



**COUNCILLOR
ANGELA DAVIES**

CABINET

1 OCTOBER 2018

WIRRAL WATERS ONE

Councillor Angela Davies, Cabinet Member for Jobs and Growth said:

“Creating new homes on brownfield sites has never been more important. Huge Government house-building targets mean we have to take every opportunity to encourage, enable and drive landowners to develop brownfield sites and build the homes Wirral residents need.

“We have been clear with every developer and landowner in this borough who has planning permissions in place: we will support you every step of the way, but we need you to build the homes you promised. The Wirral Waters One proposal demonstrates just how serious we are in our determination to get brownfield sites developed.

“This is an ambitious and entrepreneurial move by Wirral Council. We know we need housing to be developed on brownfield sites and at Wirral Waters in particular, to relieve some pressure from our Green Belt. It is also clear these type of schemes are always difficult for private developers to make viable.

“The Council has stepped in and made it work. We have secured national funding to improve local infrastructure, we have worked hand in hand with the developers to make sure the quality of the homes was at the right level, and we have pulled together a solid commercial approach to make sure the financing needed to make the scheme a reality is available.

“This commercial deal also ensures the Council will generate ongoing revenue from the homes which are built, which can be used to invest further into making difficult brownfield regeneration schemes more viable.

“An extensive amount of work has been delivered to get this scheme to where it is today. We now have a major housing development coming forward at Wirral Waters – the first of what we hope will be many such schemes.”

REPORT SUMMARY

On the 26th February 2018 (Min 88 refers) Cabinet considered and approved a proposal to progress the development of the Wirral Waters One project. Primarily this is a project to bring forward 500 residential units in a 1 and 2 bedroom apartment scheme on the East Float of Wirral Waters. It is a joint project between Peel Holdings, Aviva (as the scheme funder) and Wirral Council, with the Council entering into a lease for the apartments for up to 50 years.

Cabinet instructed officers to develop a business case for the delivery of a commercially viable scheme commensurate with the Council's level of investment. In addition, officers were instructed to establish a trading company, limited by shares, to hold the lease to enable the delivery of the development in the longer term.

The development will be the first large scale purpose built private rented scheme in Wirral and will significantly enhance the housing offer within the local area by providing high quality private rented apartments, on brown field land, on a waterfront location. The rental levels for 20% of the apartments will meet the criteria for affordable housing. The scheme will also unlock further residential and commercial development in Wirral Waters creating a new community within the dockland area.

This report presents a business case for the Council to participate in the scheme on an investment basis which has been assessed as having the potential to deliver an acceptable rate of return on the investment. It confirms that the market economy operator principle has been met by the scheme and sets out the legal structure through which the development would be procured, delivered and managed over the 50 years of the Council's lease.

The Wirral Plan has a pledge to deliver good quality housing that meets the needs of residents. The Wirral Waters One project will bring forward a new type of housing offer but it will also be the forerunner of two further residential schemes at East Float which will enable Housing Infrastructure Funding to be accessed. The three residential developments will together result in some 1,000 residential units being delivered. The following pledges will also be supported by the scheme:

- Inward investment
- Greater job opportunities in Wirral

The annex and appendices in this report are exempt under Schedule 12A of the Local Government Act 1972 due to the commercial sensitivities of the information contained.

This is a key decision and matter affects all Wards within the Borough.

RECOMMENDATIONS

It is recommended that Cabinet:

- 1 Approve the Full Business Case for Wirral Waters One thereby agreeing in principle for the Council to enter into a lease of residential units for up to 50 years as an investment vehicle.

