



Union Place - Update on Joint Venture Partnership with Roffey Homes.

Report by the Director for the Economy

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Executive Summary

1. Purpose

- 1.1 The purpose of this report is to advise members of the Committee on the progress with negotiations with the Council's preferred Joint Venture Partner on the development of the Union Place site, and to seek the Committee's comments on the proposed form of the joint venture agreement for the development of the site.
- 1.2 The report sets out the detailed nature of the proposed joint venture agreement through the formation of an LLP between the Council and Roffey Homes, and the proposal for the Council to invest land into the LLP company at the outset, with a further parcel of land being invested following grant of planning permission. The report sets out how the value of the Council's investment is then matched by Roffey Homes equity and sets out how the development will be funded.
- 1.3 The report updates members on key issues that remain to be resolved surrounding legal powers, procurement, state aid, and tax implications of the proposed joint venture.
- 1.4 The report summarises the work undertaken to date to design the scheme, agree land valuations, and sets out a proposed programme between the joint venture partners to finalise the agreement and deliver the site.

2. Recommendations

- 2.1 To note the progress made in developing and enabling the site since the most recent update to the Joint Strategic Committee in March 2022.
- 2.2 To note the principal purposes of the Council in relation to the development of the site as set out in paragraph 3.3
- 2.2 To note that Officers will obtain updated procurement advice on the final proposals for developing the site and to authorise the Director for the Economy to take any recommended procurement action to appoint the Joint Venture Partner.
- 2.4 To note that a report will be brought back to the Joint Strategic Committee for consideration detailing the final proposed documents, and to seek any required authorisations to continue with the proposed Joint Venture arrangement.

3.0 Background to Union Place

- 3.1 The Worthing Local Plan sets out a number of sites that will be brought forward to deliver market and affordable housing in Worthing over the 2020 - 2036 plan period. Of the fifteen sites identified, seven of these are to be delivered by Worthing Borough Council either directly (such as the Integrated Care Centre on the Civic Centre site), or in conjunction with partners including the Fulbeck Avenue Site, Teville Gate, Union Place and in due course the Grafton site.
- 3.2 Collectively these sites have the capacity to deliver approximately 900 homes and are a key workstream in the Pathways to the Affordable Homes strategy approved by the Committee in March 2021 to deliver the homes needed within the town. The housing-led sites included in the local plan are:
 - Union Place (150 homes)
 - Teville Gate (350 homes)
 - Camping & Caravanning Club (100 homes)
 - Fulbeck Avenue (152 homes)
 - Grafton Car Park (150 homes)
- 3.3 The Council's key purpose of the the council in working with the joint venture partner is to:

- Maximise the number of homes delivered, especially affordable homes
- Maintain a focused approach to attract government funding and support to aid viability;
- Bring forward other uses that will enhance the town's centre and promote economic recovery;
- Deliver high quality design and architecture;
- Deliver capital receipts that can be used to support the delivery and maintenance of new infrastructure;

3.4 This previously developed site lies east of the Connaught Theatre and west of the High Street. It comprises a surface car park adjacent to the theatre acquired by the Council in 2017; a cleared site of unmade ground and footings to the former Police Station acquired by the Council in 2018, and an adjoining small area of car park along the High Street. It is close to Chapel Road (secondary shopping area) and links to the central shopping area via the Guildbourne Centre.

3.5 Large parts of this sustainably located site have stood vacant for many years and its comprehensive redevelopment has been supported within planning policy. Its redevelopment will act as a catalyst for change, helping to revitalise the High Street and deliver new housing, amenities and jobs. As such, the site is identified as being strategically important in a number of key documents including the Worthing Investment Prospectus and the Worthing Town Centre Investment Strategy. Redevelopment also has the support of the Coast to Capital Local Growth Fund Local Economic Partnership.

