

23 March 2015

Agenda Item: 9b

REPORT OF SERVICE DIRECTOR TRANSPORT, PROPERTY & ENVIRONMENT

LINDHURST SCHEME – THIRD SUPPLEMENTAL AGREEMENT

Purpose of the Report

1. To provide an update on the current Lindhurst Scheme and to inform Committee of a decision taken by the Chief Executive under the Urgency Powers for Council to enter into the necessary agreements to give effect to the release of covenants restricting the use of part of the Council's land forming part of the Lindhurst Scheme, including payment of the sums due in respect of this.
2. To seek approval for the Council to enter into a 3rd supplemental agreement to the collaboration agreement with its development partners for the Lindhurst Scheme to include additional land.
3. To also seek approval for the Council to enter into a deed of variation for the Section 106 to incorporate the necessary revisions required by the Lindhurst Group's commitment made to the Court of Appeal during legal proceedings which lead to the Court of Appeal decision to dismiss an appeal for Judicial Review of the planning decision made by the Mansfield District Council of respect of the Lindhurst Scheme.

Information and Advice

Commentary Background

4. Some information relating to this report is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972. Having regard to the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because divulging the information would significantly damage the Council's commercial position. The exempt information is set out in an exempt appendix to this report.
5. The Mansfield area needs new opportunities for employment and housing for its economic and social wellbeing. The Lindhurst Scheme will help to provide new jobs and homes and improve the prospects for the whole area. It is a new neighbourhood which will have 1 million square feet of employment it will also lead to building over 1700 homes, and provide a community park, shops and bus links. It will also include green routes, a new school, sports and other community facilities.

6. The development accommodates growth and embraces sustainability that will play a vital role in future well-being of Mansfield as well as surrounding areas and enhance quality of life of local people.
7. In June 2006 the Council acquired the land comprising of 71.66 hectares (177 acres) edged red on the attached Rushley Farm on Plan 1. Part of the land acquired included land known as the 'Ashfield Triangle' shown as Plot E on Plan 1.
8. In November 2009 the Council's adjoining land owners entered into a developer collaboration arrangement to promote their land for development. This area of land comprised of some 96.522 hectares (238.55 acres) which is located to the east of the Council owned Rushley Farm site. It should be noted that this collaboration arrangement did not include the Council's land or land known as the Warrener, Elizabeth Heath Trust.
9. In June 2010 the Council joined the collaboration arrangement (the 1st supplemental agreement) to explore the opportunity of promoting a holistic master plan for the south Mansfield area. Each landowner included land held in their ownership; the Council included approximately 27.823 hectares (68.77 acres) (Parcels C & D on Rushley Farm plan 2) to be held on trust for the collaboration partners (known as the 'Lindhurst Group') in consideration of receiving a proportion of sale proceeds.
10. In January 2013 the Finance and Property Committee approved the signing of the S106 Agreement; increasing the Council's contribution to shared costs for the life time of the project; and for the Council to move to project implementation with its collaboration partners. In April 2013 the Council implemented this decision by entering a further agreement (a 2nd supplemental agreement) which enabled the collaboration partners to sign a Section 106 Agreement to secure the Lindhurst Scheme planning consent, which was subsequently challenged by local objectors to the planning process in June 2013.
11. The original planning consent for the Lindhurst Scheme was issued in April 2013 by Mansfield District Council. In June 2013, this planning decision was challenged by way of Judicial Review by a group of local objectors. The Court of Appeal dismissed their claim on 15 January 2015. This decision is still capable of being appealed to the Supreme Court. An assessment of the risk of this is addressed in the *attached* exempt appendix.
12. An urgent decision needed to be taken by the Chief Executive under the Council's urgency powers rules regarding the Council entering into the necessary agreements to give effect to the release of covenants restricting the use of part of the Council's land forming part of the Lindhurst Scheme, including payment of the sums due in respect of this. The reason for this urgency was to ensure the Lindhurst Group could commence project implementation and therefore preserve the planning consent secured in relation to the scheme.

The Proposal

13. A further agreement (3rd supplemental agreement) is now required to be entered into with the collaboration partners. This agreement would enable:

- a) The collaboration partners to enter a Section 106 Deed of Variation in order to incorporate amendments in view of a commitment made by the Lindhurst Group to the Court of Appeal during the court proceedings and relied upon by the court in dismissing the appeal.
 - b) Assembly, in a single ownership, all of the land shown on Lindhurst Scheme Plan 2) as part of the collaboration arrangements. This includes the Council's land known as the Ashfield Triangle. The Council's land along with the other additional land will greatly enhance the total value of the Lindhurst Scheme and expedite Project Implementation by bringing all the land under the control of the Lindhurst Group. Details of the Council's commercial interests are addressed in the exempt appendix.
 - c) Safeguard and protect the Council's ability to promote a future development of its retained land outside the Lindhurst Scheme. This land is located west of the A60 Nottingham Road as shown on the attached Rushley Farm Plan 1 edged red and marked as Plots A & B, which is located in Ashfield District. Arrangements will be made shortly for a Pre Application to be submitted to Ashfield District Council.
14. The Council has received external legal advice from Weightmans LLP independent from the Lindhurst Group on the terms of the proposed third supplemental agreement. Key issues legal and commercial issues are outlined in the exempt appendix.

Market Commentary

15. The Council have obtained professional advice from external development consultants with a good local and national knowledge of housing and commercial land values. The advice received has been used to support the assessment of the values of bringing into the Lindhurst Scheme additional land.

Costs

16. The cost implications of the proposal contained in this report can be funded from the capital provision for the scheme which was approved at the County Council meeting on 26 February 2015. The commercial risks and uncapped liabilities for the Council in relation to these proposals are addressed in the exempt appendix.

Other Options Considered

17. As detailed in the Exempt Appendix.

Reason/s for Recommendation/s

18. To inform the Finance and Property Committee of the current position relating to the progress of the Lindhurst Scheme to enable the Lindhurst Group to enter into the necessary agreements to give effect to the proposals outlined in this report.

Statutory and Policy Implications

19. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That approval is given for the Council to enter into the necessary legal documents to give effect to the proposals set out in this report.

Jas Hundal

Service Director - Transport, Property & Environment

For any enquiries about this report please contact: Oliver Dyke 0115 977 2395

Constitutional Comments (SSR 4.3.2015)

20. This decision falls within the scope of decisions which may be approved by the Finance and Property Committee.

Financial Comments (GB 11.03.2015)

21. Costs associated with this report are approved within the County Council's capital programme.

Background Papers and Published Documents

22. None

Electoral Division(s) and Member(s) Affected

23. Ward(s): Sutton in Ashfield East, Mansfield South
Member(s): Councillor Steven Carroll, Councillor Andy Sissions, Councillor Stephen Garner

File ref.: /OD/SB/00728

SP: 2823

Properties affected: 00728 - Land at Rushley Farm