- 2 Thereby authorises the Director of Governance and Assurance, in consultation with the Corporate Director for Business Management and the Director of Finance and Investment, to:
 - (a) enter into an Agreement for Lease between Wirral Council, Peel Legacy (Wirral Waters) Limited and Peel Holdings Land and Property (UK) Limited, on terms that are substantially in accordance with the draft set out at Appendix 2, noting that the Agreement for Lease contains a number of conditions that must be satisfactorily met before the Agreement is deemed to be unconditional;
 - (b) enter into a 50 year underlease and other ancillary agreements for the residential units with Aviva Investors Commercial Assets GP Limited when the conditions within the Agreement for Lease have been satisfactorily met;
 - (c) grant a sub under-lease to a Peel Management Company, intended as a single purpose vehicle (SPV), for it to manage the leasehold property and grant the residential tenancies from Years 0–10;
 - (d) form a wholly owned company limited by shares to operate as a property management business; and
 - (e) grant a sub-underlease to the wholly owned company for it to manage the leasehold property and grant the residential tenancies from the ending of the sub-underlease (referred to at (c) above) to Year 50.
- 3 Authorises the Corporate Director for Business Management, in consultation with the relevant Cabinet portfolio holder, to determine the relevant approvals granted to the Council in the Agreement for Lease as and when each condition is met to his or her satisfaction.
- 4 Notes that:
 - (a) the head-lease to be granted by Peel Holdings Land and Property (UK) Limited to Peel Legacy (Wirral Waters) Limited is to be assigned for 250 years to Aviva Investors Commercial Assets GP Limited; and
 - (b) the Agreement for Lease grants an option to the Council to hold 350 of the residential for the remainder of the 250 year head-lease period and that the decision whether or not to exercise that option to acquire will be made by the Council at the relevant time.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATIONS

Participating in the Wirral Waters One Scheme, through the taking of the lease of 500 apartments will bring forward the first large scale Private Rented Sector development in Wirral. It will also provide an opportunity for the Council to drive the delivery of new homes, meet the housing needs of residents and contribute to economic growth in Wirral. The recommendations will allow the project to proceed as an investment vehicle for the Council which has the potential to deliver a financial return and therefore a long term revenue income stream to the Council which could support wider service delivery and future investment.

2.0 OTHER OPTIONS CONSIDERED

2.1 Do Nothing

The Council takes no action and does not participate in the scheme. This would result in the scheme not progressing in its present form with the risk that development would not take place. The Full Business Case outlines that the viability of the scheme is based upon utilising the strength of the Council's covenant through taking the lease of the development.

2.2 Direct Delivery by the Council

This has not been an option as the land upon which this development will take place is in the ownership of Peel Holdings Land and Property (UK) Limited. Peel are carrying out the remediation of the land in advance of the development and have outlined plans for two further residential schemes at East Float which will follow the Wirral Waters One project.

The Belong scheme is for a specialist dementia care village comprising 12 'household' units for 6 residents each, 34 apartments and a number of visitor suites, a mixed extra care facility and guest bedrooms. Urban Splash will be bringing forward a range of one to three storey houses and apartments to deliver up to 347 units.

Wirral Waters One is seen by Peel as a catalyst for the wider developments and these plans have also been supported by the award of £6m from the Government's Housing Infrastructure Fund which will enable further infrastructure improvements in the area.

2.3 Wirral Council funding the Scheme directly

This option would be for the Council to fund the scheme directly thereby removing the need for Aviva's investment. In order to do this the Council would need to reopen its Housing Revenue Account and build the apartments directly. As noted in 2.2 above this option is not available. However for purely illustrative purposes, Finance officers have fully considered this option and details are set out in the Full Business Case which is attached as an exempt annex.

Based on the variables underpinning the current proposal from Peel and Aviva, this option of the Council funding the scheme could potentially deliver increased benefits to the Council. However, there are a number of financial benefits which

would not be in place under this option and this includes the guarantee from Peel of covering the rental payments for the first 10 years of the scheme.

In addition in order to directly deliver the scheme the Council would need to re-open its Housing Revenue Account which would have significant implications for the Council. Alternatively the Council could deliver the scheme through the trading company (a Special Purpose Vehicle - SPV). This, however, would mean that it is likely that a higher rate of interest would need to be charged in order to comply with State Aid regulations.

Taking the above issues into account officers have identified that this would therefore not be a viable option to pursue.

