

**BARWELL SUSTAINABLE URBAN EXTENSION – LEGAL BUDGET
PROVISION
REPORT OF DEPUTY CHIEF EXECUTIVE – COMMUNITY
DIRECTION**

WARDS AFFECTED: BARWELL

1. PURPOSE OF REPORT

- 1.1 To seek agreement for the provision of a supplementary budget to fund the research, drafting and completion of the section 106 for the determination of the Barwell Sustainable Urban Extension major planning application.

2. RECOMMENDATION

- 2.1 That Executive approve the provision of a supplementary budget of £45k in relation to the appointment of a Legal Consultant to fulfil the legal process.

3. BACKGROUND TO THE REPORT

- 3.1 Executive Members will be aware of the outline planning application submitted by HOW Planning Consultancy, on behalf of their clients Ainscough Strategic Land Ltd, Barwood Development Securities Ltd, Barwood Strategic Land II LLP and Taylor Wimpey Ltd on land to the west of Barwell.
- 3.2 The application (12/00295/OUT) was received on 10 April 2012. A programme for determination has been agreed between the parties and forms part of the Planning Performance Agreement (PPA). The programme is attached as *appendix 1* to this report. The programme indicates that the legal process for the compilation of the Section 106 is due to commence in January 2013 and continue until the completion of the Section 106 document and issue of the decision notice.
- 3.3 The development is proposed on land identified in the Hinckley and Bosworth Core Strategy adopted in 2010 and in the emerging Earl Shilton and Barwell Area Action Plan (AAP) as the "Direction for Growth". The Core Strategy proposes that the development of this land is linked to a strategy of regeneration of the existing settlements, especially their centres. The AAP seeks to guide the process in terms of addressing the challenges of providing the additional infrastructure and regeneration the settlements need, which are matters of greater scale than on individual sites. The infrastructure requirements have been identified through the AAP process and the specific contributions have been identified through the consultations on the planning application. Due to the scale and phasing of the development together with the scope of infrastructure requirements the legal resource required for this application is significant and bespoke.
- 3.4 There needs to be a dedicated team working on this matter, given its impacts and potential complexity. There are some areas, notably the education contributions and the proposals for the carrying out of, and future responsibilities for, the village centre improvements which will require research, advice and careful drafting, and it is considered that an external law firm would have the resources for, and the capability of, achieving these objectives within the timescale necessary.
- 3.5 The Development Services budget is under a considerable amount of strain, particularly as the Policy Consultancy Budget will be required to fund additional work relating to the Site Allocations Document and the Earl Shilton and Barwell Area

Action Plan generally and there are several planning appeals in the pipeline that will require the Development Control legal budget to be topped up.

- 3.6 A brief has been prepared which outlines the necessary requirements to complete the legal process. The request is now being formally made to Executive that monies be made available to finance the consultancy service through the Planning Delivery Grant Funds (PDG). The draft brief is attached as *appendix 2* to this report.
- 3.7 The Brief will provide details of the outline application and the background to the proposed SUE development, with copies of the Core Strategy and Draft AAP provided.
- 3.8 The brief will outline each developer contribution requested and the Borough Council's response to those requests. The requests and the Borough Council's comments will be compared with the proposed contributions put forward by the developer consortium. If the Borough Council indicates it will support a contribution request which is opposed by the developer consortium, then the Borough Council's stance will be challenged by the consortium. A first exercise therefore for the external advisors will be to review the Council's conclusions regarding CIL-compliance so that the Council has a robust case for making its decision. The position could be reached that there is an impasse between the Council and the consortium on what is CIL compliant, which may lead to a refusal of planning permission and subsequent appeal by the consortium, hence the need for a robust case being able to be presented.
- 3.9 There are matters which need to be researched and carefully drafted. An example is the matter of the education contribution and how that is spent and by which party. There may be added complications regarding academy status for schools. There will be a need to be clear that what is proposed in relation to village centre improvements is CIL-compliant. Having satisfied itself on that point the Council would need to be clear how best those improvements could be delivered and how best it could ensure the future management and upkeep of such facilities. Advice will be required on these points.
- 3.10 The agreement will need to carefully provide for the phasing of the development and the payment of the agreed contributions. There will also be a need to understand and make provision for equalisation of the contributions required for the impact of the proposed Earl Shilton SUE. This application is yet to be submitted.
- 3.11 The work carried out by the consultant will assist internal legal officers with the drafting and completion of the section 106 for the determination of the Earl Shilton Sustainable Urban Extension major planning application.

4. FINANCIAL IMPLICATIONS [PE]

- 4.1 The supplementary budget of £50k which has been requested will be funded by the Planning Delivery Grant which has sufficient funds available to cover this amount.

5. LEGAL IMPLICATIONS (AB)

- 5.1 None raised directly by this report. The legal implications of the S106 requirements of the Barwell SUE will be dealt with by the successful bidder.

