



COUNCILLOR PHIL DAVIES

CABINET

26 FEBRUARY 2018

WIRRAL WATERS ONE

(LEGACY PROJECT)

DOCK ROAD, WALLASEY, WIRRAL

Cllr Phil Davies, Leader of Wirral Council, said:

“This is an exciting proposition which will play a significant part in helping us to deliver the new housing which the area so desperately needs and will also help kick-start even more development on one of the key regeneration sites in Wirral.

“We are seeing huge confidence in Wirral as an area to invest in at the moment. Our plans for regeneration throughout the borough are gaining momentum, and we will see more exciting news in the coming days and weeks about developments on a number of different sites.

“There is still work to be done to take this project forward but, combined with other developments already progressing at the site, this represents a major breakthrough for Wirral Waters.”

REPORT SUMMARY

This report provides a progress report on the potential residential projects in Wirral Waters (now likely to be accelerated given the Housing Infrastructure Fund announcement on 1 February 2018) and specifically focuses on the Wirral Waters One (Legacy) project.

The number of issues on this project has reduced significantly over the past few months (from over 40). There are still issues as set out in the report, resolution of which are considered fundamental to further progress.

The Wirral Waters One project is being considered on an investment basis by the Council and therefore an acceptable rate of return on the investment will be required.

It seeks Cabinet's views in principle on progressing with the Wirral Waters One project, subject to the legal, market economy investor principle and commercial matters set out in this report. Without satisfaction of all these matters the Council could not proceed with this project. Negotiations on a number of matters set out in this report are continuing and therefore will be subject to change.

A further report would be brought back to Cabinet or the Leader of the Council once the outcome of the various matters are known.

RECOMMENDATION/S

It is recommended that Cabinet

- 1 Agrees to the principle of participating in the scheme to enable the development of building at Wirral Waters of 500 homes and associated commercial tenancies as an investment vehicle for the Council and to kick-start wider development in the area.
- 2 Notes that, subject to receipt of a viable business case, the Council being able to satisfy its statutory requirements and budgetary approval, the Council would achieve this objective through
 - (a) entering into a lease of 500 residential units for up to 50 years;
 - (b) taking an option to acquire 350 residential units at the end of the 50 year lease set out in (a) for a long term (in the region of 200 years);
 - (c) establishing a trading company limited by shares to hold the 50 lease and, from year 11, to manage residential tenancies;
 - (d) funding of the trading company referred to in (c) for years 1 to 10; and
 - (e) providing assurance to the funder that the terms of the lease of the 500 residential units can be met from years 11 to 50.
- 3 Authorises officers to continue to negotiate with the current and potential landowner, developer, landlord and funder and obtain such expert opinions as they consider fit in order to deliver a commercially viable scheme commensurate with the Council's level of investment
- 4 Requests a further report, at Cabinet or for a cabinet member decision, at such time as officers are in a position to recommend final approval to enter agreements and establish a Council company for delivery of the scheme.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To ensure that the Council meets its legal and fiduciary requirements.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 It is the Wirral Waters One project that is being considered in this report. The report and exempt appendix set out the state of affairs as they have currently been reached. As this report provides an outline of the scheme to date and seeks approval only to continue to progress the project to final recommendation, several options remain open for the Council to pursue.

3.0 BACKGROUND INFORMATION

- 3.1 Wirral Waters is one of the largest regeneration opportunities in the United Kingdom. It has the potential to transform Wirral's economy and create thousands of homes, businesses and jobs.

- 3.2 Peel are currently promoting a number of projects within Wirral Waters and the Council is working in partnership with them, and alongside other private sector partners to deliver transformation and innovative projects. The partners have a track record of delivery.

- 3.3 There are currently three major residential projects which are being brought forward. These are:

- A specialist dementia care development through an organization called "Belong" (Peel have indicated that they expect to submit a planning application within the next two months).
- A development by Urban Splash providing family accommodation (Planning discussions have already commenced).
- A project with Peel to create 500 residential units in a 1 and 2 bed apartment scheme. Initially this project was associated with The Legacy Foundation but they have recently confirmed that this project in its current form is not one they would be involved in as it does not include sport and community facilities on site and they will not be a party to any of the legal documentation required for this project. Therefore, to avoid any confusion the working title for the project has been changed to "Wirral Waters One" and the parties involved in the project are Peel Land and Property Ports Limited (Freeholder), Peel Legacy Wirral Waters Limited (Developer), an Investment Company (Funder) and Wirral Council (Leaseholder). The Legacy Foundation will however be providing £100,000 to the Council to invest in sports and education in Wirral and they are supporting Peel in the negotiations with the investor.
- These three developments would provide approximately 1,000 units of accommodation upon completion.

3.4 A major impetus to these residential schemes was given by the Ministry of Housing, Communities and Local Government with the announcement on 1 February 2018 of £6m of Housing Infrastructure Funding to the Council/Peel bid for Wirral Waters (North Bank East) This will enable the residential schemes to be accelerated as the funding can help to support infrastructure developments in the area to support the housing schemes.