3.0 BACKGROUND INFORMATION

- 3.1 Wirral Waters is one of the largest regeneration projects in the UK (some 500 acres) with the potential to create over 20,000 permanent jobs and to transform the derelict docklands through a mix of sustainable mixed use development schemes. Housing is a key feature of Wirral Waters, with outline planning permission in place for up to 13,500 units to be developed over the next 25 years. Government Enterprise Zone status was secured in 2011 and the area was awarded Housing Zone status in 2017 – recognising the opportunity for housing growth within the scheme.
- 3.2 Wirral Waters One is a £90m funded project providing 500 apartments in a series of blocks, on a key strategic waterfront site in Wirral Waters. The development will be the first large scale purpose built private rented scheme in Wirral and will significantly enhance the housing offer within the local area by providing high quality private rented apartments on brown field land. The apartments will be of 1 or 2 bedrooms, with 100 apartments being designated as affordable. Current Council policy for housing schemes within deprived areas is for schemes to include 10% of affordable housing, with affordable defined as 20% below the market rent. The Wirral Waters One scheme includes provision for 20% of the apartments to be affordable which is twice the level required by Council policy.
- 3.3 The apartments will be constructed using traditional methods which will fit well into the local environment and also focus on quality design. The development will have dedicated parking and high quality landscaping and a pedestrian route along the dock edge will be created linking the residential developments. There will be 350 car parking spaces provided. This is in line with planning policy which seeks to reduce reliance on the private car and Peel and the Council have agreed to develop a car parking strategy for Wirral Waters One and subsequent schemes. A range of transport initiatives and public realm improvements have been commissioned to support new development at East Float and to encourage the use of public transport and active travel such as cycling, walking. Additional investment has been secured from the Liverpool City Region Combined Authority to extend this infrastructure over the coming 12 months.
- 3.4 The development is within walking distance of Birkenhead Park and Hamilton Square train stations as well as Seacombe Ferry. In addition the increased demand arising from the new developments will support additional services via existing or new bus operators.

The 2020 Wirral Plan

- 3.5 The proposals contained in this report contribute to a number of the Pledges within the Wirral Plan, including:
- Increase inward investment
 - Greater job opportunities in Wirral
 - Good quality housing that meets the needs of residents
- 3.6 The Wirral Plan has a pledge to create 3,500 new homes, as well as improving a further 3,500 homes by 2020. This residential development will help to deliver 500 of these and, as they will be constructed on brownfield vacant land, it will help to reduce the pressures on development in Wirral's Green Belt. The scheme represents a step change to the residential offer in the East Wirral housing market in addition to unlocking further residential and commercial development in Wirral Waters and creating a new community within the dockland area.

Delivering the Project – the Full Business Case

- 3.7 The Council will be participating in the scheme on an investment basis which has been assessed as having the potential to deliver an acceptable rate of return on the investment. This is outlined in the Market Economy Operator Principle Report (MEOP) which has been prepared by a specialist external advisor and is appended to the Full Business Case. MEOP is a concept which determines whether a transaction entered into by a public sector organisation gives a selective advantage to a private sector organisation and therefore falls within the European State Aid rules. In broad terms an economic transaction carried out by a public sector body does not constitute State Aid if it is in line with normal market conditions and a market operator, of similar standing, could have been prompted to enter into the transaction on the same terms. The MEOP report for this project confirms that it is in line with these principles.
- 3.8 The Business Case outlines the legal structure of the project. Peel Legacy (Wirral Waters) Limited will take on a 250 year lease from Peel Holdings and will build the development. The scheme will be funded by Aviva who will take a 250 year lease from Peel Legacy. If the Full Business Case is approved then the Council will commit to taking a 50 year underlease of the 500 residential units and to pay Aviva a fixed rent (increasing with RPI) and estate service charges to secure repayment of the loan with interest.
- 3.9 The Council will grant a sub-underlease to a Peel Management Company who will manage the apartments for years 0-10 and take on the Council's rental obligations. This company will make rental payments to the Council at a level which will cover the Council's payments to Aviva. A Peel company of substance will provide a guarantee of the Company's rent payments to the Council. From Years 11-50 the commercial risks will be transferred to the Council with the Council's Management Company being responsible for letting out the properties, managing the apartments and for securing the rental payments for the Council. The Council will therefore be responsible for making the payments to Aviva for the remaining 40 years of the underlease.
- 3.10 At the end of the 50 year lease period the Council will have the ability to take up an option to acquire a lease for 200 years at a peppercorn rent from Aviva of 350 of the

residential units and Peel will have a similar option for 150 units. The Council's residential units will be contained in specific blocks thereby making any future decisions fairly straightforward at the end of the 50 year period, be that continuing to rent them out or selling them on.