6. CORPORATE PLAN IMPLICATIONS

- 6.1 This report supports all the aims of the Corporate Plan.

7. **CONSULTATION**

7.1 No consultation

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Failure to determine planning application in accordance with timetable set out in Planning Performance Agreement	Ensure sufficient resources are in place to meet timetable.	Simon Wood/Cathy Horton
Failure to ensure delivery of all CIL compliant mitigation and policy requirements within the SUE	Ensure resources and expertise in place to maximise delivery of mitigation and policy requirements.	Simon Wood/Cathy Horton

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

- Impact on Parish Councils
- Environmental implications
- Ensuring services are accessible to all (location, method of delivery).

10. **CORPORATE IMPLICATIONS**

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications – None relevant to this report
- Environmental implications – As detailed in the report
- ICT implications- - None relevant to this report
- Asset Management implications – None relevant to this report
- Human Resources implications – None relevant to this report
- Voluntary Sector – None relevant to this report
- Legal implications – As detailed in the report

Background papers: None

Contact Officer: Cathy Horton, 01455 255605

Executive Member: Stuart Bray

Appendix 2

Briefing Paper for Provision of Legal Services to Hinckley and Bosworth Borough Council ('the Council') Re: SUE at Barwell Leicestershire

1. INTRODUCTION

- 1.1 Hinckley & Bosworth Borough Council seeks to secure external legal advice and assistance leading to the conclusion of a Section 106 Agreement.

2. BACKGROUND

- 2.1 The following documents are listed by way of background information.

- a) The Council's Core Strategy adopted in December 2009
- b) The Council's draft Earl Shilton and Barwell Area Action Plan
- c) Planning application ref 12/00295/OUT
- d) Barwell West Design and Access Statement dated April 2012

- 2.2 The documents, in total, are bulky and you are requested therefore to view them on the Council's website.

- 2.3 There is a common initial link to all of the documents referred to:

- go to HBBC website
- click on planning
- for items (a) and (b) above click on planning policy and search for '*core strategy*' and for '*area action plan*'
- for items (c) and (d) go to right-hand column and click on '*search local planning applications*'
- scroll to bottom of the next page and click on '*view an application*'
- enter 12/00295/OUT in the search box, this will lead to details of the application and also to the Design and Access Statement.

- 2.4 Planning application 12/00295/OUT was received on 10 April 2012.

- 2.5 The application is an outline application including access for up to 2,500 new residential dwellings (use class C3) an employment zone for general industrial buildings (use class B2) and storage and distribution warehouses (use class B8) providing up to 24,800 sqm sports pitches, pavilion building and changing rooms (use class D2) areas of formal and informal open space, children's play areas, landscaping allotments and public realm works, provision of hydrological attenuation features, pedestrians and cyclists connections, new infrastructure and services as necessary to serve the development and a new community hub area comprising a primary school (use class D1) a local health care facility (use class D2) or in the alternate a family public house/restaurant (use class A3/A4) and local retail and commercial units (use class A1, A2, A3, A4 and A5) up to a maximum floor space of 1,000 sqm (EIA development) Barwell Sustainable Urban Extension (SUE) land west of Barwell Ashby Road Barwell Leicestershire.

2.6 The developer consortium comprises

- Ainscough Strategic Land Ltd
- Barwood Development Securities Ltd
- Barwood Strategic Land II LLP
- Taylor Wimpey Ltd

3. DEVELOPER CONTRIBUTIONS

3.1 The developers have indicated the terms which they are proposing to enter into in a Section 106 Agreement. These are as follows:

- a) A financial sum which will initiate the Barwell Centre Improvement Fund to be dedicated towards public realm, environmental and other priority projects in Barwell that will be led and administered by the Council.
- b) Measures to secure the long-term management of public open space and play facilities associated with the development.
- c) Provision of affordable housing in line with the Council's Core Strategy requirements, an element of which would be provided on site, and a possible financial contribution in lieu of on-site provision.
- d) Financial contributions towards public transport (bus) enhancements.
- e) Funding of other traffic management measures as identified in the Transport Assessment.
- f) Measures to secure the implementation of a Travel Plan for both the residential and employment development.
- g) Delivery of the new primary school located with the community hub area and if required a potential financial contribution towards funding future secondary education requirements (to be assessed in conjunction with the Education Authority).
- h) Support for local health care needs, on and off-site, to meet the needs of the SUE (further discussions to be had with the Primary Care Trust).
- i) Establish a mechanism to afford priority for local people in relation to construction of job opportunities to establish an apprenticeship/skill training programme and a local procurement policy which will ensure that materials and services are sourced from the local area wherever possible.

3.2 The developers have further indicated that they judge the following matters not to be compliant with Regulation 122 of the 2010 Community Infrastructure Levy Regulations ("Regulation 122") and Paragraph 204 of the National Planning policy Framework (NPPF).

