


URGENT BUSINESS AND SUPPLEMENTARY INFORMATION
Executive
5 July 2021

Agenda Item Number	Page	Title	Officer Responsible	Reason Not Included with Original Agenda
14.	Pages 3 - 6	Graven Hill Village Development Company (Dev Co) - Creation of Additional Companies	Corporate Director Commercial Development, Assets & Investment	Report being reviewed and finalised at time of agenda dispatch
15.	Pages 7 - 16	Graven Hill Village Development Company (Dev Co) - Request for s278 works bond relating to land at A41 Pioneer Roundabout	Corporate Director Commercial Development, Assets & Investment	Report being reviewed and finalised at time of agenda dispatch
17.	Pages 17 - 18	Graven Hill Village Development Company (Dev Co) - Request for s278 works bond relating to land at A41 Pioneer Roundabout - Exempt Schedule	Corporate Director Commercial Development, Assets & Investment	Report being reviewed and finalised at time of agenda dispatch

If you need any further information about the meeting please contact Natasha Clark, Democratic and Elections democracy@cherwell-dc.gov.uk, 01295 221589

This page is intentionally left blank

Cherwell District Council

Executive

5 July 2021

Graven Hill Village Development Company (Dev Co) – Creation of Additional Companies

Report of Shareholder Representative

This report is public.

Purpose of report

To consider a request from Graven Hill Village Development Company (Dev Co) for the creation of an additional subsidiary company that is required to facilitate the leases for the commercial units as required as part of the delivery of Graven Hill.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the creation by Dev Co of a special purpose vehicle (SPV) as a company limited by shares and that Dev Co be requested to prepare governance documents for final approval by the Shareholder Representative, in consultation with the Chairman of the Shareholder Board before registration and director nominations occur.
- 1.2 That the new company be included, along with Dev Co's existing subsidiary companies, within the shareholder agreement between the council (1) Graven Hill Village Holdings Limited (2) and Dev Co (3) entered 30 September 2019.

2.0 Introduction

- 2.1 The Shareholder Representative will present the report for consideration. The request from Dev Co to set-up a subsidiary company stems from the need to lease out the commercial units effectively and legally and in order to facilitate this a subsidiary company will need to be set-up.

3.0 Report Details

- 3.1 A necessary consequence of the development process for the Graven Hill site is the requirement to set up subsidiary companies to carry out specific roles. The actual requirement for additional subsidiary companies will be determined over time as the process of development continues and to affect the most efficient methods of

delivery. This was envisaged during the initial establishment of the Graven Hill entities.

- 3.2 Dev Co is the landlord for the commercial / retail units beneath the apartment blocks situated at Block E on the site.
- 3.3 Dev Co intend that these commercial / retail units be disposed of to a Graven Hill group company, being the structure offering the most tax efficient benefits, and because Dev Co cannot grant a lease to themselves, Dev Co have taken legal advice on the most appropriate method to facilitate the leases. The advice is to set up a special purpose vehicle in the form of a company limited by shares to be the tenant for the commercial head-leases (a head lease is a lease to an entity that will subsequently grant leases to sub-lessees who will be tenants in possession).
- 3.4 The commercial head-leases could then be assigned by the SPV at a premium to buyers or the SPV can underlet the commercial/ retail units at a rack rent prior to assigning the head-leases.
- 3.5 Directors appointed to the new company will need to be nominated to enable incorporation, and the process will follow the previous subsidiary pattern of being two existing Dev Co directors. The two directors appointed to the existing subsidiaries are Ian Corkin (CDC Member) and Adrian Unitt (Dev Co Operations Director).
- 3.6 Dev Co has already set-up three subsidiary companies for the specific property management of each residential area and apartment block as approved by the Shareholder Committee in December 2016:
 - Graven Hill Village Management Company Limited
 - Graven Hill Village Management Company Block A Limited and
 - Graven Hill Village Management Company Block E Limited.

These companies are all limited by guarantee as it is much easier to transfer membership when, for example, an apartment changes hands as there are no share certificates involved.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The proposals in this report are designed to ensure that Dev Co has in place an effective governance structure to enable it to meet its aims and delivery objectives and in so doing safeguard the councils' investment and return on investment.

5.0 Consultation

- 5.1 The recommendations in this report have been subject to discussion between the Shareholder Representatives, CDC Finance Representatives and Dev Co's Managing Director and Finance Director.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

None Applicable

7.0 Implications

Financial and Resource Implications

- 7.1 There are no direct financial implications arising from this report at this time. Graven Hill have confirmed that funding required to obtain legal and technical advice, register and operate the companies is contained within existing budgets and the Graven Hill loan.

Comments checked by:

Michael Furness, Assistant Director Finance. Telephone:01295 221845, Email: Michael.furness@cherwell-dc.gov.uk

Legal Implications

- 7.2 The recommendations in this report are intended to address Dev Co's obligation under its shareholder agreement with the council to obtain the council's consent to the formation of subsidiary companies, with appropriate delegation to Shareholder Representative to approve final governance documents for the new company when these are available from Dev Co.