- 3.11 The Council's commitment is its rental obligations, together with service charge payments made by the Council's management company, from years 11-50. In addition up-front Stamp Duty Land Tax (SDLT) will be payable in respect of the grant of the under lease. Peel will be taking a sub under lease for the first ten years and have agreed to cover the cost of the SDLT. This agreement is in line with the conditions contained in the MEOP report.
- 3.12 An Agreement for Lease has been negotiated between the Council, Aviva and Peel. This sets out the legal structure of the project, including termination rights, as well as issues such as the requirements relating to the environment, building quality, insurance, services, and asset management. It includes a number of conditions, for example the condition that planning permission must be granted and that the apartments must be built to a specification agreed by the Council, before the Agreement for Lease can be seen as being unconditional. The Council will not progress with taking the underlease until all conditions within the Agreement for Lease are met.
- 3.13 The Council will be taking on a 50 year lease of the apartments and therefore their specification and design must be entirely acceptable to the Council. The Council will continue to be fully involved in the work to finalise the specification to RIBA Stage 3 and will have absolute discretion as to whether it can be finally signed off. This will be a condition within the Agreement for Lease. The scheme design has been prepared by Glenn Howells Architects and provides for a mix of one and two-bed apartments across six residential buildings, together with on plot car parking. There will be contemporary public realm landscape to Duke Street, the waterside, Dock Road and East Square.
- 3.14 Peel submitted a planning application for the scheme at the end of May 2018 and it is currently anticipated that it will be considered by Wirral's Planning Committee in October 2018. Should the planning application be approved and Cabinet approve the Full Business Case for the project then remediation of the site by Peel will begin in November 2018, the construction tender would be issued in March 2019 with construction likely to commence in August 2019.
- 3.15 The appointment of a construction contractor will be via a fully compliant OJEU procurement process. The Council will ensure that the design and specification of the residential units and public realm set out in the tender will be of a high quality and will deliver a scheme which will retain its quality over at least the 50 year period for which the Council will take the underlease. In addition the need to address Social Value will be a clear requirement within the tender documents issued as part of the procurement process. This will include a requirement that all bidders must deliver against Wirral Council's Social Value policy and contribute towards the social and economic development and regeneration of the area. This will reflect the social value delivered through the construction of the Wirral Metropolitan College Campus in Wirral Waters and include the use of local labour, the provision of apprenticeships, the use of the Wirral Construction Forum for supply chain opportunities and work placements.

- 3.16 Local facilities such as a food outlet, a café etc will also be provided to support the development and, together with the adjacent Grain Warehouses, the development will help create a new sustainable community within the area. Peel have therefore committed through the Agreement for Lease to bring forward such provision within the first ten years of the scheme. It should be noted that the Grain Warehouses, a private ownership scheme, have had consistently high levels of occupation since their conversion in 2007 and are currently some 97% occupied, despite lacking any complementary amenities to date.
- 3.17 A key objective of the Council in investing in this scheme is to generate on-going revenue to support service provision. However, in addition the Council will also be investing in the delivery of wider regeneration and economic development. In addition to the 500 homes delivered by the scheme, it will also bring on the Urban Splash and Belong schemes, securing £6 million from the Government's Housing Infrastructure Fund which will result in some 1,000 residential units on the wider site – creating a new community in derelict brown field docklands and delivering some 220 FTE construction jobs and a minimum of 25 operational jobs. Housing development will also complement a range of other projects which are in the pipeline for both Wirral Waters and for the Wirral Growth Company, some of which have already been submitted as planning applications. The project pipeline includes industrial development at the Marine, Energy and Automotive Park at West Float which is proposed as a new, multi-unit, 1 million sq ft waterside manufacturing, logistics, R&D and assembly campus. Also a high quality 25,000 sqft office development at Tower Road and the opportunity to have a university presence in Wirral, to complement the high quality skills provision of the existing Wirral colleges, at the proposed Maritime Knowledge Hub.
- 3.18 In addition there are a range of highway schemes being considered for funding at a city region level which involve improving links between Wirral Waters and the surrounding areas, including Birkenhead. A residential community at Wirral Waters will increase the demand and the need for these solutions to be brought forward through the Combined Authority.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The finances of this project have been structured on the requirement that the Council uses its covenant strength through taking a lease on the 500 residential units for 50 years. As a result there is no need for public sector funding and / or grants to deliver the scheme. The strength of the Council's covenant is critical in enabling investment in the scheme which would not otherwise come forward at a rate that would be financially viable for the development to progress. The project is financially viable and a number of financial scenarios have been modelled.
- 4.2 As highlighted in paragraph 3.9 Peel will manage the apartments for years 0-10 and take on the Council's rental obligations, thereby guaranteeing rental payments to the Council at a level which will cover the Council's payments to Aviva. From years 11-50 the commercial risks will be transferred to the Council with the Council's Management Company being responsible for letting out the properties, managing the apartments and for securing the rental payments for the Council. The Council will therefore be responsible for making the payments to Aviva for the remaining 40

