

Cherwell District Council

Executive

9 January 2017

Solihull Partnership

Report of Head of Regeneration & Housing

Purpose of report

To update on the progress being made in respect of completing works and achieving a resolution to issues impacting on the delivery of schemes contained within the Solihull Partnership arrangements approved in January 2016.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the progress being made towards achieving completion of the maximum number of projects between December 2016 and 31 March 2017.
- 1.2. To note the management intervention taken and request that Executive support the implementation of an intensive project management approach in respect of those schemes being completed by SMBC and the revised programme. And further note that costs are intended to be recovered, although the split between utilising elements of the management fee previously allocated to SMBC for the original programme and those additional procurement costs to complete schemes through CDC resources have yet to be finally agreed. These negotiations should be concluded at the Commercial Meeting on 17 January 2017.
- 1.3 To support a “mixed approach” to the delivery of remaining schemes so that those schemes not being completed through SMBC can, if necessary, be procured through CDC’s own resources and delivered within budgets approved.

2.0 Information

- 2.1 Members will already be aware that a presentation was made to the Budget Planning Committee on Tuesday 29 November regarding performance issues in respect of the Solihull Partnership. This followed a request by members of the committee to understand the detail relating to the delivery of the capital programme which was being delivered through the partnership arrangements.

- 2.2 Members of the committee indicated their dissatisfaction and concern that progress around spending capital monies allocated for this initiative would not be substantially spent before 31 March 2017. The presentation material and information provided by Virtus Consult Limited (Virtus), the recently appointed independent specialist consultants to review progress had indicated that a maximum of approx. 30% of the capital programme would be achieved by 31 March 2017.
- 2.3 Officers were tasked with delivering responses to a wide range of questions raised by members and also with critically reviewing the programme arrangements. Officers specifically were asked to review whether additional delivery of projects could be achieved by the end of this financial year thus increasing delivery outputs and expenditure.
- 2.4 Further, officers proposed that a working group with member involvement be established to agree the detailed arrangements for progressing schemes and critically review those schemes that were to be finally delivered by Solihull during the remaining part of the 2016-17 year. This group met for the first time on 16 December 2016, agreed terms of reference and a planned approach to the intensive monitoring of progress regarding the delivery of the remaining programme. Members of the group will meet ahead of any planned Budget Planning Committee to ensure effective communication of progress with the Chairman of the Budget Planning Committee into the Financial Planning Committee itself.
- 2.5 This report aims to indicate those matters that have been and are currently being progressed. Executive are reminded that a meeting with SMBC officers took place on 14 December 2016 to discuss how improvements could be made to the delivery process to achieve the maximum number of completed schemes by 31 March 2017. A further commercial meeting with Solihull will take place on 17 January 2017.

3.0 Report Details

- 3.1 Since the meeting of the Budget Planning Committee, officers have been reviewing a number of key elements that relate to the current arrangements between CDC and Solihull MBC covering the partnership and also the potential remedial steps that need to be taken to ensure maximum delivery of projects through to the 31 March 2017.
- 3.2 Executive should note that the proposals for ensuring the effective delivery of schemes by Solihull and those other schemes that may require separate procurement will involve the deployment of Virtus to provide the necessary intensive management regime. Below, under the Financial Implications Section we have identified how such costs are intended to be covered, although the split between utilising elements of the management fee previously allocated to SMBC for the original programme and those additional procurement costs to complete schemes through CDC resources have yet to be finally agreed but we anticipate concluding these negotiations at the Commercial Meeting scheduled with SMBC on 17 January 2017. Members should be aware however, that our stated objective of completing the projects will still be done within the overall budget approval and that no additional costs will therefore fall on CDC.

- 3.3 As I stated above, we covered a number of areas in our discussions with SMBC from 14 December 2016. The areas of consideration and discussion were:-
- Agree those schemes to be completed by SMBC;
 - Define roles and responsibilities to improve delivery;
 - Review governance/communication arrangements;
 - Review contractual /legal status;
 - Improve overall project management of delivery.

Current position

- 3.4 Below is a more detailed explanation of each of the areas of discussion covered with SMBC on 14 December. Officers would however confirm that in terms of the contextual discussions before looking at how we might improve the overall position, both sides identified where they felt some of the current challenges had emerged.