It is noted that Dev Co have procured their own legal advice in relation to the most appropriate vehicle for managing the commercial/retail unit leases.

Comments checked by:

Richard Hawtin, Team leader – Non-contentious, Telephone: 01295 221695, Email: richard.hawtin@cherwell-dc.gov.uk

Risk Implications

- 7.3 The proposals set out in this report mitigate risk to the council in ensuring that Graven Hill has the correct governance in place and is able to safeguard the council's investment and make a return on that investment.

Comments checked by:

Louise Tustian, Head of Insight and Corporate Programmes, Telephone: 01295 221786, Email: Louise.Tustian@cherwell-dc.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: **No**

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Not Applicable

Lead Councillor

Not Applicable

Document Information

Appendix number and title

- None

Background papers

None

Report Author and contact details

Steve Jordan, Shareholder Representative. 01295 221526, steve.jordan@cherwell-dc.gov.uk

Cherwell District Council

Executive

5 July 2021

Graven Hill Village Development Company (Dev Co) – Request for s278 works bond relating to land at A41 Pioneer Roundabout

Report of Shareholder Representative

This report is public save that the sums stated in it and Appendix 1 are exempt from publication by virtue of paragraph 3 of Schedule 12A of Local Government Act 1972

Purpose of report

To bring to the attention of the Executive the request from Graven Hill Village Development Company Ltd (Dev Co) for the Council to act as surety in a performance bond for highway works to be undertaken by Dev Co under section 278 of the Highways Act 1980, and for the Executive to agree in principle to that request and to delegate to the Shareholder Representative authority to negotiate and agree the formal documentation in relation to that performance bond, in consultation with the s.151 Officer and the Monitoring Officer.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve in principle that the Council act as surety for Dev Co in respect of a performance bond (up to the sum referred to in the schedule to this report) relating to the construction of highway works by Dev Co on land at A41 Pioneer Roundabout pursuant to an agreement between Dev Co and Oxfordshire County Council (as local highway authority) to be made under section 278 of the Highways Act 1980.
- 1.2 To delegate to the Shareholder Representative authority to negotiate and agree the formal documentation in relation to that bond, in consultation with the s.151 Officer and the Monitoring Officer (or, in the event they are conflicted, their nominated deputies).
- 1.3 To agree that Dev Co be requested to pay to the council 1% of the value of the agreed bond for use of the facility.

2.0 Introduction

- 2.1 The Shareholder Representative will give a verbal update.

3.0 Report Details

- 3.1 Dev Co is in discussion with Oxfordshire County Council (as local highway authority) regarding terms for a proposed agreement with the County Council under section 278 of the Highways Act 1980 relating to the construction of a roundabout on the A41 Pioneer Road in Bicester. This work will benefit the whole of the Graven Hill development when completed as the roundabout sits at the main entrance to the site.
- 3.2 As is usual with such agreements, the county council requires Dev Co to provide a bond to guarantee the due performance of the highway works by Dev Co, and Dev Co (a subsidiary of Graven Hill Village Holding Company Ltd, wholly owned by the district council) have accordingly approached the district council with a request that the district council acts as surety under the section 278 bond.
- 3.3 Negotiations on the terms of the section 278 agreement and supporting bond are on-going between Dev Co and the county council, but a performance bond in the sum set out in the schedule to this report is expected to be provided by Dev Co. The draft version of the bond agreement is attached at Appendix A.
- 3.4 By agreeing in principle to act as surety up to the total value set out in the schedule to this report a clear boundary is established within which the Shareholder Representative, supported by the Section 151 Officer and Monitoring Officer, can act. This will allow the Shareholder Representative to respond to Graven Hill in a timely manner minimising any delay or impact to its commercial negotiations.
- 3.5 CDC has previously entered bonds in respect of a highways agreement for Rodney House Roundabout works as well as the bond given in relation to the original section 106 agreement entered by Dev Co.
- 3.6 It is proposed to charge Dev Co 1% of the bond value as consideration for the council acting as surety in this instance, which is consistent with previous arrangements made where the council has been requested to stand for Dev Co as guarantor.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Through agreeing with the recommendations in this report the council is ensuring that Dev Co can act swiftly to meet its aims and delivery objectives in relation to the works at the A41 Pioneer Roundabout and in doing so safeguard the council's investment and return on investment.

5.0 Consultation

- 5.1 The recommendations in this report have been subject to discussion between the Shareholder Representatives, CDC Finance Representatives and the Dev Co Managing Director and Finance Director.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

None Applicable

7.0 Implications

Financial and Resource Implications

- 7.1 Given the extent of the Council's investment in Graven Hill, it is in the Council's interests to ensure that this agreement progresses.

There is no budget for the value of the guarantees the council has provided to date and/or may be requested to provide in the future. This is because it is not expected to result in a cashflow for the council. The 1% fee payable by Graven Hill will offset the "Fair Value" accounting cost of the guarantee, resulting in a neutral net financial position for the Council.