years of the underlease. The risks and mitigation of the Council's position is set out in Section 7 below.

- 4.3 In addition to the potential income from the rental payments from years 11-50, the scheme will result in increased income to the Council from the following sources:
- Council Tax and Business Rate income upon completion of the development and associated commercial units;
 - The Legacy Foundation will provide £100,000 for investment in the Hive Youthzone and its activities. The Legacy Foundation worked with Peel and the Council at the early stages to develop this project and have a commitment to improving sport and education opportunities for young people.
- 4.4 Costs related to the payment of SDLT will be met by Peel.
- 4.5 Further specific financial details of the scheme are set out in the Full Business Case attached as an exempt annex.

5.0 LEGAL IMPLICATIONS

- 5.1 This is a private sector development and does not involve any local authority direct provision of housing. It is to be considered in terms of the Council's powers to acquire and dispose of land under the Local Government Act 1972. In order to privately let housing accommodation on assured shorthold tenancies the Council must facilitate this through a Council owned company set up under Section 1 of the Localism Act 2011.
- 5.2 The Cabinet Meeting of 26th February 2018 (Min 88 refers) refers to setting up a local authority trading company, as the Council's establishment of a special purpose vehicle (SPV) to hold the 50 year lease and to manage and grant private sector tenancies at the properties. The company will be limited by shares as a wholly owned subsidiary of the Council. The purpose is to enable the Council to hold the property and operate as a commercial entity, allowing it to intervene in the market to deliver new homes as a social and economic regeneration return on investment and to create a return net cash flow to the General Fund as a financial return. The business case sufficient to meet the tests set out in the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009, made under the Local Government Act 2003, is set out in the Full Business Case appended to this report.
- 5.3 As set out in 4.1 above the finances of this project have been structured on the requirement that the Council uses its covenant strength through taking a head lease on the 500 residential units for 50 years. The rules on State Aid prohibit the Council from using public money in any way that would give Peel or its Funder, Aviva, a commercial advantage over its competitors. The scheme must therefore meet a test whereby the Council can prove that an investor would equally consider the expected rate of return on the investment to be sufficient to compensate for the risk of financial losses. The Council has engaged specialist advisors and the MEOP report states that they are of the view that a private sector investor, in comparable circumstances to the Council, would take the same investment decision as that currently being considered by the Council.
- 5.4 The MEOP opinion is contingent upon a number of factors being satisfied. These matters are set out as conditions within the Agreement for Lease and will need to

be met before the Agreement for Lease can be considered to be unconditional. The Council will not be bound to enter into the underlease with the Funder unless the Agreement for Lease becomes unconditional.

5.5 The Council has engaged suitably qualified external specialists in order to advise on the full range of legal, financial and technical matters associated with this project.

5.6 The legal implications are detailed fully in the Full Business Case.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 The taking of the underlease by the Council will involve a financial liability with regards to Stamp Duty Land Tax. Peel have agreed that they will meet the costs of the SDLT as part of the development.

6.2 The setting up of a Council Management Company to hold the 50 year lease and to manage the properties will incur operational costs. These will be minimal for the first ten years as Peel Legacy will be carrying out the management function for this period. Costs for this period can be met from existing budgets.

