

WILTSHIRE COUNCIL

CABINET CAPITAL ASSETS COMMITTEE

14 June 2011

Subject: Castledown Business Park Ludgershall

Cabinet Member: Cllr Fleur de Rhé Philipe
Economic Development and Strategic Planning

Key Decision: Yes

Purpose of Report

1. To seek authority for the acquisition of 17.75 hectares (31.1 acres) of land at Castledown Business Park Ludgershall (see **Appendix 1**).

Background

2. Approximately 10 years ago the South West Regional Development Agency (SWRDA) acquired the land at Castledown Business Park from the Ministry of Defence for the purpose of promoting regeneration of the area.
3. After a marketing process SWRDA entered into a Development Agreement with St Modwen to develop out the site.
4. Following the grant of planning consent, St Modwen spent in excess of £2 million on infrastructure, which is to be refunded from the sales of individual development plots.
5. In 2008 the Council acquired a 150 year lease on phase 1 (Castledown Business Park) extending to approximately 0.77 hectares (1.9 acres), upon which it has constructed The Castledown Business Centre and a number of commercial units which are let out to various companies.
6. In light of the forthcoming disbandment of the Regional Development Agency, SWRDA has offered the Council the opportunity of acquiring the freehold of the entire site (including Phase 1), but subject to the Development Agreement with St. Modwen continuing.

Main Considerations for the Council

7. If the Council does not take up the offer from SWRDA then it is likely that the property will be passed across to the Homes & Communities Agency (HCA).
8. Whilst the HCA is considered a competent authority to deal with the property, inevitably it will have a large number of similar sites passed across to it which will probably be dealt with on a priority basis. Where Ludgershall would appear on such a list is unknown.

9. In addition, the HCA may well be required to sell the land on the open market, with the possibility that ownership might pass to a body for whom, regeneration of Ludgershall would not be its key driver.
10. It is also considered that the Council would be equally, if not more, effective than the HCA in generating interest arising from its local knowledge, together with its contacts with business leaders and other companies. Especially, given our presence and role in business development from the site.
11. The Council's work through the Military/Civilian Sponsoring Group leaves it well placed to ensure maximum synergy is achieved in the development of this site alongside MoD sites in the vicinity.
12. In addition, work undertaken jointly with the Homes and Communities Agency has identified how Ludgershall could develop into a more balanced community if development was managed in concert. Wiltshire Council's acquisition of the key site would enable a number of significant developments to be delivered in the best interests of the local community.
13. Jointly with the Council, St. Modwen will be actively promoting the development opportunities on a national scale. It is reasonable to assume that companies interested in occupying parts of the site will perceive the Council as being able to make decisions quickly compared to the HCA.
14. Accordingly, the acquisition of the site from SWRDA will assist the Council to deliver its Local Economy objectives set out in the Corporate Plan.

Environmental and Climate Change Considerations

15. There are no environmental or climate change considerations arising from the proposal. The development of individual plots on the site will have implications and these will be dealt with through the process of securing detailed planning consent.

Equalities Impact of the Proposal

16. There are no equalities issues arising out of the proposal.

Risk Assessment

17. There is a financial risk attached to the proposed acquisition, which is outlined in the next section.

Financial Implications

18. The Agreement with St. Modwen functions as follows: Sales receipts from the disposal of individual plots are ring-fenced to fund the infrastructure provided by the company which is contained in a 'Development Account'. However, this is subject to a minimum land value which the Council can choose to collect or to put into the Development Account to mitigate interest payment costs which is a legitimate element of the Account.

19. In addition, St. Modwen will charge the Council a Service Charge for the management of the site, currently standing at around £15K per annum. The Council's exposure to such a revenue cost will reduce as and when the various plots are occupied. There is currently no revenue budget within Property Services or Economy & Enterprise to meet this ongoing charge and represents a pressure to be managed in year for 2011/12, and an increase in growth for 2012/13.
20. Both the above elements have been taken into account by Strategic Property in its assessment of the purchase price, based upon assumptions relating to inflation and the rate of disposal of individual plots. On this basis, it is considered that the Council will, at worst, be in a cost neutral position over a 10-15 year period, assuming it collects the minimum land value.
21. The Agreement with St. Modwen will expire in about nine years' time. If some or all of the plots have not been disposed of, then any outstanding costs within the Development Account are the responsibility of the company.
22. The purchase of the site is currently not in the Capital Programme and if approved will need to be added and approved by Full Council. The funding will be met from increased borrowing undertaken during the year; it is anticipated that due to the size of the purchase, there will be minimal revenue impact during the year due to timings and cash flow of the overall Programme. However, the increased revenue cost of financing will need to be factored into the setting of the 2012/13 revenue budget.
23. Any other potential financial implications in terms of accounting policies and practices, e.g. group accounts, are still to be assessed in detail. However, it is unlikely that there would be an impact on the Council's bottom line.

Legal Implications

24. When SWRDA tendered the Development Agreement opportunity it did not follow a formal EU public procurement procedure. Whilst the relevant public procurement challenge period has now expired, there is a possibility that by SWRDA extending the Development Agreement "End Date" (i.e. the long stop date by which all of the development works have to be completed and the Agreement terminates) by five years this might constitute a "material change", effectively giving rise to a new Development Agreement that should have been awarded to St Modwen, subject to the EU public procurement rules and a breach of EU public procurement law that could be challenged in the High Court.
25. A material change may arise where the original End Date was in any way material in SWRDA's choice of St Modwen as the original winner of the tender process, or where the new End Date would have allowed for the inclusion of tenderers, other than those initially included, or would have allowed for the acceptance of a tender, other than the one initially accepted. This seems unlikely, although the position is not clear. Further, a change to the End Date does not appear to alter the economic balance under the Development Agreement so as to materially favour the Developer. It would allow the Developer (and potentially the Council) more time to develop and sell each development plot, but any increase or decrease in profits deriving from changes in the commercial property market over a longer development period would affect both parties.

- 26 Even if a variation of the End Date did amount to a material change, the risk of challenge may be small and the chance of a successful challenge may be low. It is relevant that the extension is needed in order to obtain St Modwen's consent to the assignment, to improve the commercial viability of Development Agreement, and that the extension can be objectively justified, e.g. it has become necessary as a result of external market factors leading to a decline in demand for commercial property and therefore a more protracted development period, following the global economic crisis and recession. Such factors would tend to mitigate the risk of the extension being material or of any challenge succeeding in court.

Options Considered

27. The Council could do nothing, allowing the site to either remain with the HCA or be sold onto the open market. Either option would, however, reduce the Council's ability to stimulate development and regeneration in the area.

Conclusions

28. That the Council should acquire the site.

Proposal

29. To acquire the 17.75 hectares (31.1 acres) of land at Castledown Business Park Ludgershall for the sum of £180,000 on terms set out in the attached Council offer.

Reason for Proposal

30. To help stimulate regeneration opportunities in the area in accordance with the Council's Corporate Plan.

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The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix 1 – Indicative Masterplan