paisner), who had confirmed that this was now a normal practice. Members asked that the position should be clarified in a letter from the external solicitors.

It was also confirmed that there was very substantial provision in the Development Account for archaeological investigation and mitigation on the site, but should something of a national or international importance be discovered, then all parties would need to discuss how the scheme would be progressed. Initial archaeological investigation suggested that such a

significant find would be unlikely bearing in mind the impact of previous redevelopment of the site.

It was agreed that the risk document which formed part of exempt Report CAB1535 considered by Cabinet on the 17 October 2007 should be revised and updated to reflect current risks and should be submitted to the meeting of Cabinet to be held on 18 November 2008.

The Corporate Director (Operations) assured Members that there was commitment from Thornfield for the development to proceed. There was strong indication by retailers that they wished to locate in Winchester if suitable premises could be found. This gave the scheme a strong chance of success. Although it was still possible that the scheme could fail if it transpired at certain key milestones that the scheme was at the point that it was no longer viable. The critical stage at which the scheme became unconditional would be the advance payment of the estimated acquisition costs currently estimated to be £30 million by the developer before Compulsory Purchase Order is implemented. At this stage, viability would be re-assessed and other pre conditions such as pre-letting agreements taken into account.

Should the developer cease to proceed with the scheme, it would have incurred significant cost. It was possible that funding institutions would look to step in and take over the development if it were to fail after construction commenced and the Council would be able to seek another developer to secure the completion of scheme together with the appropriate financial backing.

The Corporate Director (Operations) also confirmed that an operator had yet to be found to operate the space set aside for youth facilities within the completed scheme.

At the conclusion of debate, the Committee agreed that the following matters be brought to the attention of Cabinet.

RESOLVED:

- 1 That the Committee considers that the following issues be raised with Cabinet at its meeting to be held on 18 November 2008:
 - (a) That the maximum amount of affordable housing should be included within the scheme, consistent with the whole scheme being viable, and only in exceptional circumstances should an off-site contribution for affordable housing be accepted.
 - (b) That the risk analysis included in exempt report CAB1535 be updated and be submitted to Cabinet, to include financial risks, such as monitoring the principal funders/bond providers for the scheme.

(c) That a letter from the external solicitor's Berwin Leighton Paisner regarding Stamp Duty Land Tax advice be included in the information to be submitted to Cabinet.

2 That the estimated timetable with suggested dates for further reports for the Committee to review the project as set out in Appendix B be noted.

5. **EXEMPT BUSINESS**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
##	Silver Hill, Winchester – Compulsory Purchase Order	Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Para 3 Schedule 12A refers)
##		Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Para 5 Schedule 12A refers)

The meeting commenced at 6.30pm and concluded at 9.45pm.

Chairman