- a) Financial contributions towards off-site highways works beyond the scope of those identified in planning application 12/00295/OUT.

- b) financial contributions toward the establishment of off-site green infrastructure play space and open space.
 - c) Financial contributions towards waste disposal, recycling and household waste expansion and recycling and waste receptacles.
 - d) Financial contributions towards existing and planned sports and leisure facilities.
 - e) Financial contributions towards community safety/policing.
 - f) Financial contributions towards existing libraries.
- 3.3 The Council has received several developer contribution requests including those in respect of waste disposal facilities, the police service and libraries and is currently considering whether all the contribution requests which it has received pass the tests set out in Regulation 122 and paragraph 204 of the NPPF.
- 3.4 An initial task for the external adviser will be to review all the developer contribution requests received together with the Council's assessment of whether they pass the tests in Regulation 122
- 3.6 The Council will provide a summary of existing developer contribution requests to the external adviser with a summary of the Council's assessment as to whether those requests pass the tests in Regulation 122
- 3.7 The developers have indicated they will not provide contributions in respect of waste disposal facilities, libraries, police services and sports and leisure facilities.
- 3.8 If the Council is of the view that the contributions set out in 3.7 pass the tests in Regulation 122, and requires them to be included in a Section 106 Agreement then it needs to be satisfied that the case for their inclusion is sufficiently robust to overcome an appeal against a refusal of planning permission, if the developers will not agree to their inclusion.
4. OTHER MATTERS
- 4.1 The Council also needs to be assured that developer contributions which the developer is prepared to provide nevertheless still pass the tests in Regulation 122.
- 4.2 The initiation of the Barwell Centre Improvement Fund, the delivery of a new primary school within the community hub area and the establishment of a mechanism to afford priority for local people in relation to construction job opportunities are matters upon which the Council will seek advice as set out in more detail in Section 6 of the this Briefing Note.

5. TIMESCALES

- 5.1 A first meeting with the developer's representatives is scheduled for 28 January 2013.
- 5.2 It is anticipated that the successful bidder will be informed of the result on 21st January 2013

6. SUBMISSION OF PROPOSAL

- 6.1 The Council expects the successful bidder to undertake the following:
 - a) Review and assess the developer contribution requests submitted to the Council in relation to 12/00295/OUT and advise on whether they pass the tests in Regulation 122
 - b) Assess and advise on the proposals for;
 - i) the establishment and utilisation of the Barwell Centre Improvement Fund (which is intended to be allocated to the regeneration of Barwell Town Centre)
 - ii) the provision of a new primary school, the proposed shared use of public open space and play facilities by the school authority and the wider community and the impact on any such proposals of academy status for the primary school
 - iii) the establishment of a mechanism to afford priority for local people in relation to construction job opportunities an apprenticeship/skills training programme and a local procurement policy which would ensure that materials and services are sourced locally wherever possible;
 - iv) the mechanism for the equalization of the secondary education provision across both the Barwell and Earl Shilton SUE developments;
 - v) elements of the police contributions which are considered reasonable to pursue and advice on detail required to take contribution forward;
 - c) Advise on and draft the terms of the Section 106 Agreement to give effect to the proposals.
 - d) Negotiate on the Council's behalf with the developers and/or the developers' representatives to finalise the terms of the Section 106 Agreement.
- 6.2 Would you please therefore submit your proposals for providing advice and assistance as outlined in 6.1 above and cover the following matters particularly ;
 - a) Please outline your firm's experience in negotiating Section 106 Agreements in relation to SUEs and with particular reference to agreements involving contributions towards the regeneration of town centres and academy status schools.

- b) Please outline your firm's experience in advising on the tests in Regulation 122 and Paragraph 204 of the NPPF.
- c) Please indicate who within your organisation would be involved in providing the advice and assistance requested together with brief CV details of each such person and, if possible, the division of their responsibilities in providing the service.
- d) Please indicate the respective hourly rates for each fee earner who will be involved in providing the service.
- e) Please advise on availability to meet with the developers on 28 January 2013.
- f) Please submit your proposals in writing by noon on 14 January (email is acceptable) to Michael Rice, Planning Solicitor, HBBC etc, email michael.rice@hinckley-bosworth.gov.uk.

7. ASSESSMENT

- 7.1 The Council in its consideration of proposals will place weight on the experience of an external adviser in negotiating section 106 agreements which include the regeneration of a town centre and also on its knowledge of the impact of academy status for schools and on how that status might impact on the proposals for the construction of a new primary school and a joint approach between the Council and the school body in relation to the provision and future use of play and open space facilities.
- 7.2 Overall the Council's assessment will be based on the relevant experience of the bidders and the financial element of the bid and equal weight will be given to both elements.