

Derwenthorpe – Amendments to the “Agreement for Sale” and “Framework Agreement”

Summary

1. In October 2002 the council entered into an “Agreement for Sale” and an accompanying “Framework Agreement” with the Joseph Rowntree Housing Trust (JRHT) relating to land in the council’s ownership at Osbaldwick. In the intervening period and following a public inquiry JRHT have gained planning permission for 540 homes on the site and have recently had a reserved matters application approved on phase 1 of the development.
2. As a result of the length of time it has taken to progress this development a number of issues have arisen which require amendments to be made to the original agreements, both from the council’s and JRHT’s points of view. The purpose of this report is to seek Member approval for these proposed changes to allow the sale to go ahead and the development to proceed.

Background

3. The council and JRHT have been working together to realise the development of a highly sustainable community focussed development at the land north of Osbaldwick village for over 10 years. Planning permission for the development of 540 homes was granted in May 2007 on the site now named Derwenthorpe. The proposed development has been subject to widespread public consultation and participation throughout with an informal three way partnership between JRHT, the council and the community. Within this partnership the relationship between JRHT and the council was formalised by means of a Framework Agreement which sets out the responsibilities of the partners and the vehicle for involving the community.
4. Alongside the above agreement there is also an Agreement for Sale between the council and JRHT in which JRHT contracts to buy the council’s land subject to gaining access to the site from the required four directions and also subject to gaining planning approval. In return the council is guaranteed a payment of £5.575 million and 100% of the next £2 million of overage (assuming there is overage) and 50% of all subsequent overage.

Proposals

5. There have been a number of issues that have arisen over the period since the Agreement for Sale and the Framework Agreement were signed by the council and JRHT in October 2002. These have resulted in the need to amend the current agreements and it is proposed to do this by supplemental agreements which will address the following:-

Changes requested by JRHT

- Changes of terminology in relation to the Community Consultative Panel and the New Osbaldwick Committee being replaced by the Partnership Committee as required under the terms of the Section 106 Agreement.
- Extending the period for the satisfaction of the conditions precedent to allow for the Village Green application to be resolved (the original period ran out in October)
- Adding a new condition precedent to the sale agreement, namely that the Village Green application would be disposed of without there being a Village Green registered (or if part of the site was registered only a part that JRHT are willing to accept).
- Altering the terms of the Sale Agreement so it permits JRHT to “self develop” individual phases rather than requiring them to tender each phase for sale to housebuilders.

Changes that the council wish to be addressed

- A tightening of the agreement to ensure that there is a clear and express obligation on JRHT to seek to maximise the profits made from the development and thus to maximise the overage paid to the council.
- Further revision to the structure of the overage provisions to:
 - Be prescriptive in requiring a sale or development and imposing a timetable for it.
 - Provide a mechanism whereby the council may elect to call for an interim payment after sales of parts of the site and for a final payment at a defined longstop date.
 - Clarify how overage would be calculated in the event of the site being disposed of prior to full development and linking any such calculation to open market value of the land.
 - Ensure there is provision for including all receipts of all property constructed by JRHT both open market and affordable bearing in mind JRHT may well let but retain the freehold of a number of properties.

- Provide an explicit requirement on JRHT to maximise land sale proceeds or overall development profit or to minimise costs.
 - Define precisely a final payment date to the council.
- The agreed change of affordable housing from 35% to 40% is also recorded.

Consultation

6. There has been no specific consultation relating to the proposed changes to the two agreements in question however there has been extensive consultation relating to the development scheme both at the preplanning and planning stages.

Options

7. The proposed amendments to the agreements have been the outcome of several months of discussion and negotiation between JRHT and the council. As such they provide a way forward which addresses the up to date needs of both parties in updating the agreements.
8. **Option 1** - The council does have the option of not amending the agreement in the way proposed but seeking other/different amendments which would of course be subject to further discussion /negotiation with JRHT.
9. **Option 2** – The council could decide not to amend the agreement and leave it as previously drafted
10. **Option 3** – The council could agree to the amendments as proposed

Analysis

11. **Option 1** – The proposed amendments build on and update the previous agreements. They address the issues of both the council and JRHT and therefore it is not recommended that any further or different amendments are necessary.
12. **Option 2** – If the council were to unilaterally decide not to amend the agreements then JRHT could decide not to proceed with the development and the council would then need to find another partner to develop this site. There would of course be no guarantee that a different partner would not still require the same conditions as set out in the proposed agreements or would be prepared to pursue the sustainability and community approach currently proposed or pay a higher price for the site. If JRHT decided to proceed under the existing agreements then the council would lose the opportunity to address the matters set out in paragraph 5 above which significantly improve

its protection under the agreement. It is not therefore the recommended option.

13. **Option 3** – Three of the proposed changes requested by JRHT are a result of changed circumstances which have arisen over the period since the original agreements in October 2002. These relate to matters outside their control, namely the requirements of the planning permission involving continued community involvement; delays to the development largely caused by the need for a planning enquiry and the subsequent Village Green application which has meant that the end date set out in the original agreement ran out last October. The fourth change is to permit JRHT to “self build” individual phases rather than tender them to a house builder. This allows more control over the quality of the development in particular the overall sustainability of the development and the aspiration shared with the council to create a 21st century model village concept.

This option also considerably strengthens the agreement for sale from the council’s perspective. In particular the obligations placed on JRHT to maximise the overage payable to the council.

The proposed changes covered by option three have been subject to considerable discussion and negotiation between the council and JRHT and have been carefully drafted and scrutinised by the council’s appointed legal advisor. This option is therefore recommended.

Corporate Priorities

14. The development of Derwenthorpe which it is proposed be delivered in accordance with the revised agreements will link with the following council priorities:-

- Reduce the environmental impact of council activities and encourage, empower and promote others to do the same.
- Improve the quality and availability of decent affordable homes in the city.

Implications

15. **Financial:** The sale of Derwenthorpe will guarantee the council a capital receipt of £5.575 million with the expectation of a further £2million in overage and a 50% share of any further overage. The council’s capital programme for 2008/09 assumes that £2.95million of this receipt will be received with a further £2.625million in 2009/2010. Failure to reach agreement with JRHT on the proposed amendments would almost certainly prejudice the timing of these assumed receipts.

16. **Human Resources:** None directly from this report

17. **Equalities:** None

18. **Legal:** None

19. **Crime and Disorder:** None

20. **Information Technology:** None

21. **Property:** The agreements are for the sale of 2 Ha of council owned land immediately to the north of Osbaldwick. The council entered into the agreement for sale of this asset in October 2002 and this report relates to amendments to that agreement for sale which strengthen the council's position regarding level and timing of payment.

Risk Management

22. The current agreements between the council and JRHT contain specific risks relating to the level and timing of overage payments. The proposed amendments significantly strengthen the council's position and subsequently reduce the risk to the council.

Recommendations

23. Members are recommended to approve option 3 concerning the changes as set out in paragraph 5 above which will allow for the necessary amendments to the "Agreement for Sale" and "Framework Agreement" between the council and Joseph Rowntree Housing Trust.

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Report Approved Date 26/02/08

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Wards Affected: Osbaldwick

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Background Papers: Executive report 8th February 2002