3.5 This report focuses on the Wirral Waters One (Legacy Project) scheme.

4.0 THE 2020 WIRRAL PLAN

4.1 The Wirral Plan has a pledge to create 3,500 new homes, as well as improving a further 3,500 homes by 2020. These residential developments would help to deliver 1,000 of these and as they would be constructed on brownfield vacant land it would also ensure the effective use of land in the Borough and help to reduce the pressures on development in Wirral's Green Belt.

4.2 Realising these development opportunities would also demonstrate the Council's ability to achieve significant developments in locations which benefit our communities.

5.0 WIRRAL WATERS ONE: AN OUTLINE OF THE SCHEME

5.1 Wirral Waters One is a £90m project which would provide a 500 unit apartment development, in a series of blocks, on a key strategic waterfront site in Wirral Waters. It would be constructed using traditional methods which fit well into the local environment and also focus on quality design.

5.2 A building adjacent to the junction at Dock Road/Duke Street would have commercial premises to provide services to the local residents in terms of convenience shopping.

5.3 The development would have dedicated parking and high quality landscaping and a pedestrian route along the dock edge would be created linking the residential developments.

5.4 Peel will provide an updated plan of the proposed development site as the development has undergone substantial changes over the last 3 months.

6.0 WIRRAL WATERS ONE: DELIVERING THE PROJECT

6.1 The development would be funded with money from an investment fund, which would buy a 250 year lease from Peel. The proceeds would be used by Peel to pay for the development and the balance would be Peel's profit. The funder would grant a 50 year underlease of the residential units to the Council which would pay the funder fixed rent (increasing with RPI) and service charges to secure repayment of the loan with interest The Council would in turn grant a sub-lease to a company controlled by the Council that would then let out the apartments for years 0 to 10 to a Peel company at the same rents as it would pay the funder and from years 11 to 50 the company controlled by the Council would let out the apartments at market rents to private tenants on assured or assured shorthold tenancies. The Council will contribute to an

overall estate service charge which would not be directly passed on to the residential tenants but would need to be factored into the market rent to be charged to them.

- 6.2 The Council would only be involved in the residential parts of the scheme with Peel taking full responsibility for the commercial site. At the end of the 50 year lease period the Council would take up an option to own 350 units and Peel 150 units. The Council's residential units would be contained in specific blocks so making any future decisions fairly straightforward at the end of the 50 year period, be that continuing to rent them or selling them on.
- 6.3 Peel have proposed a complex structure for the deal which involves land transfers between two Peel companies and a range of funding, development and lease agreements between the parties. These details are subject to ongoing change as the proposals from Peel and the funder are constantly evolving along with the specification (the changes in structure may affect the financial liabilities of the Council in terms of Stamp Duty Land Tax).
- 6.4 Council officers, as stated, are in the process of negotiating a residential sub under lease to Peel that will enable the Council's company to pass on its rental obligations under the 50 year under lease from Years 1 to 10 at Peel's cost. The Council would be responsible for the payments from Years 11 to 50 when the entire commercial risks would be transferred to the Council.
- 6.5 The Council's commitment would then be annual rental obligations together with service charges to Peel for 40 years and up-front Stamp Duty Land Tax (SDLT) in respect of the grant of the under lease.
- 6.6 The obvious risk for the Council would be from years 11 to 50 if its rental stream from private tenants were less than its financial obligations (rent + service charges + cost of repairs and maintenance and insurance). It is difficult to predict the rental market beyond 5 years and the Council's profits will be reduced or it is likely to make a loss if e.g. RPI increased at a faster rate than the rents it hopes to receive from private tenants. However, it needs to be noted that Peel are providing a guarantee for the first ten years of the project 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.
- 6.7 The Council would need to be satisfied that its expected financial returns and other benefits are likely to outweigh the risks of substantial losses on its investment.
- 6.8 Officers have also proposed to Peel, alterations to the structure of the arrangement which would significantly reduce the Council's SDLT liability. Peel, have agreed the principle of this revised structure, and are currently seeking the funders agreement to it. The new structure should also reduce the Council's VAT liabilities that would otherwise fall to the Council and which would not be recoverable from tenants.
- 6.9 Upon proper consideration of this revised structure the Council's officers and advisors, will need to:
 - a) review the advice on the legal power of the Council to enter into these arrangements; and

- b) determine whether or not the investment complies with the Market Investor Principle on lawful State Aid. This can only be done once Peel and the funder have agreed the revised structure. and also agreed to share with the Council evidence of the steps taken (if any) to test the market for competitive offers for funding the project (for example, other funders may be willing to fund the project over less than 50 years and require lower rents from the Council).

Before the Council can proceed with any scheme it needs confirmation that it has the legal powers to do so; that the Investor Principle test is passed and that the proposal is in the best commercial and financial interests of the Council. These assessments, supported by the Council's commercial advisors, will consider the risks associated with this project and set these out in a future report alongside an analysis of them.