Agree Schemes

- 3.5 SMBC were tasked with taking away the current scheme list and projects to complete and review their ability to deliver schemes up to 31 March 2017 and those other schemes which would be completed during 2017/18. They were further challenged with indicating the specific dependencies required to meet the delivery aspirations. Accordingly, they have now submitted their detailed comments relating to each project, the dependencies in each case and an indication of when the project will be delivered. At the Council meeting on 19 December, as part of a written response to an enquiry from Councillor Woodcock, Councillor Lynn Pratt provided an overview of these discussions and this is attached as Appendix 1.

As can be seen by Appendix 1, the discussions with SMBC have progressed. Decisions have been taken which have resulted in a reduction of the programme of £419,000 so the revised scheme total excluding management fee is £1.616m. It is estimated that 55% of this work will be delivered by 31 March 2017 with the remaining 45% being delivered no later than December 2017.

Define roles and responsibilities

- 3.6 Both parties agreed that it was necessary to clearly define roles and responsibilities to ensure effective progress on individual projects. Members should note that we identified confusion around respected roles and responsibilities in relation to particularly scoping of works, design issues, and specifications. By redefining the roles and responsibilities it should cut down unnecessary processes and improve the overall communication arrangements put in place. Subsequently, SMBC have been requested to produce the first examples of these redefined arrangements. A meeting between the Head of Regeneration and Housing at CDC and the Head of Service at SMBC is planned for early January to complete this task and issue the respective agreed roles and responsibilities.

Review governance/communication arrangements

- 3.7 SMBC officers were notified of the high importance this overall partnership had with members at CDC. Accordingly, they were advised that new governance and reporting arrangements were being put in place. This includes the on-going participation of nominated members through the new internal working group now established and an increased and improved regime of reporting into the Budget Planning Committee. Further, from the delivery perspective of projects, it was

agreed that the two new project managers, one at SMBC and one at CDC (Virtus) would act in a new coordinating role to ensure better lines of communication, improved responses to any technical issues arising and overall operational governance to ensure compliance and delivery of the maximum number of schemes.

Review legal status

- 3.8 Both parties accepted that there was a need to clarify and improve the current legal status as further schemes were implemented and completed. Currently, the issuing of individual purchase orders by CDC provides for a means of achieving projects, however, this system fails to provide either the Council or SMBC with sufficient clarity as to precisely whose legal terms will govern the contractual relationship going forward. This issue is further complicated by the fact that certain statutory rules affecting all construction contracts (principally around payment terms and arbitration) will regardless be binding on both parties where existing terms fall short of the statutory requirement.
- 3.9 On this basis, it was agreed that some formal agreement picking up the wider legal relationship issues needed to be put in place. A meeting therefore will take place between SMBC and CDC to conclude these legal relationship matters after the roles and responsibilities have been clarified.
- 3.10 CDC's legal team have been engaged to review the draft contractual documents which SMBC have prepared and have highlighted substantial concerns around the form of those documents. Those concerns cover issues from the absence of any contractual terms to deal with specific issues of law around construction work and also issues relating more directly to the Council's relationship with SMBC with the principle concerns around the contract documents being the:
1. requirement for CDC to use SMBC exclusively for all types of work which is within the scope of the SMBC arrangement;
 2. length of the term of the contract itself;
 3. assumed minimum level of spend;
 4. potential for extra costs to arise under the agreements; and
 5. contractual approach which is predominantly based on trust rather than any more certain contractual principals.
- 3.11 Given the nature of the concerns, the legal team have produced revised copies of the contractual documents which highlight these concerns and present solutions to achieve a more favourable contractual position for CDC, but also a position which is fairer, more transparent and more robust which is to the benefit of SMBC as well. Whilst the Council recognises the need to negotiate and agree the basis of a refreshed working relationship with SMBC, therefore, the changes previously proposed will initially inform the Council's approach to those discussions.

Improve overall project management of delivery

- 3.12 As mentioned above, a revised programme (Appendix 1) has been critically reviewed by SMBC. The introduction of new project management resources at both SMBC and CDC are aimed at controlling and monitoring progress in an intensive way for each individual scheme. Both parties have agreed to review the effectiveness of this approach as an on-going process of the overall monitoring

arrangements. We have also agreed the escalation process in the event that the monitoring RAG status shows a Red Indicator.

