

# **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](mailto: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](mailto:steve.jorden@cherwell-dc.gov.uk)