

CABINET

2 December 2015

THE OVERVIEW AND SCRUTINY COMMITTEE

7 December 2015

SILVER HILL, WINCHESTER – SITUATION REPORT AND ASSESSMENT

REPORT OF CORPORATE DIRECTOR

Contact Officer: Steve Tilbury/Howard Bone Tel No: 01962 848 256

RECENT REFERENCES:

CAB2665 – Silver Hill Judicial Review Decision, 3 March 2015.

CAB2675 – Silver Hill Review of Project Position, 18 March 2015.

CAB2688 – Silver Hill Notice of Motion from Council 1 April) 15 April 2015.

CAB2695 – Silver Hill Update – Submission By Developer, 21 May 2015.

CAB2700 – Silver Hill – submissions by Silver Hill Winchester No. 1 Ltd and Council's Response, 13 July 2015.

CAB2736 – Silver Hill, Winchester – Update Report, 21 October 2015.

EXECUTIVE SUMMARY:

The purpose of the report is to outline the progress made by the developer Silverhill Winchester No. 1 Ltd in fulfilling the outstanding conditions required by the Silver Hill Development Agreement and consider next steps. It also addresses the significance of the permission recently given for the judgment in the Judicial Review case brought by Cllr Gottlieb to be challenged in the Court of Appeal.

RECOMMENDATIONS:

TO CABINET

- 1 That the Leader write to Silverhill Winchester No. 1 Limited (SW1) asking for confirmation of how it intends to progress the Silver Hill development in the light of the granting of permission to SW1 to appeal to the Court of Appeal, the fact that the 2009 scheme has not yet gone unconditional, and the need to implement the CPO by 19 March 2016.
- 2 That SW1's response be reported back to Cabinet on 13 January 2016, in order that the Council can consider its position on the scheme accordingly.

TO THE OVERVIEW AND SCRUTINY COMMITTEE

- 3 That The Overview and Scrutiny Committee considers the report and determines whether it wishes to raise any matters with the Leader or Cabinet.

## CABINET

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### THE OVERVIEW AND SCRUTINY COMMITTEE

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### SILVER HILL – SITUATION REPORT AND ASSESSMENT

#### REPORT OF CORPORATE DIRECTOR

#### DETAIL:

##### 1 Introduction

- 1.1 At its meeting of 21 October 2015 (Report CAB2736 refers), Cabinet received an update on the progress being made by the Silver Hill developer, Silverhill Winchester No. 1 Ltd (SW1), in meeting the outstanding conditions of the Silver Hill Development Agreement.
- 1.2 Since October, a significant amount of work has been undertaken towards the implementation of the planning consent and in relation to the two Development Agreement conditions which remain incomplete, relating to the agreement with the Registered Provider of affordable housing and the Funder. However, neither of these two conditions has yet been satisfied, whilst the Council remains anxious to see progress.
- 1.3 SW1 is clear that the Social Housing Condition (relating to an agreement for the sale of the affordable housing within the scheme to a registered provider) could be satisfied, as terms have been fully agreed with the Registered Provider, and they have informed the Council that the matter would only require lawyers to be instructed to finalise the legal agreements.
- 1.4 However, they have advised that the Funding condition is proving more difficult to satisfy. SW1 have continued to seek to enter into an agreement with the same proposed Funder as previously reported to Cabinet in exempt session (CAB2700 Exempt Appendix 10) to provide the necessary funds for the scheme, but have been unable to do so at the present time. Further details can be given to Members in exempt session if required.
- 1.5 If and when these two conditions are met, SW1 would have to show that the Financial Viability condition had also been met (i.e. that the proposed development is viable, in that the anticipated profit on the anticipated costs of development is at least 10%). This assessment would be carried out once the other two conditions have been met.

## 2 Project Timetable

- 2.1 There are two key dates in early 2016 which affect the delivery of the scheme. These relate to the implementation of the planning consent, and the implementation of the compulsory purchase order.
- 2.2 Under the existing planning consent for the 2009 scheme, there are various conditions which need to be met before the development commences. Work on submissions for these conditions is underway at present. As well as these pre-commencement conditions, there is a further condition which requires that the development is begun before the expiry of seven years from the date of the permission. This means that the development must commence by no later than 9 February 2016.
- 2.3 The CPO was confirmed by the Secretary of State on 20 March 2013, and must be implemented within three years, i.e. no later than 19 March 2016. Relevant notices would therefore have to have been served on all the interests which need to be acquired under the CPO by that date, in order to ensure that the Council will own the entire development site. That in turn will allow the Council to grant leases to the developer so that the development can proceed. Members will recall that under the Development Agreement (and the associated Full Indemnity Agreement) funds for the acquisitions of the relevant interests must be made available by SW1, so the Council can be sure that it in turn will have access to these funds to pay compensation that will be due when the CPO is implemented.
- 2.4 The CPO is a key element in securing a comprehensive development of the site. Without a confirmed CPO in place (and capable of implementation), comprehensive development would only be possible with the agreement of the other landowners within the site.

## 3 Appeal to Court of Appeal

- 3.1 Following the judgment in February 2015 on the judicial view claim brought by Cllr Gottlieb, the Council decided not to appeal the decision. SW1 did however seek permission to appeal the decision to the Court of Appeal. This was an essential pre-requisite to proceeding with the appeal.
- 3.2 Initially, an application for permission to appeal is considered by a judge on the papers only. In April 2015, SW1's application was refused on the papers. SW1 then applied to "renew" the application for permission, which then means that the application is considered in open court, before a single judge.
- 3.3 Since the last report, the renewal hearing into SW1's application for permission to appeal has been held, and permission to appeal has been granted on all grounds sought. Permission was granted following a brief hearing in front of a Court of Appeal judge. This means that SW1's appeal will now be considered at a full hearing of the Court of Appeal, where each party will be presented and full legal arguments put. No date for the full hearing has been set, although it is likely to be several months before the case is heard.

- 3.4 In granting permission, the Court accepted that there was an arguable case which should be heard. The possible outcomes of the Court of Appeal hearing include:-
- a) The High Court decision is quashed, and the Council's decision to approve the 2014 changes reinstated;
  - b) The High Court decision is upheld, confirming that the Council's decision to approve the changes was unlawful;
  - c) The High Court decision is quashed/upheld in part – e.g. finding some of the alterations were not unlawful, but the remainder were.

The decision of the High Court on the original claim still stands, unless the Court of Appeal determines otherwise. However, it is clearly now possible that the Court of Appeal may take a different view on the legal position to that taken by the High Court, which might allow variations in the current scheme to be made (which could include changes to assist funding and address the issue of design) without starting the whole Silver Hill process again from scratch.

#### 4 Options Available to Council

- 4.1 The main options available to the Council are summarised in this section of the report. It is recommended that SW1 be asked to formally confirm their position in respect of the Silver Hill scheme, and that its response is reported back to Cabinet on 13 January 2016. The report will include full and detailed advice on the various options available (the main options set out here, and others which may also be open to the Council), so that appropriate decisions in the light of these options can be taken.

##### **Option 1 - Terminate the Development Agreement by Notice – no further immediate action (CPO expires).**

- 4.2 The Development Agreement includes provisions allowing either party to terminate the agreement in the event that the agreement has not gone unconditional. Although both parties have previously mutually agreed not to exercise this option in the past, there is no current agreement preventing the Council or SW1 from serving notice to terminate.
- 4.3 If the notice was served on the basis that the Development Agreement had not gone unconditional, SW1 would still have twenty working days to meet the outstanding conditions, in which case the notice would cease to have effect, and the Development Agreement would continue. If however SW1 were unable to meet the outstanding conditions within this twenty day period, the Agreement would terminate three months after it had been served.
- 4.4 If this option were to be taken (and assuming the Agreement did not go unconditional in the twenty day period), the CPO would expire, and any site assembly for future comprehensive development of land outside the Council's

ownership would need to be by agreement with landowners and other interested parties, or by restarting a new, lengthy CPO process.

**Option 2 - Terminate the Development Agreement by Notice – Implement CPO before March 2016**

- 4.5 If this option were to be chosen, funding would have to be identified to fund any acquisitions under the CPO, either from the Council's own resources or other funding providers. If the Council were to fund the acquisition itself, this would have considerable implications for the other projects which the Council is seeking to undertake, given the potential levels of compensation that would need to be paid. A detailed report would be required to support the implementation of the CPO if this option was to be pursued, given the fact that the Council would be proceeding to acquire land compulsorily.
- 4.6 Once the site had been acquired, the Council would then need to progress the redevelopment of the area, either itself or by procuring a new development partner.
- 4.7 **Option 3 – Take no action at present**
- 4.8 Under this option the Development Agreement would remain in force, but the CPO may expire without being implemented. The Development Agreement could be terminated at a later date.
- 4.9 If the CPO expires without being implemented, any site assembly for future comprehensive development of land outside the Council's ownership would need to be by agreement with landowners and other interested parties, or by restarting a new, lengthy CPO process.
- 4.10 **Option 4 – Agree not to terminate for a further fixed period.**
- 4.11 This would allow SW1 (if it were able to do so) to continue to pursue the 2009 scheme, or (depending on whether, and the extent to which, the Appeal succeeds) a varied scheme. If a varied scheme were to be pursued, the Council would need to agree any variations that were controlled under the terms of the Development Agreement. The Council would also need to discuss with SW1 the basis on which the CPO was implemented.

OTHER CONSIDERATIONS:

5 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 5.1 The delivery of regeneration of the Silver Hill area is a major objective of the Council on behalf of the economic vitality of the town centre and key policy within the Council's current and emerging Local Plan.

6 RESOURCE IMPLICATIONS:

- 6.1 The resource implications of the different options will be considered in the report to January Cabinet. Members should be aware that each of these options is likely to have a significant impact on the Council's budget and financial position.

7 RISK MANAGEMENT ISSUES

- 7.1 The purpose of this report is to update Members on the current position, and outline the possible options. Full advice and information, including risk management matters will be set out in the January 2016 report. The budget options report being considered elsewhere on this agenda identifies a significant financial risk relating to this project.

8 BACKGROUND DOCUMENTS:

None

APPENDICES:

None