3.6 To help accelerate the comprehensive redevelopment of the site, and to de-risk the development, Worthing Borough Council undertook the land assembly before entering into a land-pool agreement with government owned regeneration specialist LCR Property in 2018. A Development Strategy was prepared to deliver a mixed use scheme and planning permission approved by the planning committee in November 2020. The key objective of working with LCR Property was to bring clarity as to what could be delivered on the site in terms of uses, density, scale and height. Then with the risk element of planning reduced to bring in a delivery partner who would see out this agreed plan.

3.7 At the February 2022 meeting of JSC members considered an update on marketing the site following the successful enabling exercise with LCR Property. The report identified Roffey Homes as the preferred bidder for the site, and delegated authority to officers to negotiate a joint venture agreement.

This report provides an update on the various issues and seek to progress the scheme by agreeing to enter into the joint venture agreement.

4.0 Unwinding the LCR Property Landpool and Promotion Agreement Arrangements

- 4.1 There are two key items that need to be addressed to unwind the agreement with LCR Property.
- 4.2 Firstly, as part of the agreement the Council sold the freehold of the surface car park fronting high street to LCR Property. Independent valuations have been procured and a sale price is close to being agreed for this land. As part of the joint venture it is proposed that the new LLP company would purchase this land directly using equity injected by the JV partner as it is more efficient, and to minimise transaction costs. This will take place as soon as possible following the formation of the company.
- 4.3 Secondly, the agreement formed a mechanism for the Council and LCR to share the costs of enabling and promoting the site. Essentially it allowed for the Council to pay either the costs of promoting the site, or for LCR to capture a percentage of the increase in land value as a result of the grant of planning permission. Officers have negotiated with LCR to cover the costs of promoting the site as this is more favourable to the development overall.
- 4.4 The resolution of these two issue, enable the Council to proceed with the new joint venture with

5.0 Proposed Joint Venture

- 5.1 Rationale
- 5.2 The Council is proposing to deliver the regeneration of Union Place through a joint venture structure. A Joint Venture is where two parties come together to undertake a property development. Decision making, risk, and reward are shared. Local authority property joint ventures with private sector partners might typically entail the council investing land and capital as equity, with a partner bringing matched investment. Both parties are responsible for delivering the development, which would be managed through a Board structure, and profits are distributed in proportion to investment stake. Joint Ventures are a common way for a public landowner to bring finance and expertise to a development, and are popular with developers as it provides access to land and a way of sharing risk.

5.3 Following a detailed analysis of the options against the key objectives of the council, and detailed discussions with the preferred partner, the joint venture approach was considered the most beneficial. For the Council it provides the following key benefits:

- An experienced Joint Venture partner will bring skills, expertise, capacity and funding to deliver what is a major regeneration project with a gross development value of £50m.
- Risk and reward will be shared on a 50:50 basis.
- The right level of control will be exercised by the Council to ensure that its objectives for the site are achieved.
- The long term opportunity, jointly incentivises both partners to work closely throughout the pre-development and delivery phase to achieve their objectives

5.4 Limited Liability Partnership (LLP)

5.5 A Limited Liability Partnership (LLP) with the preferred joint venture partner will be established to bring forward the development of Union Place. The LLP Members Agreement is the formal contract setting out the relationship between the Council and Roffey Homes. In that document the objectives of the LLP joint venture will be set out and are likely to contain the following:

- a comprehensive regeneration of the Union Place site that responds to the needs of the local community and town centre
- a transformed neighbourhood with a public realm led, high quality living environment and high quality architecture and urban design
- a guaranteed minimum of 20% of the development to be affordable housing assuming full delivery of the scheme, with an ability to achieve more affordable homes should the Council choose to invest returns.
- Appropriate returns to the LLP members as set out in the Business Plan

5.6 LLP Project Documents

5.7 There are a number of key project documents that are required to govern the working of the LLP:

- LLP Members' Joint Venture Agreement – the main agreement between the Council and the preferred joint venture partner setting out the objectives of the LLP, how the business of the joint venture will be

managed and arrangements for profit distribution, settling disputes, default events and termination of the joint venture.

