

Executive

BICESTER TOWN CENTRE REDEVELOPMENT SCHEME

12 JANUARY 2009

Report of Head of Economic Development and Estates

PURPOSE OF REPORT

To update the Executive on progress made on the scheme, and to consider the request that the Developer be granted a further Exclusivity Agreement

This report is public

Recommendations

The Executive is recommended:

- (1) To note the changes being made to the ownership of Town Centre Retail (Bicester) Ltd, (TCR) the Council's development partner.
- (2) To approve the grant of an Exclusivity Agreement to TCR for a period expiring on 31.12.09.

Executive Summary

Introduction

- 1.1 Members will be aware that progress on the implementation of this scheme has been delayed due to problems over the viability of the project, exacerbated by the general lack of availability of development finance.
- 1.2 Arrangements to address these problems have been agreed in principle, but they require some restructuring of the legal framework previously envisaged, and work to achieve this is being progressed.
- 1.3 Meanwhile, Sainsbury's will be investing substantially in pre-development costs, and seek a further period of Exclusivity, during which the Council agrees not to seek to bring forward this scheme with any other party.

Proposals

That a further Exclusivity Agreement be granted to TCR under which the Council agrees not to pursue the redevelopment of its land with any other party prior to 31.12.09.

Conclusion

- 1.5 TCR has already invested substantial sums in professional fees and in acquiring properties affected by the scheme, but currently no formal development agreement exists. As further expenditure is required to take these proposals forward, it is appropriate to grant the developer a further period of Exclusivity. The alternative would be to delay progress until a formal Development Agreement has been completed, and this is likely to take some months.

Background Information

- 2.1 In 2005 the Council appointed Stockdale, supported by Sainsbury's, to bring forward this development. Stockdale formed a subsidiary company, TCR, for this purpose, and an agreement was made between TCR and Sainsbury's which provides for Sainsbury's to lease the proposed supermarket and car park. It was the intention that TCR would raise the necessary development finance via conventional borrowing.
- 2.2 After it became apparent that it would not be possible to finance the development in the proposed fashion, alternatives were considered. Earlier in 2008 the Council agreed, in principle, to invest in the project by agreeing to acquire part of the scheme, and similarly Sainsbury's agreed to invest further in the project, in order to overcome the funding problems. However this required changes in the ownership of TCR.
- 2.3 Terms have now been agreed for Sainsbury's to acquire TCR from Stockdale, so they have a greater legal and financial interest in the scheme, and are able to bring in the development finance required. Stockdale will continue to act as project manager for TCR.
- 2.4 Whilst terms were agreed some time ago for a formal Development Agreement between the Council and TCR, it will be necessary to revise the terms for that Agreement, to reflect the new arrangements. It is likely to take some time to complete this Agreement, as it is complex, imposing significant financial rights and obligations on the parties, and securing the final ownership structure which will apply on completion.
- 2.5 In order to move the project forward by acquiring any remaining property interests, making any necessary amendments to the detailed design, and developing construction drawings and specifications, further significant expenditure by TCR is required. Sainsbury's have indicated their willingness to finance this, but naturally they wish to be certain that they have a reasonable period to do so without the risk that the Council will decide to seek an alternative developer for the scheme. Consequently an Exclusivity Agreement is requested.
- 2.6 The last Exclusivity Agreement granted to TCR expired on 31.12.2007. Should the Council choose to break the new Agreement, and negotiate with another developer for the development of its property within the scheme, it would be liable to reimburse costs incurred by TCR to a maximum of £1m.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The proposals are designed to enable this proposed development to come forward as soon as possible. Current economic circumstances are extremely unfavourable for such developments, but Sainsbury's have indicated that they remain very keen to deliver this project.
- 3.2 TCR have requested that they be granted an Exclusivity period of 1 year, with an option to extend for a further year in the event that substantive matters remain outstanding at the end of the first year. It is not recommended that this option for a further year be granted at this stage. It is clear that a

significant amount of detail remains to be agreed, and it is not considered appropriate to grant such a long period of Exclusivity at this time. Consequently an Agreement ending on 31 December 2009 is recommended.

- 3.3 If the Council was not minded to continue to pursue this project with TCR, along the lines outlined in the report, it is very likely that there would be a substantial delay before another developer could be found, and it may well be necessary to reduce the content of the scheme.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One** To grant a further period of Exclusivity until 31 December 2009 to TCR, so they can continue to bring forward the development scheme.
- Option Two** To grant a period of Exclusivity for one year, with an option for TCR to extend for a further year, if substantive matters remain outstanding at the initial expiry date.
- Option Three** The only other option would be to discontinue negotiations with TCR, which would imply a significant delay before it might become possible to find another developer willing and able to progress a redevelopment scheme. It should also be noted that TCR and Sainsbury's currently own a significant part of the site.

Implications

Financial: The delay in completing a development agreement has resulted in a various costs not being recovered during the current financial year. However, the delay in commencing work has resulted in additional car park income being received this year, as the relevant car parks continue in operation.

It is proposed that provision be made in next year's estimates for continuing consultancy support, and for costs to be recovered when the revised development agreement is completed. The detail of these arrangements is not treated as public information.

Comments checked by Eric Meadows, Service accountant
01295 221552

Legal: The proposed Exclusivity Agreement is a simple document, and it is not anticipated that difficult issues will arise in completing this. Members should, however, be aware that it does create a potential liability to compensate TCR to a maximum of £1m, should the

Council decide to withdraw from negotiations or seek an alternative developer, during the Exclusivity period.

Comments checked by Malcolm Saunders, Senior Legal Assistant 01295 221692

Risk Management:

There are significant risks to the Council's reputation, and to the commercial vitality of Bicester, should the Council fail to deliver this scheme. The proposed action is considered to be the best way of ensuring that the scheme does proceed. The financial risks to the Council associated with the Exclusivity Agreement are set out above.

Comments checked by Rosemary Watts, Risk Management and Insurance Officer 01295 221566

Wards Affected

All Wards in the Bicester area

Corporate Plan Themes

District of Opportunity

Executive Portfolio

Councillor Norman Bolster
Portfolio Holder for Economic Development and Estates

Document Information

Appendix No	Title
Background Papers	
None	
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