

CABINET

18 March 2009

KNOWLE COMMUNITY BUILDING IMPLEMENTATION

REPORT OF CORPORATE DIRECTOR (OPERATIONS)

Contact Officer: Steve Tilbury Tel No: 01962 848 256

RECENT REFERENCES:

CAB1225 Knowle Chapel – 13 April 2006

EXECUTIVE SUMMARY:

The report seeks approval to enter into an agreement with Berkeley Homes ((Hampshire) Ltd to provide a new community building at Knowle village. This will replace the Knowle Chapel as the primary community facility. The cost to the City Council will be £400,000 which is already included in the Council's capital programme. Wickham Parish Council has agreed to become the owner of the freehold of the building on its completion and will make arrangements for its future management involving the local community.

RECOMMENDATIONS:

1. That the Corporate Director (Governance) be authorised to enter into an agreement with Berkeley Homes (Hampshire) Ltd for the transfer to the City Council of the land on which the new community building and its infrastructure at Knowle Village is to be constructed subject to the completion of the agreements required in 2 and 3 below.
2. That the Corporate Director (Governance) be authorised to enter into an agreement with Berkeley Homes (Hampshire) Ltd for the construction of the new community building at Knowle at a total cost to the City Council of £400,000 providing for suitable warranties on completion of the works of the form described in the report.

3. That the Corporate Director (Governance) be authorised to enter into an agreement with Wickham Parish Council for the transfer of the freehold of land and building referred to in recommendations 1 and 2 above on completion of the works under the powers vested in the City Council under the Local Government Act 1972: General Disposal Consent (England) 2003 (Disposal of land for less than best consideration than can reasonably be obtained).
4. That the Corporate Director (Governance) be authorised to enter into an agreement with Berkeley Homes (Hampshire) Ltd and Wickham Parish Council providing for the transfer of the recreation ground at Knowle Village to Wickham Parish Council on its completion
5. That Directions be made (i) under Contract Procedure Rule 2.1 that Rules 10.5 and 10.7 be waived (in relation to liquidated damages and bond) and (ii) under Rule 3.3 (a) to authorise the arrangements with Berkeley Homes (Hampshire) Ltd as set out in the report
6. That in accordance with Financial Procedure Rule 6.4 (iv), authority be given for release of the expenditure for the monies held in the Capital Programme for the scheme.

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### KNOWLE COMMUNITY BUILDING IMPLEMENTATION

#### REPORT OF CORPORATE DIRECTOR (OPERATIONS)

##### DETAIL:

#### 1 Introduction

- 1.1 At its meeting on 13 April 2006 (CAB1225 refers), Cabinet considered the problems associated with the operation of the old chapel at Knowle as a community building. The background to the problems with the chapel and the reasons for seeking an alternative approach were detailed in that report and are not repeated here. It was agreed to pursue the option of a new building as an alternative subject to certain key issues, such as future maintenance liabilities, being resolved. A sum of £400,000 was subsequently included in the Council's capital programme as the estimated contribution needed to meet the cost of a new building working in partnership with Berkeley Homes (Hampshire) Ltd ('Berkeley Homes') who are the developers of the Knowle village community.
- 1.2 This report provides an update on the discussions surrounding the proposed replacement building and seeks approval to enter into an agreement with Berkeley Homes for its construction.

#### 2 Proposed Community Building

- 2.1 Following detailed discussion with residents' representatives, Wickham Parish Council and Berkeley Homes, a design and specification for a new building has been agreed and a drawing is attached as Appendix 1. It is a simple "village hall" type facility appropriate in size and layout for a variety of events and activities serving Knowle residents. It includes changing rooms to serve the sport pitches which are being provided on the adjoining recreation ground and a dedicated car park. Unlike the chapel building it will be insulated, heated and equipped to modern standards and this will be much easier and cheaper to operate. Planning consent has been obtained for the building and associated infrastructure.
- 2.2 The estimated cost of constructing the building is £530,000 including fees based on a specification agreed between the parties. Berkeley Homes have provided a cost schedule for the construction which has been evaluated by officers and a third party and this has confirmed that the estimated cost is a fair assessment of what the Council could expect to pay for such a project if tendered on the open market. The only liability Berkeley Homes have in respect of this cost is an amount they would have incurred for building a stand-alone changing pavilion to which they are committed under the Section

106 agreement, the need for which would be superseded by the new building. A reasonable estimate of cost for such a pavilion would be £100,000. Following negotiation, Berkeley Homes have agreed to construct the new building at a cost to the City Council of £400,000. On the agreed specification they will therefore effectively contribute in excess of £100,000 and will also bear all the risks of additional costs associated with construction.

- 2.3 One issue of concern to Cabinet when it last considered the matter was that of ongoing maintenance. The City Council does not own or maintain the freehold of village hall type facilities in parish areas and this would be a complicating factor even if it were subsequently leased to a local organisation.
- 2.4 Recognising the role of parish councils in relation to community infrastructure, Wickham Parish Council has agreed to take the freehold of the building on its completion provided that satisfactory warranties are provided by Berkeley Homes. The Parish Council will then make arrangements for it to be managed by a more local group for the benefit of residents – as the chapel is at this moment. This arrangement is agreeable to the developer.