6.3 Resource will be required in order to monitor the detailed design work to meet the specification as set out in the Agreement for Lease. This will be met from existing staff resource. It is proposed that external expertise will need to be procured in order to advise the Council on the technical content of the tender process and award. There will also be a requirement for post contract construction monitoring. These costs can be met from existing departmental budgets.

7.0 RELEVANT RISKS

7.1 All risks associated with this project will be identified and managed as part of the Economic and Housing Growth Directorate's programme management and a comprehensive risk register is contained within the Full Business Case. Below is a summary of some of the key risks identified and how they will be managed.

Key Risk	Mitigation Strategy
7.1 The Council cannot develop a specification to enable an appropriate quality of build to be achieved.	A specification to RIBA Stage 2 is included in the AfL together with agreement as to how the spec will be developed prior to tender to RIBA Stage 3 which will be subject to Council approval at its absolute discretion.

<p>7.2 If from Year 11 the units are not let to the required levels of rent and occupancies the Council's payment to the Funder may not be covered.</p>	<p>Peel are providing a rental guarantee for the first ten years of the scheme to cover the Council's commitment to the Funder. This is the period when there are likely to be the highest risks given that this is one of the first residential developments to take place in Wirral Waters. In addition the Council will consider setting aside contingency funding each year as part of its Medium Term Financial Strategy to cover possible future shortfalls over the next 50 years.</p>
<p>7.3 That the RPI is greater than rental growth which could lead to an operational deficit for the Council once the rental guarantee from Peel ceases at the end of Year 10.</p>	<p>The Full Business Case sets out the assumptions upon which RPI and rental growth have been assessed and the financial model has been run to consider a range of scenarios. No investment is without risk but the MEOP report states that a private sector investor, acting under comparable conditions, would invest in the scheme and the investment is therefore lawful for a risk aware private investor able to cover its losses in the event of failure. In addition the extent of the increase in RPI is capped for this scheme.</p>
<p>7.4 The properties are in a good state of repair at the end of Year 10 when the Council, via its Management Company, becomes responsible for their letting and management.</p>	<p>An Asset Management Agreement will be agreed with Peel as part of the AfL. This will include a lifetime replacement schedule which will outline the range of items, their likely lifespan and when they are required to be replaced. Peel will put in place a sinking fund to cover these costs on an annual basis. Any funds remaining at the end of the 10 years will be assigned to Wirral Council's Management Company.</p>
<p>7.5 The procurement of the building contract is not properly conducted by Peel in accordance with the Public Contract Regulations 2015 with the result that the contract award is successfully challenged or the Council becomes liable to make payments to the contractor under the regulations with Peel deemed to be its agent.</p>	<p>A fully compliant OJEU procurement process will be conducted which will be inputted to and monitored by the Council. The Council will obtain an indemnity from Peel that it will meet the costs of the Council of any non compliance by Peel with the regulations. The building contract is to be drafted so that Peel is solely liable to make any payments due to the contractor for whatever reason.</p>
<p>7.6 The rent payable to the Funder by the Council is at a higher level than originally modelled in the financial model.</p>	<p>The number of apartments that can be built as part of the development will be a maximum of 500. In addition there will be a cap on the level of increase of rental payments which has been included in the financial model and covered within the Agreement for Lease.</p>

--	--

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Consultation is taking place as part of the planning application that has been submitted by Peel Land and Property to the Council.

9.0 EQUALITY IMPLICATIONS

- (a) Yes. The potential impact has been reviewed with regard to equality. This links to the existing EIA conducted for Wirral's Growth Plan. <https://www.wirral.gov.uk/communities-and-neighbourhoods/equality-impact-assessments/equality-impact-assessments-2014-0>

REPORT AUTHOR: Sally Shah
Lead Commissioner: Place and Investment
 telephone: (0151 691 8148)
 email: sallyshah@wirral.gov.uk

APPENDICES

Exempt appendices – by virtue of Paragraph 3, Part 1 of Schedule 12A of the Local Government Act 1972

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet: Wirral Waters One (Legacy Project) Dock Road, Wallasey, Wirral	26 February 2018