

# **Cherwell District Council**

## **Executive**

**4 October 2021**

### **Graven Hill Development Company (Dev Co) – Request for s38 agreement (Highways Act 1980) works bonds relating to highway infrastructure delivered by Dev Co.**

#### **Report of Shareholder Representative**

This report is public. Appendix 1 is 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 three performance bonds for roadway infrastructure works to be undertaken by Dev Co under section 38 of the Highways Act 1980.

#### **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 three performance bonds (up to the sum referred to in Appendix 1 to this report) relating to the construction of highway works by Dev Co pursuant to agreements between Dev Co and Oxfordshire County Council (as local highway authority) to be made under section 38 of the Highways Act 1980.
- 1.2 To delegate to the Shareholder Representative authority to agree the formal documentation in relation to the bonds, in consultation with the s.151 Officer and the Monitoring Officer.
- 1.3 To agree that Dev Co be requested to pay to the council 1% of the value of the agreed bonds for use of the facility.

#### **2.0 Introduction**

- 2.1 The report details the performance bonds that are required by Oxfordshire County Council in respect of the future adoption of the roadway infrastructure delivered by Dev Co. There are three bonds required as detailed in the report and attached Appendix 1. By approving the provision of these bonds, the council is ensuring that Dev Co can act swiftly to meet its aims and delivery objectives in relation to the highway works and in doing so safeguard the council's investment and return on investment.

### **3.0 Report Details**

- 3.1 Performance bonds (including the three bonds that form the request contained in this report) are a prerequisite to Dev Co entering Section 38 Agreements (Highways Act 1980) with Oxfordshire County Council in respect of the future adoption by the County Council of roadway infrastructure delivered by Dev Co.
- 3.2 The infrastructure projects that the three bonds are required for are:
- delivery of the employment access land road
  - delivery of the western spine road
  - delivery of the road infrastructure for the first plots in the next phase (Homezone 3a and 3b)
- Details of the values and timings for these bonds are contained in Appendix 1.
- 3.3 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 38 bonds.
- 3.4 Negotiations on the terms of the section 38 agreements and supporting bond are on-going between Dev Co and the county council, but performance bonds in the sum set out in Appendix 1 to this report are expected to be provided by Dev Co. The value of the bonds is reduced incrementally over time and the bonds would only be called upon in the event that Dev Co defaults on its obligations.
- 3.5 By agreeing in principle to act as surety up to the total value set out in Appendix 1 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.
- 3.6 CDC has previously entered bonds in respect of highways agreements for Dev Co. The details of the previous and future bonds including value and timing are contained in the table in Appendix 1.
- 3.7 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. This payment is considered necessary and appropriate to represent market value and is seen to accord with how a normal investor would act in the pursuit of securing the value of its investment.

### **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 highway works and in doing so safeguard the council's investment and return on investment.

## **5.0 Consultation**

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.

Option 1: Not to give a performance bond. This has been dismissed by officers on the grounds that performance bonds are prerequisites for entering section 38 adoption agreements with the county council, and that, by giving a performance bond to a company in which the council has a stake, the council is acting in no less a manner than a parent company would in relation to a subsidiary.

## **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 and bonds 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 or bond, 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 and the Council would have to identify sufficient revenue resources to pay for this.

External Audit is placing significantly greater focus on the number of guarantees/bonds that the Council is agreeing to. This is a significant factor in the Council's "Going Concern" assessment and the Council must place close attention to the combined value of debt and guarantees in relation to its overall borrowing limits.

Comments checked by:

Michael Furness, Assistant Director Finance. Telephone:01295 221845, Email: [Michael.furness@cherwell-dc.gov.uk](mailto:Michael.furness@cherwell-dc.gov.uk)

### **Legal Implications**

- 7.2 The council's legal unit will assist in the completion of the proposed performance bonds to ensure the same are compliant with usual models and are consistent with bonds previously provided.

Comments checked by:

Richard Hawtin, Team leader – Non-contentious, Telephone: 01295 221695, Email: [richard.hawtin@cherwell-dc.gov.uk](mailto: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 Appendix 1 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. These risks are managed as part of the GH Dev Co risk register.

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 – Table detailing bond amounts and timings

### **Background papers**

None

**Report Author and contact details**

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