



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
3 November 2020

Key Decision Yes

Wards Affected: Central & Gaisford

A Partnership Approach to Secure New Homes at Teville Gate

Report by the Director for the Economy

Executive Summary

1. Purpose

- 1.1. To inform members of progress towards a partnership with Vivid Homes Ltd to support the development of Teville Gate and provide 230 new homes; 130 of which will be affordable homes as part of a housing led mixed use development with an emphasis on placemaking and design.

2. Recommendations

2.1 That members of Joint Strategic Committee:

- i) approve the release of £246,000 from the Worthing Borough Council Capacity Issues Reserve to fund the initial costs associated with the project.
- ii) delegate to the Director for the Economy the authority to enter into a pre-purchase funding agreement with Vivid Homes on the terms proposed within this report

- iii) note that a further report will be presented to the Joint Strategic Committee detailing the final agreement with Vivid Homes and the financial commitment to be made by the Worthing Borough Council and seeking authority to proceed.

3. Progress Following Worthing Planning Committee on 3rd March 2020

- 3.1 Members of the Committee will recall that earlier this year on March 4th, Mosaic Global Investments Ltd. secured planning approval for 'Station Square', comprising 378 new homes, an 83-bedroom hotel, a food store, gym, and retail space on the site of the former Teville Gate.
- 3.2 Since March, the Mosaic team have made a significant commitment of resources to establish the best option for delivering their proposals on the ground; including an extensive dialogue with agencies such as Homes England.
- 3.3 Understandably, the impact of the Pandemic on the wider economy has meant that finding a workable funding solution to support this major development has proven to be particularly challenging. Accordingly, Mosaic has considered a number of alternative options to bring the site forward, and has concluded that the sale of the land to another developer is the best way forward for their organisation.
- 3.4 Mindful of the period that Teville Gate has lain vacant and the considerable progress that resulted in the 'Station Square' planning permission; officers have actively engaged in a dialogue with Mosaic and with national agencies such as Homes England and potential development partners, to establish whether an alternative development proposition can be developed.
- 3.5 The focus of the officer's efforts in these discussions have been on two issues. Firstly, to vocally demonstrate the Council's support to see the site developed without any unnecessary delay. Secondly, and critically, to ensure that the successful purchaser has a track record of seeing development projects through to the construction stage and completion.
- 3.6 The Council team's involvement has been undertaken with the prevailing economic conditions in mind; and very much in the spirit of making appropriate and timely interventions in line with the Council's

Platform commitments and the Council's 'And Then....' response to the Pandemic. There is a real sense of ambition here: not letting the opportunity pass to drive the regeneration agenda forward, in particular at this time, as opposed to waiting for the next proposition to come forward regardless of its merits.

- 3.7 Over the summer months, it became clear that a financially viable scheme at Teville Gate would require additional input from a development team able to invest in the delivery of new homes and in particular, a demonstrable ability to finance and the delivery of affordable homes. With support from Mosaic, officers had discussions with several interested parties to explore ideas and to examine whether any additional intervention was needed.
- 3.8 The outcome of these various discussions is that a proposed partnership between Worthing Borough Council and Vivid Housing Ltd. (Vivid) will purchase the site with a view to developing it on a joint venture basis. This proposed partnership has negotiated an agreement to purchase from Mosaic on a "subject to planning" basis.

4.0 Proposed Joint-Venture Partnership with Vivid

- 4.1 Vivid is a Housing Association and is one of the largest providers of affordable homes and housing-related services in the south of England. Vivid currently has around 31,000 homes and over the next 10 years plans to build a further 17,000 new homes including many for social rent. Vivid was named 'What House? Housing Association of the Year, 2019'. It is evident that Vivid are an experienced and active developer with a track record of delivering complex brownfield sites in the south east and as such we are keen to attract them to invest in this site. Of critical importance, Vivid is a strategic partner with Homes England which means they have access to significant financial resources to deliver developments by March 2024, and is keen to develop new homes in Worthing.
- 4.2 The Council's involvement in the joint venture is considered the best approach. Firstly, the involvement of the Council will give confidence to Vivid about our commitment to seeing the site being developed de-risking the investment from their perspective. Secondly, a genuine partnership will commit the council and Vivid to ensuring that a high quality design is secured. In addition as a member of the joint venture

partnership the Council can continue to press the urgency of moving ahead with the development.

- 4.3 The proposal that Vivid and the Council team have explored is founded on a residential-led, mixed use scheme comprising 230 new homes. Whilst this is a lower total than the scheme that has planning approval, 130 of these new homes would be affordable homes, including a proportion for social rent. 100 homes would be for market sale. This compares with 116 affordable homes included in the Station Square scheme. The new proposal would also include retail; café/ restaurant and community uses. The housing mix would also be more in keeping with the Borough's housing need with the removal of the large number of studio flats in favour of higher quality one and two bed homes.
- 4.4 Overall, the quantum of development on the site will be reduced by comparison with Station Square and the storey heights will be lower. A partnership approach will ensure that the emphasis on placemaking (including high quality public realm) is retained and that links with Worthing Station and the neighbouring new HMRC digital hub building are well expressed as part of the design.
- 4.5 The revised design approach and lower storey heights will reduce the construction risk associated with tall buildings and improve cash flows, improving the deliverability of the scheme overall.
- 4.6 The Council will ensure that as part of the new scheme; 50 car parking spaces are made available for exclusive use of HMRC: this was always the intention with the 'Station Square' scheme and remains part of the Council's enabling approach to supporting the development of the new digital hub and the 900 jobs this will bring to the location.
- 4.7 The nature of the joint venture with Vivid is set out in the Financial Implications section of this report and the detailed agreement will be the subject of a further report to the Committee. In overview, the Council and Vivid have secured an agreement to purchase the site on the basis that the Council will share the development risk of delivering 100 new homes for market sale. The affordable accommodation will be developed and managed by Vivid for the long term with the Council able to secure nomination rights for a proportion of new homes for people currently on the Council's housing waiting list.

5.0 Issues for consideration

- 5.1 The active engagement of a development partner prepared to purchase the site and commit to a joint venture under the terms referred to in this report will help to ensure that development is delivered on this strategically important site.
- 5.2 Alternative models have been considered through dialogue with potential development partners and national agencies such as Homes England to help inform the recommended approach.
- 5.3 A positive intervention on the part of the Council, including an element of managed financial risk, is seen as an appropriate response to securing the delivery of a high quality scheme at Teville Gate with an emphasis on new homes. Should this intervention not succeed for whatever reason, the strategic priority afforded to this site underlines the need to consider use of the Council's statutory power to compulsory purchase.
- 5.4 An earlier alternative approach explored the option of securing direct Homes England funding to close the 'viability gap'. Working with one of Homes England's strategic housing partners has proven to offer a more realistic prospect of delivery.
- 5.5 Doing nothing would represent a very significant risk. In the absence of a viable scheme, there is a danger that Teville Gate is simply sold on and 'landbanked' with all of the subsequent delay and uncertainty that entails. Alternatively, in the pursuit of financial viability, there is a risk that any new developer may seek to maximise housing numbers to the detriment of good design and place making.

6. Engagement and Communication

- 6.1 Council officers have engaged with the landowner/developer, national agencies and potential development partners to explore options for the development of the site. The outcome is a proposed joint venture with Vivid Housing Association and a collaboration to which has secured the purchase of the site.

- 6.2 Officers have the views of the relevant Executive councillors as part of the preparation of this report. In addition to expert advice from legal and financial officers, external advice has been secured from senior consultants at CBRE.

7. Financial Implications

- 7.1 As the proposed joint venture has emerged following the recent circumstances with the site, the Council did not allocate any revenue or capital budgets to fund the potential costs associated with this within the 2020/21 budget.
- 7.2 Initially the Council's financial commitment will be to fund 50% of the deposit and underwrite 50% of the current developer's interest costs, although the extent to which the Council has to fund interest costs will depend on the planning process. If the Council has to appeal against the planning decision then the interest costs will escalate.
- 7.3 If the Council enters into the joint venture, there will need to be an overarching legal agreement between the parties. This will require specialist advice and a budget of £100,000 will be required.
- 7.4 Overall Worthing Borough Council will need to fund initial revenue costs of up to £250,000.
- 7.5 The Council does have unallocated reserves of £2.2m of which £895,700 remains available in the Capacity Issues Reserve, however it will be important to retain as much financial capacity as possible to manage current risks associated with the Pandemic. Nevertheless, it may be possible to utilise the reserves to fund these initial costs.
- 7.6 In committing to the proposed partnership, the Council should be aware that these initial costs may prove abortive if, say, planning permission is not granted or agreement on the JV terms cannot be reached.
- 7.7 As part of the potential joint venture, the Council will be funding 50% of the cost of building out the 100 market housing units. Whilst the cost of developing these units has not yet been fully established, this will require the Council to make available at least £12.5m of funding. The Council will subsequently benefit from 50% of the sale proceeds. Assuming a 10% uplift on sale, the Council would benefit from sufficient capital receipts to repay the investment costs and allow for a surplus.

- 7.8 The £12.5m contribution planned is defined as capital by regulation. Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003 No. 3146) extends the statutory definition of capital, on a proper practices basis, to include “the giving of a loan, grant, or other financial assistance, to any person, whether for use by that person or by a third party towards expenditure which would, if incurred by the authority, be capital expenditure’ and ‘expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure if the local authority had an interest in that land or building.
- 7.9 Consequently, it will be possible to fund the contribution by a loan. However, there will be substantial interest costs associated with a £12.5m loan of £225,000 per year based on a 1.8% interest charge (based on a 2 year PWLB loan). A development of this size will take 2-3 years to build out and so the Council would have to fund between £450,000 - £675,000 of interest costs.
- 7.10 The Council does not have the financial capacity to fund these interest costs from within the revenue budget at present. The last medium term financial plan presented to Council indicated substantial budget shortfalls of:

	2021/22 £'000	2022/23 £'000	2023/24 £'000	2024/25 £'000	2025/26 £'000
Cumulative shortfall	1,971	3,383	4,161	4,881	5,557
Annual shortfall	1,971	1,412	778	720	676

Whilst progress is being made on balancing the budget for 2021/22 which will be reported to members in December, it will be difficult to accommodate any further financial pressures in the next couple of years particularly against the backdrop of the uncertain nature of the Pandemic. Consequently, any joint venture agreement must ensure that the interest costs are reimbursed on an annual basis to ensure that no further financial pressure is put on the Council at this stage. The Council will need to be certain of this point prior to exchange of contracts otherwise we could incur significant abortive costs.

- 7.11 However, if agreement can be reached on the reimbursement of the interest costs associated with the financing of the market homes then overall the scheme should be financially viable on the assumption that the homes are built and sold within a three year time period and that there is a 10% profit on the costs of construction.

	£
Sale price per unit	275,000
Council share of sale proceeds	13,750,000
Less: Principal to be repaid	-12,500,000
Less: Interest costs repaid during development	-675,000
Net capital receipt	<u>575,000</u>

- 7.12 However, there is a risk that the development will take longer or that sale prices achieve a lower return, which will mean that the Council will have to fund any shortfall in the development costs.

- 7.13 As part of the current site, the Council has a long-term interest in the surface car park. Overall this car park is budgeted to generate net income of £71,950 in 2020/21. Whilst income levels are reduced this year due to the pandemic, this is a valuable asset for the future. Any potential JV agreement will need to ensure that the Council maintains the right to a public car park of a similar size or is financially compensated for the loss of this asset. During any development the Council will lose the income from this site and this will need to be accommodated within the 2022/23 revenue budget.

- 7.14 Once completed, the Council will also benefit from the associated council tax generated by the homes. Based on the current average Band B property, the Council will generate additional council tax of £43,400 income per year from the development.

Finance Officer: Sarah Gobey Date: 21st October 2020

8. Legal Implications

- 8.1 Any payment or Grant Funding by the Council that assists Vivid Homes to purchase the property at Teville Gate would be classified as unlawful

state aid unless one of the exemptions to state aid exists. There are 3 exemptions potentially applicable in this instance:

- (a) The pre-purchase payment is made under the market economy investor principle, in that a prudent market investor acting in its best economic interests would have made the same arrangement;
- (b) The pre-purchase payment is made to further a Service of General Economic Interest; where public finance is provided by way of payments of grant or loans to undertakings, including Vivid Homes to compensate it for discharging a public service obligation (the building of affordable homes) does not constitute state aid. Provided that the cumulative conditions in Altmark [2003] ECR 1-17747 are satisfied and in such circumstances the undertaking does not receive an advantage putting it in a more favourable economic position.
- (c) The payment to be made is below the de-minimis threshold of EUR200,000 and Vivid Homes has not received state aid beyond this amount in the three previous fiscal years.

8.2 Alternatively the Statutory Guidance on Local Government Investments issued under s15 (1)(a) of the Local Government Act 2003, enables local authorities to make loans to local charities; wholly owned companies, joint ventures and third sector entities as part of regeneration or economic growth projects that are in lined with the authority's wider role for regeneration and place making.

8.3 Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003 No. 3146) extends the statutory definition of capital, on a proper practices basis, to include "the giving of a loan, grant, or other financial assistance, to any person, whether for use by that person or by a third party towards expenditure which would, if incurred by the authority, be capital expenditure' and 'expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure if the local authority had an interest in that land or building.

8.4 Land transactions that are purely land transactions without any contingent liability to provide goods, works or services, will fall outside of the Public Contract Regulations 2015. Any Grant or Loan made to Vivid Homes purely for the purposes of assisting Vivid Homes to purchase the site without obligation for goods works or services to the Council, will not create a public contract.

- 8.5 The Council may require Vivid Homes to agree to the entry of a charge or restriction on alternative property owned by Vivid to protect any Grant or Loan that the Council may make pre-purchase of the site, in the event that the purchase does not proceed through any act or omission made by Vivid as opposed to circumstances which are beyond either party's control.
- 8.6 A Joint Venture (JV) can be established through a range of delivery methods with each party contributing resources to the venture to work collaboratively and share risks. The Council is recommended to seek further legal and financial advice on the precise terms and delivery method for the proposed JV when the terms of the agreement are finalised. Providing the JV itself is a truly collaborative arrangement which does not in itself amount to a public contract for works or services the collaborative arrangement under the JV would fall outside the scope of the PCRs. Any further contract for the design and construction of the Teville Gate Site would need to be procured in accordance with the Public Contract Regulations 2015 and the Council's Contract Standing Orders.
- 8.7 Any financial agreement reached between the Council and Vivid Homes under the JV must not offend the rules on state aid. The Council may not, through state resources, distort or threaten to distort competition in such a manner that would affect trade between EU member states. As well as the considerations set out above, in relation to the Market Economy Investor Principle, and Services of General Economic Interest, it is unlikely that a distortion of cross border competition would exist, as the parties to the joint venture will already own an interest in the land which would be the subject matter of the JV and objectively the only economic operators that can perform the objectives of the JV would be the Council and Vivid Homes.
- 8.8 The Council may further protect any post JV investment by agreement and through a further charge or restriction on alternative property owned by Vivid Homes.
- 8.9 Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of its functions.

- 8.10 s1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation
- 8.11 Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 8.12 s1 Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available assets or services for the purposes of, or in connection with, the discharge of the function by the local authority
- 8.13 The Council currently holds a long lease of the car park in Teville Gate with a term of 76 years to run. If Vivid purchases the land, it will become the Council's landlord under the lease entitled to the reversionary interest. It will be important to ensure that any partnership arrangement with Vivid Homes arising from a JV agrees terms in relation to the future of this car park to avoid the Council being put in breach of the Lease terms.

Background Papers

Report to the Joint Strategic Committee dated 7th July 2020: Impact of Covid 19 on the Council's finances - Update on current financial performance and developing a revenue budget for 2021/22

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Sustainability and Risk Assessment

1. Economic

The project is strategically interlinked with a planned wider investment programme connected with future developments at other key sites in Worthing.

Redevelopment of the Teville Gate site will contribute to the creation of an enhanced entrance to the town and town centre, providing an economic boost to existing businesses, and encouraging an increase in investment across the town as the most visible regeneration challenge gets addressed.

2. Social

2.1 Social Value

Development on the site would send a positive message to the community, visitors, commuters and business, that change is taking place in Worthing and improvements to the built environment will be realised in the near future.

The existing cleared site and hoarding does little to enhance this part of Worthing from road or rail, and redevelopment of this important gateway site to enhance the street scene and act as a catalyst for the regeneration of the wider area.

2.2 Equality Issues

Matter considered and no issues identified

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified.

Works will be managed under the Construction Design & Management (CDM) Regulations 2015.

2.4 Human Rights Issues

Matter considered and no issues identified

3. Environmental

It is intended that redevelopment will bring forward a high quality development in a sustainable town centre location. Noise, dust and highway obstructions will be kept to a minimum using industry standard techniques, and monitored by the Council throughout the works

The project aligned to the council's strategic approach to Climate Emergency.

4. Governance

A dedicated project board to oversee the governance of the project will be established ensuring:

- 1) Due diligence
- 2) Alignment with Council policies and priorities
- 3) Legal issues and compliance with legislation
- 4) Risk management including health and safety
- 5) Statutory approvals
- 6) Stakeholder management and engagement
- 7) Change control

5. Sustainability & Risk Assessment

A Risk Register will be prepared and assessed through the Project Board. Any associated risks are delegated to the Project Team in the form of a risk assessment. This organic document is assessed on a monthly basis.