- Loan Notes – these are the financial instruments that set out the arrangements for equity and debt investment into the joint venture to be made by both parties. Subject to the terms of the LLP Members Agreement they also provide for the timing of the repayment of the investment.
- Development Agreement – this agreement will set out how and when land will be transferred from the Council to the joint venture; this agreement is between the Council as landowner and the LLP and places obligations on the LLP to undertake the development in accordance with the Council's requirements.
- Business Plan – the suite of documents that contain the financial model, funding strategy and key delivery strategies
- CPO Indemnity Agreement - this agreement sets out the strategy for land acquisitions and confirms that the LLP indemnifies the Council for any further land acquisition and any CPO costs.

5.8 Other key project issues will be agreed between the parties as part of the business plan:

- Project Management – the delivery of the development requires close and careful management of each stage of the process from design and planning through to construction and handover of the completed homes; this is a core function of commercial developer and a key reason for entering into a partnership
- Construction Management – it is proposed that Roffey Homes will procure all of the individual works packages required to deliver the construction of the new development; the management of this process and the fees are captured in this project plan.
- Corporate Services – an agreement will be reached on company secretary, business support and accountancy and audit services.
- Sales and Marketing - the preferred partner will provide services to the LLP relating to the marketing and disposal of private for sale properties within the new development.

5.9 Business Plan

5.10 The LLP Board will prepare a Main Business Plan for each annual accounting period. This will be agreed and adopted in line with the provisions of the LLP Members Agreement. The approval of the business plan will be a 'reserved matter' for the relevant Council Committee at the appropriate time throughout the lifetime of the development. The business plan will be recommended for adoption by the LLP Board but approval will be reserved for the Council and Roffey Homes.

5.11 Should the development be completed in phases, for each phase of the development the LLP Board will also procure the preparation of a Phase Business Plan. The approval of these phase business plans follows the same format as for the main business plan.

5.12 The Main Business Plan and Phase Business Plans, will be subject to Joint Strategic Sub Committee approval at the appropriate time throughout the lifetime of the development.

5.13 An outline LLP Business Plan template has been prepared with Roffey Homes as part of the preferred bidder stage. The template business plan covers the following:

- 1) Financial model
- 2) Funding strategy
- 3) Governance & management
- 4) Outline development proposals
- 5) Site assembly strategy
- 6) Planning strategy
- 7) Participation & Engagement strategy
- 8) Sales & marketing strategy
- 9) Construction procurement
- 10) Programme
- 11) Risk register

6.0 Governance

6.1 LLP Board

- 6.2 In the event of the proposed Joint Venture being approved the LLP Board would start to operate formally as set out in the LLP Members Agreement. The Board is constituted for the purpose of delivering the agreed business plan. Board members are responsible for monitoring the project, agreeing strategy and making decisions within the parameters of the LLP Members Agreement. It is assumed that the LLP Board will meet monthly.
- 6.3 In terms of representation on the board, the proposal is for there to be one Council representatives and one representative from the joint venture partner. Each organisation have one vote. The Joint Venutre agreement will contain mechanisms for dispute resolution in the event of a deadlock in agreement.
- 6.4 It is proposed that the role of Chairperson will alternate annually between the Council and Roffey representatives.
- 6.5 The LLP Board will routinely receive reports on a range of project matters with a standing agenda likely to be as follows:
- approval of minutes of the previous meeting
 - review of actions from the previous meeting
 - urgent matters
 - Design update
 - resident engagement
 - social value
 - Business plan
 - statutory matters raised by the Company Secretary
- 6.6 The LLP Board will approve the initial business plan and periodic updates, the overall masterplan, and proposals for each phase of development including the scope, design and viability of each phase.
- 6.7 Executive Group
- 6.8 An Executive Group consisting of council officers and Roffey Homes staff with day to day responsibility for the project, and will report to the LLP Board. The Group will meet monthly to coordinate all of the workstreams, monitor progress and agree reporting to the LLP Board.
- 6.9 The Executive Group will consist of representatives from the development project management team, regeneration, housing and sales and marketing teams. The group will prepare reports for decision or review by the LLP Board.
- 6.10 Assurances Back to the Council

6.11 In addition to the governance arrangements set out above, the Council retains approvals rights for the following matters:

- as joint landowner, to approve the design prior to submission for planning
- Approval of the Business Plan and any phase business plans
- The Council will retain independent advisors outside the LLP governance to provide additional assurance and due diligence in approving matters such as the Business Plan
- Regular reports on the performance of the LLP will be reported back to the Council at appropriate points throughout the development

6.12 LLP Funding

6.13 The project will be funded and approved phase by phase on a 50:50 basis. At the establishment of the LLP:

- The Council will transfer Sites B & C into the LLP. Site A will be transferred as soon as agreement is reached with NCP on their lease. The value of the land will be matched by Roffey Homes with an equivalent cash facility which will be drawn down by the LLP as required.
- The Council's land and Roffey's matched funding is termed the 'equity' investment into the LLP
- The LLP will then establish how much funding is needed to build out the development phase in total, which includes planning and architects fees, construction, interest on loans during the development period, sales and marketing costs and project management and development profit.
- The 'equity' investment will not cover the total cost of developing the site. The LLP will need then secure debt financing to fund the balance. This debt financing or borrowing can come from either the Council, Roffey or a third party e.g. a bank.

6.14 Upon the successful delivery of a phase of the development the LLP Agreement sets out the following distribution of receipts held by the LLP. Receipts will be paid out in the following priority order:

- Debt financing will be repaid to the provider

- Any additional equity investment required from the Council and Roffey Homes will be paid back
- Payment to Council for land value and payment to Roffey Homes for matched cash investment
- Profit paid to both parties
- If WBC elects to retain commercial properties or the car park, the agreed value of these units will be 'off-set' against WBC share of distributions.

6.15 Should a profit be likely, the Council will have an option to use this profit to purchase additional homes for affordable housing in lieu of profit.

7.0 Proposed Scheme

7.1 The proposed development is a housing led mixed use development including parking, and commercial space. The proposal incorporates a ground floor car park with residential housing blocks which face inwards to create residential courtyards, and outwards to form an attractive street frontage facing Union Place and the High Street. Taller elements would lie towards the centre of the site. The proposals include:

- Vehicular access is to move to Chatsworth Road to allow for a better urban treatment to Union Place.
- A further 5000 sq ft of commercial space is to be integrated at ground floor level.
- The current proposal will generate a proposed 217 housing units with an undercroft carpark that will replace the current Union Place (NCP) car park and provide parking for residents. 48 units will be a mix of social, affordable and intermediate housing, 10 units will be live work units
- The proposal is for the scheme to be policy compliant in terms of affordable housing delivering 48 affordable homes (22%). Nominations would be reserved to those on the Worthing Borough Council housing register. The Council would have the option to increase the amount of affordable homes using any profits that it makes from the development, and would take a decision on this when more evidence is available.
- The development would be required to comply with the Worthing Local Plan's requirement to connect to the proposed Worthing Heat Network contributing to the scheme's viability.

7.2 In line with planning policy requirements in the forthcoming Worthing Local Plan, the scheme would connect to the Worthing Heat Network that is reported on elsewhere on this committee agenda.

8.0 Proposed Milestones

8.1 This report provides a late stage update for members but in advance of all the required advice on issues such as procurement, state-aid, tax, and valuations being completed and this report asks members to note and comment on the proposals rather than to confirm them and enter into the agreement. The final draft of the joint venture agreement will be amended to reflect this advice and to deal with any issues arising. It is anticipated that this advice will be forthcoming over the coming weeks and that final form of the agreement will be ready for consideration at the Joint Strategic Sub-Committee at the first meeting of the new municipal year.

8.2 Initial public consultation to identify issues and options for the proposed designs took place between November 16th and December 7th 2022 and a public display took place in the Guidlbourne Centre. A further round of consultation is planned to take place in March 2023.

8.3 Following final approval of the agreement it is anticipated that a planning application would be submitted in Summer 2023, with an aim for it to be approved by Christmas 2023.

8.4 A start on site would follow in Spring 2024, with the first completions and keys handed over to new homesowners in Spring/Summer 2025.

9.0 Financial Implications

9.1 The proposed agreement will require the Council to transfer two substantial assets (NCP car park and land at Union Place) into the Joint Venture with a combined balance sheet value of £6.1m as at 31st March 2022. These values are based on the current use of the car park site and, in the case of the land at Union Place, on the potential use for affordable housing. These values will need to be reviewed and updated as part of the process of setting up the joint venture to ensure that they reflect any updated information regarding use. The Council has outstanding debt of £5.4m associated with the purchase of the car park.

9.2 The proposed development is split into two phases. As part of phase 1, the High Street Surface Car Park will be purchased by the Joint Venture Company

from LCR. Consequently, the Council will lose this site as a surface car park. Currently the Council achieves net income of £52,000 from this site. The Council will need to adjust the budget to reflect this loss of income as part of the 2024/25 budget development.

9.3 ***Union Place car park:***

9.3.1 As part of Phase 2, it is proposed to transfer the NCP car park into the Joint Venture provided that the Council can reach agreement with NCP regarding their current lease. Currently the Council benefits for £344,780 income per year. The current proposal is that the Council will benefit from the new car park and that the lease is offered to NCP on similar terms. However, until the new lease is agreed, it is uncertain what the potential income for the site is.

9.3.3 If the car park is redeveloped, the Council will also lose the business rate income. The car park has a rateable value of 60,500 and generates £39,190 business rates per year. If the site is redeveloped the Council will lose the business rate income which will result in a net loss of £6,040 to the Council in retained business rates.

9.3.3 If NCP does not agree to give up the lease on the existing site, then if the Council wishes to purchase the land substantial costs would be incurred. The lease on the car park is for 34 years and 11 months from June 2002 with a tenant-only option to extend the lease for a term of 20 years from the initial term expiry. The rents are increased annually by 3%. Given the terms of the lease, NCP would be eligible for significant compensation. However the Council is not bound to purchase the site under the proposed agreement with Roffey Homes.

9.4 ***Unwinding the land pooling agreement***

9.4.1 The Council is in a land pooling agreement with LCR as referred to in paragraph 3.6 above. LCR as part of this agreement purchased High Street Car Park for £456,000 and agreed to support the development of the whole site. Under the terms of the agreement, LCR would have the ability to reclaim any development costs from any profit generated from the development of the combined site based on its share of the overall value of the land and any development costs.

9.4.2 As the Council is now entering into a Joint Venture with Roffey Homes, the Land Pooling Agreement with LCR will need to be brought to an end and

this process has commenced. Under the terms of this existing agreement it is proposed that:

- The new Joint Venture purchases the land at the original price; and
- WBC reimburses LCR for the costs incurred in promoting the site and obtaining outline planning consent

The current land pooling agreement contains provisions which allow for this to occur. The extent of any payment to LCR is still being established but will be reported to members as soon as the final figures are available.

10.5 *Financial benefit of the proposed JV:*

10.5.1 The overall financial benefit of this proposal will depend on the final costs of development. Preliminary viability modelling indicates that the Council should receive a receipt to the value of £6m which will enable the Council to repay any debt associated with the purchase of the Union Place car park with a small surplus. Although the option remains to take assets to the value of the receipt in the form of the car park (retaining the rental income) or commercial property.

10.5.2 In addition to the capital receipt, the Council will also benefit from any Council Tax and 20% of any potential business rate income. As the site should generate 217 new flats when fully built out, this will generate additional Council Tax for the Council of approximately £58,000. In addition, the Council will benefit from 20% of any additional business rate income generated from the development.

10.6 *Cost of setting up the joint venture:*

The Council is currently seeking legal advice on the proposed arrangements. It is likely that during the development of this project the council will incur a further £62,000 in legal advice and other specialist surveying and valuation advice. It is intended to fund these costs from within the Major Projects consultancy budget of £225,750. Any costs incurred to date (circa £45,000) have also been funded by this budget.

10.5 *Accounting requirement for JVs:*

The Council will have a 50% interest in the new Joint Venture. Consequently the Council will need to recognise the value of it's share of the Joint Venture within it's own statement of accounts. As the parties have equal shares in the Joint Venture, the Council will need to recognise the asset within it's accounts

as an investment in accordance with the accounting treatment set out in the CIPFA Local Authority Code of Practice.

To meet these requirements, the Council will need to seek technical advice on setting up the new arrangements and then on the valuation on an annual basis. It is intended that the Council externalise the valuation of the JV at a potential cost of £5k per year.

11.0 Legal Considerations

- 11.1 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 their functions.
- 11.2 Section 3(1) of the Local Government Act 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.
- 11.3 Section 1 of the Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available of assets or services for the purposes of, or in connection with, the discharge of the function by the local authority.
- 11.4 The Public Contract Regulations 2015 state that where a public authority is to enter into a works contract in excess of £5,336,937.00 any procurement exercise to contract for those services must be conducted in accordance with the regulations and a failure to do so may be declared upon receipt of a procurement challenge anti-competitive and in breach of the regulations. The Council must update its procurement advice on the terms of the proposed final arrangement prior to entering into a Joint Venture arrangement with a partner.
- 11.5 Section 123 of the Local Government Act 1972 provides the Council with the power to dispose of land with the caveat that the Council must not do so for a consideration less than the best that can be reasonably obtained.
- 11.6 Circular 06/03 Local Government Act 1972 General Disposal Consent (England) 2003 provides criteria and guidance for circumstances for when a local authority considers it appropriate to dispose of land as an under-value.
- 11.7 Section 8 of the Local Authorities (Executive Arrangements) Meetings and Access to Information (England) Regulations 2012 sets out the meaning of a

“key decision” which is further defined in Article 12 of the Council’s Constitution.

- 11.8 Paragraph 3.12.3 of the Officer’s Scheme of Delegations provides authority to the Head of Major Projects and Investment to dispose of land in connection with the Council’s functions and to grant leases, easements, licences and wayleaves of, in, or over buildings or land in connection with the Council’s functions.
- 11.9 Paragraph 1.11 provides that all delegations shall be exercised in accordance with the Constitution and paragraph 1.12 provides that any officer exercising a delegation shall only do so in accordance with the Financial Procedure Rules.
- 11.10 The Council has obtained external legal advice in respect of the creation of the LLP; the documents referred to in paragraph 4.7 of this report and the transfer of the land into the LLP referred to in paragraph 5.16 of this report.

Background Papers

- Report to Joint Strategic Committee 06/11/2018 - Union Place Update
- Report to Joint Strategic Committee 10/04/2018 - Union Place Redevelopment
- Report to Joint Strategic Committee 08/02/2022 - Union Place - selection of preferred developer
- Report to Joint Strategic Committee 16/03/2022 - Union Place Joint Venture with Roffey Homes Update

Sustainability & Risk Assessment

1. Economic

The proposal to market the site for a mixed use scheme accords with the Adur and Worthing Economic Plan 2013 - 2023 where the Economic Priorities are named as Support Business, Develop Growth, Enhance Business Environment, Advance Local Skills, Encourage Sustainability and Promote Health and Wellbeing. The Economic Plan also states “It is vital that Adur and Worthing provides foundations for business to operate effectively” and promotes the following aims:

- Support Business
- Develop Growth
- Enhance Business Environment
- Advance Local Skills
- Encourage Sustainability
- Promote Health and Wellbeing

2. Social

2.1 Social Value the proposed approach to development of the site with mixed use will enhance the town and help to support the economic prosperity of the District.

2.2 Equality Issues Matter considered and no issues identified.

2.3 Community Safety Issues Matter considered and no issues identified.

2.4 Human Rights Issues Matter considered and no issues identified.

3. Environmental

It is considered that the existing undeveloped site contributes little in terms of biodiversity or ecology and that the sensitive redevelopment of the site provides opportunities to enhance these aspects. Buildings will be built to high standards of sustainability.

4. Governance

An internal officer board consisting of representatives from key departments essential to successful delivery has met and reviewed the programme at key stages of the marketing exercise.