- 6.10 The Council has asked Peel, who will be taking a sub under lease in the first ten years, to address the issue of the operation/solvency of the Council's company. The issue here is that, in addition to the rental income coming in (which will go straight out to the Peel on the 50 year under lease), the company will have no other income to meet costs such as administration costs and tax (SDLT) liabilities. The Council has asked Peel to fund these costs for the first ten years.
- 6.11 Subject to the matters referred to above being to the satisfaction of the Council, and based on the current development programme provided by Peel, they propose to submit a planning application in March 2018 and subject to its approval (anticipated decision date May/June 2018), be on site in November 2018 with completion of the project by April 2021. They have not however yet agreed to commit to an agreed time table for delivery in the legal documentation (but this is currently under negotiation and acceptable in principle) which in its present form could mean that it could take 7 years for the apartments to be built(a timescale that is wholly unacceptable to the Council) In relation to the development they have not yet agreed that the Council would be able to approve the specification but want to limit that approval to material changes as e.g. defined in the Building Regulations as the project progresses . This will not be acceptable as the Council would be anxious to ensure that the specification is suitable for its needs over a 50 year period whilst Peel's interest would be limited to the first 10 year when it would be letting out apartments under the 10 year sub-underlease. Negotiations with Peel are continuing on this issue.

7.0 WIRRAL WATERS ONE: THE BENEFITS

- 7.1 This project can potentially deliver the following benefits kick starting the residential development in Wirral Waters and creating the environment for other residential investment alongside it (the recent Housing Infrastructure Fund announcement will enable the other residential projects in Wirral Waters to accelerate and be built alongside the Wirral Waters One project).
- 500 units of residential accommodation (which with the Belong and Urban Splash schemes will total 1,000 new units of accommodation) contributing towards the pledge of new housing to be provided.
 - Re-use of vacant brownfield land for housing purposes which will help to reduce the pressure on land in Wirral's Green Belt.
 - Council Tax and Business Rate income from the development upon completion.

- The Legacy Foundation will provide £100,000 for investment by the Council in sport and education in Wirral
- Construction jobs.
- Significant financial investment.
- Promote investor confidence in the area

8.0 FINANCIAL IMPLICATIONS

8.1 As highlighted in paragraph 6.6, there is a risk that if, from year 11, all the units are not fully let, there would not be enough income receivable from tenants to offset the rental and service charges the Council would be under obligation to pay to Peel. The council can mitigate against such losses via two ways:

- Provision of an ongoing contingency from year 1 of the scheme to build up specific funds to be available should this occur.
- Income will be receivable from Council Tax and Business Rates as a result of the new units.

8.2 The level of risk and contingency the Council wishes to take will be included within the business case and will be dependent on the outcome of the matters discussed in section 6 being resolved to the Councils satisfaction.

8.3 Further specific financial details of the scheme are set out in the exempt appendix.

9.0 LEGAL

9.1 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 of investment and to act for a commercial purpose, which must be done through the medium of a Council controlled company.

9.2 The Council has agreed to accept a 50 year under-lease from the Funder to enable Peel to borrow on more competitive terms (through its arrangements with the Funder described above) relying on the strength of the Council's covenant as a local authority.

9.3 The rules on State Aid prohibit the Council from using public money in any way that would give Peel or its Funder a commercial advantage over its competitors. The scheme must therefore meet a test whereby the Council can prove that a market economy investor would equally consider the expected rate of return on the investment (ignoring potential tax receipts and social benefits) were sufficient to compensate for the risk of substantial and long term financial losses. It is for this reason that the Council has engaged specialist advisors, whose report must evidence that this scheme is 'a good deal' that an ordinary market economy operator would similarly invest in.

9.4 Likewise, if that advice on the local rental market and the scheme's financial prospects for the Council consider the investment would not pass that test, advisors' are asked to recommend what changes could be made to the proposed deal that would make it so and that will be the subject of further negotiations with Peel and the Funder.

9.5 Further due diligence will be required to ensure that the scheme in its final form will be lawful in terms of the powers of the Council and with its fiduciary duty to local taxpayers to obtain value for money and not to expose the Council to unreasonable risk of loss(having regard to its current and future financial position).

10.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

10.1 The Council company would need to be staffed to carry out its functions as a landlord and to comply with its administrative duties under company law.

11.0 RELEVANT RISKS

11.1 These are set out in the report in outline and will be fully detailed in a further report once the full project has been confirmed, reviewed and assessed.

12.0 PLANNING IMPLICATIONS

12.1 Planning permission will be required for the development and Peel anticipate submitting this once the project is approved.

13.0 ENGAGEMENT/CONSULTATION

13.1 Consultation will be undertaken as part of the planning application.

14.0 EQUALITY IMPLICATIONS

14.1 Providing a range of housing provision in Wirral meets the housing needs of people including single parents, the elderly and disabled ensuring that all housing needs are met.

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APPENDICES

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

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date