

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 09 October 2017

Portfolio:	Planning and Development
Subject:	Review of Welborne Delivery Strategy
Report of:	Director of Planning and Regulation
Strategy/Policy:	Local Plan Part 3 (Welborne Plan)
Corporate Objective:	Plan for the development of Welborne, a new sustainable community to the north of Fareham which achieves high environmental and design standards and provides a wide range of transport choices.

Purpose:

The purpose of this report is to update the Executive on recent land assembly changes at Welborne and agree the termination of the Council's procurement process to appoint a Delivery Partner.

The report also notifies the Executive of a future report(s) setting out an updated Delivery Strategy and governance arrangements for Welborne Garden Village.

Executive summary

Following the approval of the Welborne Delivery Strategy in February 2016, the Council progressed work to secure the comprehensive development of Welborne.

The Delivery Strategy included taking appropriate actions to work towards achieving comprehensive land assembly at Welborne, where possible on a voluntary basis, in pursuit of getting the new community delivered.

In June 2017, at an early stage of its procurement process, the Council shortlisted four potential Delivery Partners for Welborne Garden Village.

However, in July 2017, Buckland Development Ltd (via a new entity Welborne Land Ltd) contracted to acquire the Dean Farm Estate. Completion of that land transfer took place on 22nd September 2017 resulting in the Buckland organisation now owning over 90% of the land at the Welborne site.

This voluntary land assembly, secured in line with the Council's Delivery Strategy, and the assurances provided by Buckland Development Ltd to the Council in

relation to it, give the Council confidence that the objectives of the Welborne Garden Village project will be delivered.

It also recognised that Buckland Development Ltd submitted an outline planning application for Welborne in March 2017 that aims to meet the aspirations set out in the Welborne Plan.

Consequently, the need for the Council to appoint a Delivery Partner, in combination with using its compulsory purchase powers to assemble the site (if necessary), and deliver Welborne has fallen away.

It is therefore now appropriate for the Council to fully review and update its Delivery Strategy in moving forward to the implementation phase of Welborne Garden Village. This report seeks confirmation that in such circumstances the current procurement process to appoint a Delivery Partner should be terminated.

The Council may have a future lead role in securing any necessary minority land holdings, including any areas of land in unclear or unknown ownership, through Compulsory Purchase in order to secure the accelerated delivery of Welborne Garden Village. Compulsory purchase will only be used where voluntary land assembly options prove unsuccessful.

Executive approval is also sought for officers to develop an updated Delivery Strategy and updated governance proposals for consideration and approval at a future Executive meeting(s).

In implementing the Delivery Strategy, the Council's activities have positively resulted in the award of Garden Village status for Welborne from the Government; secured capacity funding of over £228,000 with a further application for £555,000 submitted in August 2017; and a bid to the Homes and Communities Agency for £10M of Housing Infrastructure Marginal Viability Funding.

Recommendations:

It is recommended that the Executive:-

- (a) delegates authority to the Director of Planning and Regulation to terminate the procurement process OJEU Reference: 2017/S 058-107255;
- (b) delegates authority to the Director of Planning and Regulation to notify the four shortlisted delivery partner bidders that the procurement process has been terminated;
- (c) notes that the Executive agreed an 'in-principle' CPO resolution of the whole of the Welborne site in February 2016 and to re-confirm this resolution insofar as it relates to minority landholdings required to enable the comprehensive development of the scheme to be progressed and delivered by Buckland Development Ltd; and
- (d) notes that the Director of Planning and Regulation will develop an updated Delivery Strategy and updated governance proposals for consideration and approval at a future Executive meeting(s).

Reason:

To terminate the current delivery partner procurement process, as the likelihood of a successful outcome and/or any appointed delivery partner being able to fulfil its development objectives will have significantly diminished, given that voluntary land assembly has now been achieved by Buckland Development (through closely associated companies under the control of the same individuals) in respect of over 90% of the land at Welborne. Further, given the assurances provided to the Council by Buckland Development Ltd, the Council considers that it will be able to work alongside Buckland Development Ltd to deliver Welborne Garden Village in accordance with the Welborne Plan.

Cost of proposals:

The Executive approved the expenditure for 2017/18 for the Welborne Delivery Strategy at its meeting on 6 March 2017. Other than staff time, there are no costs associated with terminating the procurement process.

Appendices: None

Background papers: None

Reference papers:

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BOROUGH COUNCIL

Executive Briefing Paper

Date:	9 October 2017
Subject:	Review of Welborne Delivery Strategy
Briefing by:	Director of Planning and Regulation
Portfolio:	Planning and Development

INTRODUCTION

1. On 22 February 2016, the Executive approved the Council's Welborne Delivery Strategy to deliver the Welborne vision. The Delivery Strategy outlined the critical actions and associated milestones for delivering the development of the Welborne area. The Executive was presented with a progress report at its meeting on 6 March 2017.
2. The progression of the strategy has focussed on two principal issues, namely securing a Delivery Partner and assembling the necessary land. Following the acquisition of Dean Farm Estate in September 2017 by Buckland Development Ltd (via a new entity Welborne Land Ltd), this report recommends that the Council terminates the Delivery Partner procurement process OJEU Reference: 2017/S 058-107255 for the reasons outlined in this report.
3. The Council's future focus will be placed on developing and implementing an updated Delivery Strategy and updated governance arrangements to achieve the successful delivery of Welborne Garden Village.

POLICY BACKGROUND

4. Development potential at Welborne has been identified since the South East Plan was published in 2009. The Council adopted its Core Strategy in 2011 and established the new community as a Strategic Development Area.
5. In 2015, the Council adopted the Welborne Plan (Part 3, Fareham Borough Local Plan), a development plan document setting out comprehensive development policies relating to development at Welborne.
6. There will be considerable infrastructure requirements for a new community in Welborne, the most significant of which is the works required to improve Junction 10 of the M27 motorway.

7. A Supplementary Planning Document providing design guidelines for development at Welborne was adopted by the Executive on 11 January 2016.
8. The Local Plan sets the Council's housing targets and Part 3: Welborne Plan sets out detailed annual housing delivery targets for the period 2016-2036. However, the Council's Local Plan is under review which may culminate in revised figures being adopted.

DELIVERY PARTNER UPDATE

9. The Council undertook 'soft market testing' in 2016 to test the development industry's appetite and capability for delivering Welborne and to help refine the Council's procurement approach.
10. A Prior Information Notice was published on 9 January 2017 notifying the Council's intention to start a formal tender process through the Official Journal of the European Union (OJEU) to secure an experienced Delivery Partner for Welborne.
11. Formal procurement process using the Competitive Dialogue procedure commenced with the publication of the OJEU Contract Notice and associated Selection Questionnaire on 22 March 2017. This resulted in 51 expressions of interest giving rise to 6 formal submissions from which 4 potential bidders were selected to proceed to the next stage of the public procurement process, namely the outline solutions stage, scheduled to commence in the summer/autumn 2017.
12. Technical and supporting information needed to progress to that next stage of the procurement process was assembled. These documents set out the Council's vision for what it required a Delivery Partner to achieve to deliver a successful Garden Village.

LAND OWNERSHIP

13. The Welborne development plan area was principally in two ownerships with approximately 45% owned by each landowner. The remainder of the Welborne area falls under various minority land ownerships including land in the vicinity of an improved and expanded Junction 10 on the M27.
14. Dialogue with the principal landowners and their site promoters, as well as the minority landowners, has continued to take place since the Delivery Strategy was approved in February 2016.
15. To date, the Council has acquired two of the three residential properties within the Welborne Plan area identified and approved for acquisition at the February 2016 Executive meeting. The Executive agreed the terms for the purchase of the third identified residential property in February 2017.
16. In February 2017, as a result of litigation between the three Benge family landowners of the Dean Farm Estate seeking clarity about their ownership rights over that land, the High Court made an Order to place the Dean Farm Estate on the open market for sale. The sale was to conclude in June 2017 and to be overseen by the two agents representing each side of the Benge family.

17. In late July 2017, the Council was advised that Buckland Development Ltd (BDL), via a new entity Welborne Land Ltd, exchanged contracts on the acquisition of the Dean Farm Estate. Completion of that acquisition (which ultimately took place on 22nd September 2017) would mean that Buckland Development would as a result be the 90% majority landowner for the site proposed for Welborne Garden Village.
18. On 23 August 2017, the Council issued a letter to Buckland Development Ltd seeking formal confirmation of the Dean Farm Estate sale agreement; their intentions in acquiring minority land holdings in the Welborne area; their contractual or other relationships with Southwick Estate and Welborne Land Ltd and their proposals for working with housing delivery partners to progress the development of the site. In response to these questions, Buckland Development Ltd submitted a letter to the Council on 8 September 2017 which stated that:
 - Welborne Land Ltd exchanged contracts for Dean Farm Estate on an unconditional basis to purchase three freehold interests comprised in Titles HP165475, 553147 and 268393, being the Dean Farm Estate with a scheduled completion date of 22 September 2017; that there remain various rights and easements for services and utilities that affect the Estate, including some that benefit a number of small property holdings still owned by members of the Benge family and BST Warehouses Ltd. In addition to the land above, Buckland Development Ltd has opened up preliminary negotiations with other key land owners and has the firm intention to acquire all the remaining minority land holdings at Welborne.
 - Welborne Land Ltd was established specifically to hold the newly purchased Dean Farm Estate and it is anticipated that this entity will effectively be the sole landowner at Welborne by acquiring or having control of the other interests on the Welborne site and that Buckland Development Ltd will act as the developer on behalf of Welborne Land Ltd.
 - The Chairman and principal shareholder of Buckland Development Ltd (Mark Thistlethwayte) is also the principal shareholder of Welborne Land Ltd as well as the beneficial owner of all relevant Southwick Estate land north of the M27 motorway and within the outline planning application submitted by Buckland Development Ltd in March 2017.
 - Buckland Development Ltd is in active dialogue with three national housebuilders to deliver the new homes at Welborne. It is proposed that Welborne Land Ltd will become the sole landowner of the Welborne site and that BDL will be the enabling developer co-ordinating and controlling the activities of specialist housebuilders and other developers serviced by parcels of land created by BDL.
 - The Council should stop the procurement process and remove the threat of Compulsory Purchase over land owned by Buckland Development Ltd and should instead work collaboratively with them to deliver Welborne.
19. Land assembly has always been a key consideration for the Council in devising plans for the new community and the comprehensive delivery of the new Welborne Garden Village. Welborne Land Ltd's purchase of the Dean Farm Estate is regarded as a major step forward for Welborne.
20. This voluntary land assembly has been secured in line with the implementation of the Council's Delivery Strategy. The assurances provided by Buckland Development Ltd as stated above, provide officers with confidence that the objectives of the Welborne Garden Village project will be delivered.

21. It is also recognised that Buckland Development Ltd submitted an outline planning application for Welborne in March 2017 that aims to meet the aspirations set out in the Welborne Plan, and this is presently being considered.
22. Consequently, the need for the Council to appoint a Delivery Partner in combination with using its compulsory purchase powers to assemble the site (if necessary), and deliver Welborne has fallen away.
23. In any event, the Council's property and compulsory purchase advisors, CBRE, have also confirmed that based upon the current situation the Council would not currently have a realistic likelihood of succeeding with a large-scale compulsory purchase of land at Welborne.
24. Officers now considers that it is possible for the Council to work alongside Buckland Development Ltd to deliver Welborne in accordance with the Welborne Plan, and that it is therefore now appropriate for the Council to fully review and update its Delivery Strategy in moving forward to the implementation phase of Welborne Garden Village. This report seeks confirmation that in such circumstances the current procurement process to appoint a Delivery Partner should be terminated
25. The Council, working collaboratively with Buckland Development Ltd, may have a future lead role in securing any necessary minority land holdings, including any areas of land in unclear or unknown ownership, through Compulsory Purchase in order to secure the accelerated delivery of Welborne Garden Village. Compulsory purchase will only be used where voluntary land assembly options prove unsuccessful.

UPDATING THE DELIVERY STRATEGY AND GOVERNANCE PROPOSALS

26. Officers are undertaking a review of existing work programmes to establish new objectives and priorities in the context of the changed circumstances outlined above to prioritise accelerated delivery of Welborne Garden Village. These will be presented in an updated Delivery Strategy for consideration and approval at a future Executive meeting. It is proposed that the approved new Delivery Strategy will form the basis for regular monitoring and progress reporting to future Executive meetings.
27. It is important to note that successful delivery of Welborne will be reliant on many key interested parties from across the public, private, and community and voluntary sectors working collaboratively for many years and, as such, it is critical that we have the most effective partnership and governance arrangements in place to facilitate this.
28. With Buckland Development Ltd owning over 90% of the land at Welborne it is timely to undertake a full review of future partnership and governance arrangements.
29. Officers will identify and review best practice examples from other Garden Town or Garden Village schemes nationally and will seek input from Buckland Development Ltd and key public sector partners to inform this process
30. A proposed governance structure that is fluid, responsive and dynamic in nature with a clear focus on action and delivery will be presented to a future Executive meeting. Executive and/or Council approval to the outcome of the partnership and governance review will be sought as appropriate.

LEGAL IMPLICATIONS

31. At the start of the OJEU procurement process in March 2017, in the Memorandum of Information and Selection Questionnaire publications, the Council made it clear to all prospective bidders that what is now contemplated may indeed have occurred and what the associated consequences might be. Those publications stated *'The Council reserves the right in its absolute sole discretion to cancel the procurement process at any point, or to vary or amend the stages or timings of the process. The Council shall not be liable for any costs whatsoever resulting from any cancellation or variation of this procurement process'*.
32. In addition, in Part I Instructions To Bidders contained in the Invitation To Participate in Dialogue document, the following text is set out at the fourth paragraph *'The Council may in its absolute discretion cancel, amend, vary, postpone, abandon or terminate this procurement process or decline to execute the contract. Any award of contract is also subject to the Council's internal governance approvals'*.
33. Generally, as a matter of law the Council has a wide discretion to terminate an ongoing procurement. Any such decision is challengeable by judicial review were it illegal, irrational, procedurally improper or disproportionate. As is noted above, the landscape within which the procurement process was launched appears to have fundamentally changed in the last couple of months, which itself would appear to have a significant effect on both the viability and potential success of a delivery strategy involving a procured Delivery Partner. Officers consider that the decision to terminate the procurement and the reasons for it are such that the likelihood of a successful challenge to or claim in respect of it is low.
34. Further, mindful of the risks associated with the procurement process given the number of variables which could adversely affect its smooth and successful progress, officers sought to devise the process and took steps to seek to minimise the level and cost of participation which bidders would have to have committed, and incur in respect of it and on account of that consider that any cost and resource committed by the four selected bidders will, for a project of this scale and nature, have been kept to an absolute minimum.
35. Following the approval of the Executive sought in this report, the Council will need to formally terminate the procurement process OJEU Reference: 2017/S 058-107255 and notify the four short listed bidders to that effect.

FINANCIAL IMPLICATIONS

36. An estimated £853,609 of expenditure has been spent by the Council up to the end of August 2017 in implementing the Welborne Delivery Strategy. £228,570 of this was offset by the Garden Village capacity funding secured as noted below.
37. This has funded the Welborne Delivery Team, a new Strategic Lead Officer, external commercial market advice and soft market testing, internal and external legal advice, communications, branding and the preparation and commencement of the OJEU procurement process for the Council to secure a Delivery Partner.
38. This Council (revenue) expenditure has positively resulted in:

- Securing national Garden Village status for Welborne, only one of 14 in the country;
- Securing £228,570 of income from the Homes & Communities Agency's (HCA's) Garden Village capacity funding for 2016/17;
- The submission of a £2M application to the HCA for support from its Accelerated Construction programme. Of the 1,500 sites proposed, unfortunately Welborne was not one of the 222 selected by the HCA in August 2017;
- Access to future funding streams, such as:
 - A share of the HCA's £3M Garden Village round two capacity funding where the Council bid for £555,000 in August 2017;
 - Local Government Association Housing Advisors Programme application for £14,000;
 - Bidding for up to £10M of New Housing Infrastructure (Marginal Viability Funding) submitted on 28 September 2017; and
 - Starter Homes Land Fund, where the Council is one of only 30 Local Authorities eligible to bid nationally.

39. There has been no direct Compulsory Purchase Order expenditure to acquire third party land to date. Other than staff time, there are no costs associated with terminating the procurement process.

40. Additionally, expenditure incurred in delivering the Welborne Delivery Strategy since February 2016 includes the purchase of two residential properties in the Welborne area, where the owner occupiers were at risk of hardship. These purchases cost £1,011,380 and we have spent a further £22,850 to get the properties into a lettable state. They have added to the Council's estate investment portfolio and have been generating income since May 2017.

RISK ASSESSMENT

41. The potential strategic risks arising from terminating the procurement process, such as negative publicity for the expenditure used, have been weighed against the reputational risks to the Council of being perceived as doing nothing to secure voluntary land assembly which, in turn, could be regarded as a lack of Council leadership and / or ambition to the realisation of the Welborne vision.

42. Officers have plans in place to mitigate the potential strategic risks whilst also seeking to further demonstrate the Council's ambition and commitment to working in partnership with Buckland Development Ltd to deliver Welborne Garden Village.

CONCLUSION

43. It is recommended that the Executive approves the termination of the procurement process and for officers to develop a new Delivery Strategy and governance arrangements to accelerate the delivery of Welborne Garden Village.

Enquiries:

For further information on this report please contact Richard Jolley (Ext 4388).