



## COUNCIL MEETING – 20 July 2005

### Question under Council Procedure Rule 14

#### QUESTION 3

From: Councillor Beckett

To: The Leader of the Council

- 1) "When last November 3<sup>rd</sup> the Council voted to sign an exclusive contract with Thornfield to develop the Silver Hill site, a particular mix of development was put before members and agreed. In the light of the recently announced changes to that mix, will the Leader please explain how such changes are allowed for in the contract with Thornfield.
- 2) Will the Leader further explain how such changes to the contract were negotiated. Will she tell the Council which officers and members were involved, and under which delegated powers the changes were agreed?
- 3) Assuming the Contract does not allow for infinite variation from the original on agreement between the parties, will the Leader please advise us of how far the contract can vary from the original as regards development mix, total area, public space, etc before a breach of contract (by either party) occurs.
- 4) If it is the case that the mix can be varied infinitely at the discretion of the two parties, will the Leader please make it clear at what point the contract varies so far from that agreed on Nov 3<sup>rd</sup> 2004, that a new development contract should be put before members for approval.
- 5) Following the recent proposed changes in the development mix from that put forward originally to the Council, can the Leader give an assurance that appropriately detailed amended financial analysis have been provided to the Council as landowners and development partners, and that this analysis has been checked by officers to confirm the continued commercial and financial viability of the project?
- 6) Can the Leader assure the Council that the projected profitability arising from this analysis is consistent with those returns contained in Thornfield's original offer to the Council.
- 7) Will the leader assure the Council that officers will recalculate the Council's future profit and overage projections as necessitated by any design/mix changes and market fluctuations, compare them with Thornfield's original projections, and circulate them to members."

## Reply

“The development agreement with Thornfield properties is a conditional contract which has a number of preconditions which have been put in place to protect both parties. The development cannot proceed until the conditions are either satisfied or the parties agree to a waiving or variation of that condition. To date there have been no variations to the agreement.

The development mix within the development agreement was based upon initial scheme drawings prepared by Allies and Morrison from which minimum requirements for the development were identified. Members will be aware of the public consultation that followed the signing of the agreement and the many public comments and suggestions. Amongst others these comments concerned; the height and mass of the scheme, the lack of facilities for young people and no identified area for replacement commercial offices.

The scheme presented in the recent public exhibitions has reflected some of these early concerns and the scheme has been altered principally by a reduction in the mass of the properties between Middle Brook Street and Tanner Street. As a consequence this has led to a reduction in the number of residential units. The designs by Allies and Morrison are still evolving and we can anticipate further changes as they are worked up with occupiers and technical issues are addressed.

Fundamentally Thornfield need to be in a position to present to the Council a scheme which is capable of obtaining a planning consent. By undertaking a wide scale consultation exercise with both the public and statutory consultees and reflecting comments made they are maximising the chance of success.

It has never been envisaged that the Council would agree to each and every variation or proposed change in isolation. The development agreement dictates that Thornfield have to submit their proposed scheme to the Council, acting in its capacity as landowner only, before a planning application is lodged. That submission is to include a draft of the planning application together with all supporting documents. In addition financial information will be provided in order to satisfy the separate financial viability conditions.

Based upon the current proposals only one of the minimum required elements is not in place; the requirement of a minimum of 364 residential units, the scheme currently shows 282 units. The development agreement did not expressly dictate the inclusion of a young person’s facility or offices but neither did it exclude these uses which are compatible with the planning brief. The merit of including these uses will also be part of the prior approval decision.

These variations are important but not so fundamental as to change the nature of the overall scheme. If either party were to believe that fundamental conditions attached to the development agreement could not be achieved then prior approval of an application would not be possible. In these circumstances the development agreement would need to be varied or abandoned.

The Council is waiting for updated financial projections from Thornfield based upon the revised scheme. As soon as these are received they will be tested and checked by officers and by Drivers Jonas the Council's independent property consultants. Drivers Jonas will also be asked to verify the underlying assumptions and provide advice and opinion on the impact of the scheme and market changes on overall profitability and the prospects for the Council receiving overage payments.

Cabinet will receive a full and detailed report when the pre application approval is sought including all necessary legal and valuation opinions and reports. At that point the comparison will be made with the original predicted financial returns on which the development agreement was signed in December 2004. Based upon the appraisal of the whole scheme both in terms of content and financial viability a decision can be made whether the any of the conditions that have not been satisfied can be varied."