### 3 Legal Agreement:

- 3.1 The structure of the various agreements between the parties has been carefully considered by solicitors acting for each party and it has been agreed that the best way to proceed would be as follows. The land on which the new building, its car park and landscaping is to be constructed will first be transferred for a nominal consideration from Berkeley Homes to the City Council. Berkeley Homes will enter into a development agreement with the City Council to construct the new building using their own contractors and sub-contractors. There will be no contract between the City Council and any contractor other than Berkeley Homes and thus no construction contracts. There will, however, be collateral warranties in favour of the City Council/Parish Council from third party suppliers/contractors. The development agreement will provide that the building is built with due care and attention and to the agreed specification and will be subject to inspection throughout by any mechanism the City Council chooses. Payment will be made to Berkeley Homes in stages on the completion of work. In addition to the collateral warranties Berkeley Homes have offered to provide a twelve year company warranty against defects in the construction.
- 3.2 In parallel with the agreement between Berkeley Homes and the City Council, the City Council will enter into an agreement with Wickham Parish Council which will require the Parish Council to take freehold ownership of the new building and the land on which it sits once completed for a nominal consideration. Under Circular 06/03 and the Local Government Act 1972: General Disposal Consent (England) 2003 (Disposal of land for less than the best consideration that can reasonably be obtained), a local authority can dispose of any interest in land which the authority considers will help it to serve the promotion or improvement of the economic social or environmental well being of its area (provided the “under-value” is less than £2,000,000,

which is the case here). The Parish Council will have the benefit of warranties provided on the building. This arrangement will ensure that the City Council does not have any ongoing liability for the maintenance or management of the building. It may be viewed, in effect, as a grant to the Parish Council but is more properly seen as the fulfilment of a Section 106 requirement on behalf of the community with ownership by the Parish Council as the appropriate delivery mechanism.

- 3.3 The agreements will cover issues arising in relation to VAT and Stamp Duty Land Tax so as to minimise any liabilities falling to any party
- 3.4 Separate solicitors are acting for the Parish Council to represent their interests in the process and they are also assisting the City Council in approving the proposed development agreement

#### 4 Other recreational areas at Knowle

- 4.1 Following detailed discussions, the Parish Council has also agreed to the transfer from Berkeley Homes to the Parish Council of the main recreation ground which is served by the new community building. This will reduce the liability of residents through their management charges and provide for more flexible and transparent decision making by a publicly accountable authority.

#### 5 Risk Management

- 5.1 The arrangements proposed are identical to those that would be found in a contemporary Section 106 agreement. The developer is required to undertake construction to an agreed specification and to provide warranties the finished building. There is no direct contractual relationship between those constructing the building and the City Council. This creates a risk because the City Council is not directly overseeing the construction contracts or supervising construction on a day to day basis and does not intend to appoint a Clerk of Works. It has, however, specified the outcome that is acceptable both in terms of design and specification. The risk is mitigated by the warranties that Berkeley Homes are required to give directly to the Parish Council on completion which provide the possibility of redress and a good reason for careful supervision of construction by Berkeley's in the first instance.
- 5.2 As the construction is taking place on land owned by the City Council, the ownership of works completed will vest in the City Council as they take place. If works were only part completed then those works would belong to the City Council. The City Council would therefore be able to use unpaid funds (there are no advance payments) to complete the works although there may be a need to meet any shortfall in Berkeley Homes effective contribution. However, this risk is considered to be low as Berkeley Homes (Hampshire) Ltd is part of a large and still profitable construction company.
- 5.3 The contractual relationship with Berkeley Homes will not be governed by a JCT contract of the type that would normally be used for a construction

contract as there is no direct relationship between the City Council and contractors. There will be no provision for liquidated damages due to delay in delivery as the City Council cannot claim that the delay is significant whilst Berkeley's still meet the provisions of the Section 106 agreement through existing arrangements and not will any parent company guarantee or bond be provided. Cabinet is asked to note these points and to agree to Directions to waive the Council's Contract Procedure Rules 10.5 and 10.7, and also to authorise the arrangements with Berkeley's under the Rules.

- 5.4 The risk to the City Council of cost overrun is eliminated by the proposed arrangement since Berkeley Homes will bear any unexpected or unforeseen costs. They will also be able to benefit from cost control or lower contractual prices in a way that will not benefit the City Council but this is considered reasonable as they would be able to benefit in a similar way were they meeting their original Section 106 obligation to construct the sports pavilion and because they are bearing the risk of cost increases.

#### RESOURCE IMPLICATIONS:

- 6.1 The report seeks approval for the release of £400,000 already included in the Council's capital programme once the necessary legal agreements are in place. There are no ongoing financial implications for the City Council as ownership and management of the new building will be with Wickham Parish Council.

#### BACKGROUND DOCUMENTS:

Letter from Wickham Parish Council 23 September 2008.

#### APPENDICES:

Appendix 1 – Plan of proposed new community building

CAB1821 - APPENDIX 1

DO NOT SCALE FROM THE DRAWING	
REP	DATE
	REVISION
DEVELOPMENT	
KNOWLE VILLAGE, WICKHAM	
DRAWING TITLE	
PROPOSED NEW COMMUNITY PAVILLION	
PRELIMINARY NOT FOR CONSTRUCTION	

**Berkeley HOMES**  
Berkeley Homes (Berkeley) Limited  
Langleigh Road, Wickham  
Wickham, Hampshire, UK  
Tel: 01403 21290 Fax: 01403 21253

STATUS	CALCULATED
DATE	09.07
SCALE	1:100
DWG NO	C688-05-300
REV.	