Improvement Plan

- 3.13 The above information relating to the current position will be finalised in early January 2017 and an agreed improvement plan will be issued by both parties. This will capture the final arrangements in respect of the project management regime roles and responsibilities, performance, KPI objectives and overall legal status etc. by which the parties will work. This document will be presented initially to the Working Group at CDC and then Budget Planning Committee so that members can support and endorse the final improvement plan approach aimed at achieving the maximum number of schemes delivered and complete up to 31 March 2017 but also recognising those other schemes for final completion during 2017/18.

Resources/Finance

- 3.14 As mentioned above, the intention is to complete the revised programme through a mixture of SMBC and relatively minor CDC procurement. The core resource to improve overall performance is around the new project management arrangements identified above. In respect of CDC, this will involve our continuing arrangement with Virtus.
- 3.15 The stated objective however, is that those costs incurred by CDC for employing the services of Virtus in the PM role will be recovered in full from income derived from the existing approved capital programme of £2.2m and SMBC. .
- 3.17 Once the commercial negotiations have been concluded, the working group, Budget Planning Committee and Executive will be advised of the detailed financial arrangements.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The series of projects allocated to SMBC should have been more intensively managed. Lessons however have been learnt and the actions indicated above in this report are now aimed at delivering the maximum number of schemes and therefore expenditure of approved budget by 31 March 2017.
- 4.2 Officers have jointly agreed with SMBC the most effective approach to maximise delivery and a critical review of projects to complete has been undertaken. This combined with the improved governance, member oversight and increased reporting process should enable effective and transparent monitoring of progress.
- 4.3 Overall, the stated objective of delivering these projects and keeping costs within the approved capital programme is still the primary objective. The final arrangements with SMBC in terms of reviewing the management fee etc. will be concluded at the Commercial meeting on 17 January 2017. A full detailed financial breakdown of how all costs are to be met to complete delivery of schemes will then be available for members' scrutiny.
- 4.4 The final legal position will be concluded after clarification of roles and responsibilities and again this will be subject to members scrutiny once agreement has been reached.

5.0 Consultation

- 5.1 Clearly, following the meeting of the Budget Planning Committee a significant number of members are aware of the present position. Further on-going meetings through the member working group established for the purpose will continue. Improved reporting lines into the Budget Planning Committee will also aid the overall member involvement and consultation arrangements.
- 5.2 Officers are aware of the sensitivities surrounding at least one major scheme that being Orchard Way. It is now planned to complete an early consultation event with key stakeholders at Orchard Way during January 2017 around the planned improvements to the shop frontages and play area. This will form the basis of trying to secure delivery of this element of the Orchard Way improvements by 31 March 2017. Further consultation around the wider scope of works at Orchard Way will follow. Similarly, consultation considerations on other projects will be reviewed accordingly.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The above information contained within the report aims at realistically achieving the best outcome in terms of scheme delivery through to 31 March 2017.

7.0 Implications

Financial and Resource Implications

- 7.1 These have been outlined above and once commercial negotiations have been completed, a detailed financial appraisal of the additional costs and how these are to be covered within existing approved budgets will be submitted accordingly.

Comments checked by:

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Legal Implications

- 7.2 These are set out under the heading *legal status above*, which recognises the need to achieve a consensus with SMBC on governing legal terms in January 2017. Members will then be advised of these arrangements. The current position will remain the status quo until such time as the final agreement is reached. This enables the Council to continue to place orders with SMBC if it is necessary to secure works in the short term with no commitment from the Council to SMBC for any particular term, or for any volumes of work. The Council has the comfort that there is sufficient surety around the form of the contract which will govern any services provided by SMBC on the basis of a Purchase Order. This surety is formed on the basis that the draft provisions of the SMBC framework agreement will apply, and be supplemented by statutory provisions, which at least provide the Council with some enforceable rights in respect of any existing projects, or any future projects prior to the conclusion of the legal agreements.

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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

Those covered by the Solihull MBC partnership initiative.

Links to Corporate Plan and Policy Framework

These will be considered and identified at the appropriate time.

Lead Councillor

Councillor Lynn Pratt, Lead Member for Estates and the Economy

Document Information

Appendix No	Title
Appendix 1	CDC Capital Programme Status Overview
Background Papers	
None	
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