The council, through its Shareholder governance arrangements, will always seek to work with Graven Hill to avoid any situation in which Graven Hill would be unable to meet its commitments. Should the worst happen, and the council had to step in to pay the bond on behalf of Graven Hill, the appropriate authorisations to do so would be obtained.

Comments checked by:

Michael Furness, Assistant Director Finance. Telephone: 01295 221845, Email: Michael.furness@cherwell-dc.gov.uk

Legal Implications

- 7.2 The council's legal unit will assist in the completion of the proposed performance bond.

Comments checked by:

Richard Hawtin, Team leader – Non-contentious, Telephone: 01295 221695, Email: richard.hawtin@cherwell-dc.gov.uk

Risk Implications

- 7.3 The risk implication is derived from the increased financial exposure. Whilst the level of the risk can be clearly defined (up to the sum stated in the schedule to this report) the likelihood of the risk occurring is dependant predominantly on Graven Hill. With the current oversight via the Shareholder Committee, the existing Graven Hill Business plan and ongoing communications between both parties this risk is already managed. Both Graven Hill's Audit record and strong credit rating are

evidence of appropriate financial management which would also support an assessment that the likelihood of this risk happening is low.

Comments checked by:

Louise Tustian, Head of Insight and Corporate Programmes, Telephone: 01295 221786, Email: Louise.Tustian@cherwell-dc.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Not Applicable

Lead Councillor

Not Applicable

Document Information

Appendix number and title

- Appendix 1 - Draft Bond Agreement

Background papers

None

Report Author and contact details

Steve Jorden, Shareholder Representative. 01295 221526, steve.jorden@cherwell-dc.gov.uk

DATED _____ **2021**

CHERWELL DISTRICT COUNCIL

- and -

GRAVEN HILL VILLAGE DEVELOPMENT COMPANY

- and -

THE OXFORDSHIRE COUNTY COUNCIL

(WORKS) BOND
relating to land at
A41 Pioneer Roundabout,
Graven Hill, Bicester

EF/55188

Anita Bradley
Director of Law and Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS BOND dated the _____ day of _____ 2021

MADE BETWEEN

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** (“the Council”)
- (2) **GRAVEN HILL VILLAGE DEVELOPMENT COMPANY LIMITED** (company registration number 9102699) whose registered office is at The Plot Shop, Pioneer Square, Bicester, Oxon, United Kingdom, OX26 6JU (“the Owner”)
- (4) **CHERWELL DISTRICT COUNCIL** of Bodicote House White Post Road Bodicote Banbury OX15 4AA (“the Surety”)

Preliminary and Definitions

1. By an Agreement (“the Agreement”) of even date herewith between the Council the Owner the Secretary of State for Defence and Cherwell District Council the Owner is under obligation to execute and complete in accordance with the terms and conditions of the Agreement certain works in connection with development of a roundabout on A41 Pioneer Road Bicester in the County of Oxfordshire (“the Works”)
2. “The Bond Sum” means the sum of XXXXX

NOW THIS DEED WITNESETH as follows:-

1. The Owner and the Surety are jointly and severally bound to the Council for the Bond Sum
2. If the Owner shall duly perform and observe all the terms provisions conditions and stipulations of the Agreement on its part to be performed and observed according to the true purport intent and meaning thereof or if on default by the Owner the Surety shall satisfy and discharge the established and ascertained

damages sustained by the Council up to the amount of the Bond Sum then this Bond shall be null and void **BUT OTHERWISE** this Bond shall be and remain in full force and effect

3. Any claim hereunder shall be accompanied by a statement signed by the Solicitor to the Council that the amount claimed represents the amount payable and such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council. [Without prejudice to the generality of the foregoing none of the following shall be required:-
 - 3.1 the Council being obliged to make any enquiry of the Owner or the Surety
 - 3.2 the need to take any legal action against the Owner
 - 3.3 any proof of default or liability on the part of the Owner]
4. The Surety shall within 14 days after service of any claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment for any reason notwithstanding any objection by the Owner or any other party provided always that the maximum aggregate liability of the Surety does not exceed the Bond Sum
5. The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bond Sum
6. Without prejudice to the generality of clause 5 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:

- 6.1 any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety;
 - 6.2 any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time) or in the extent or nature of the Works;
 - 6.3 any obligation on the part of the Owner being void;
 - 6.4 the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;
 - 6.5 any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary
7. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act
 8. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.
 9. This Bond shall be reduced and as applicable discharged in accordance with the provisions of the Agreement

THIS BOND has been executed as a deed and is delivered the day and year first before written

THE COMMON SEAL of)

OXFORDSHIRE COUNTY COUNCIL)

was hereunto affixed in the)

presence of:-)

Chief Legal Officer/Designated Officer

EXECUTED as a **DEED** by)

GRAVEN HILL VILLAGE)

DEVELOPMENT COMPANY LIMITED)

acting by a director in the presence of:)

Director:

Witness:

The **COMMON SEAL** of)

CHERWELL DISTRICT COUNCIL)

was affixed in the presence of:)

Authorised Signatory:

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank