

Bath & North East Somerset Council		
DECISION MAKERS:	Cllr Dine Romero, Leader of the Council & Cllr Tim Ball, Cabinet Member for Planning Housing and Economic Development	
MEETING/ DECISION DATE:	On or after 24th August 2019	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3168
TITLE:	RULE 15 Bath Riverside Land and Infrastructure Investment	
WARD:	All	
AN OPEN ITEM CONTAINING EXEMPT APPENDICES		
<p>List of attachments to this report:</p> <p>Please list all the appendices here, clearly indicating any which are exempt and the reasons for exemption;</p> <p>Exempt Appendix 1 – External funding Information</p> <p>Exempt Appendix 2 – Project Initiation Document</p> <p>Appendices 1 & 2 are exempt pursuant to Paragraph 3 of Schedule 12A Local Government Act 1972 (as amended) - information relating to the financial or business affairs of any particular person (including the authority holding that information)</p>		

1 THE ISSUE

- 1.1 Bath Western Riverside will provide up to 2284 new homes on former industrial land in the heart of the city. The scheme was committed in 2010 and has now built out 854 new homes including 25% affordable homes. The remaining land comprises former gas works and live operational gas infrastructure which risks the delivery of the remaining 1000+ homes. The Council has a continuing role using external grant funding to secure delivery of this strategically important project in the heart of the Bath City Riverside Enterprise Zone.

2 RECOMMENDATION

The Cabinet Member for Planning Housing and Economic Development in consultation with the Leader, Director for Economy and Growth and S151 Finance officer is asked to;

- 2.1 Increase the Provisional Capital programme item for Bath Western Riverside from £12.5M to £29.8M to incorporate additional external funding allocations from WECA and Homes England.

- 2.2 Delegate the approval to the Director of Economy and Growth in consultation with the S151 Finance officer to;
- I. Enter funding agreements with Homes England and WECA to fund infrastructure and land investment in the future phase of Bath Riverside on the former gaslands and Council waste site.
 - II. Move provisional capital approved to full approval upon entry to funding agreements and commitment to proceed on infrastructure expenditure.
 - III. Recycle initial investment in enabling infrastructure to support the Councils aims to deliver additionality to affordable housing provision and school delivery as part of the future project outcomes.
- 2.3 Approve the execution of actions under the Councils Corporate Agreement with Crest entered in 2010 to exercise its pre-emption to acquire undeveloped land within the Bath Western Riverside project (the Site).
- 2.4 Delegate to the Director of Economy and Growth the power to appropriate for planning purposes the Site (pursuant to section 122 of the Local Government Act 1972) and to exercise the power, if required, under Section 203 of the Housing and Planning Act 2016 ("Section 203") to facilitate the carrying out of the development of the Site.

3 THE REPORT

- 3.1 Bath Western Riverside (BWR) is a major component of the Councils SHLAA and housing delivery trajectory. The project was committed in 2010 under Decision 2216. Phase 1 has successfully delivered 854 new homes. The Council has managed the application public grant funding to deliver infrastructure and 25% affordable housing within Phase 1.
- 3.2 Under a Corporate Agreement with Crest, B&NES have been working to facilitate continued development of Phase 2, the remaining undeveloped land. Current Ownership is split between National Grid, Crest and B&NES.
- 3.3 Crest has now served a pre-emption notice for their remaining land within the scheme (an obligation of the Corporate Agreement). Exercising the pre-emption right would result in B&NES owning a 44% share of Phase 2 land, giving it control over future residential delivery. Land control alongside the application of infrastructure grant funding enables the public sector to directly control the delivery of around 450 new homes within the remaining scheme.
- 3.4 Under the Pre-emption process B&NES has a limited time to proceed. As a result, the Council will enter the decision under Rule 15 General Exception powers to ensure it can meet its obligations under the Corporate Agreement.
- 3.5 The project will deliver against a number of key Council priorities:-
- I. Creating and developing a better quality of life - facilitating high quality urban design, built environment and distinct sense of place where communities can thrive.
 - II. Create vibrant, diverse communities with a range of accommodation to meet needs of local people.
 - III. Improving the local environment - regenerate 12.7 acres of brownfield land, incorporating green infrastructure and improved access to the river and tow path.
 - IV. Minimise carbon emissions by securing low carbon housing development with low energy needs.

- V. Leverage the site's natural assets and inner city location to promote use of sustainable travel modes.

3.6 The Council's objectives are:

- I. Achieve comprehensive development in line with the Core Strategy Placemaking Plan policy SB8.
- II. Deliver a 1 Form Entry Primary school with early years and community space provision within the development
- III. Deliver homes focussed upon economically active younger demographic occupiers within the Bath Enterprise Zone.
- IV. Continue to diversify tenure options within the city's housing supply.
- V. Maximise the provision of affordable housing given the viability challenges presented.
- VI. Use external grant funding to support Council objectives, recycling value to deliver on-site affordable housing.
- VII. Unlock development potential of waste site for delivery via the Councils wholly owned company, as part of the future land supply pipeline.

This project now seeks to facilitate public sector land acquisition at phase 2 of Bath Western Riverside, known as "Bath Riverside", and ready land for development via delivery of key infrastructure and enabling works with the assistance of external grant funding. Phase 2 land benefits from outline planning consent which includes B&NES Waste Site land to the north of the river. Collectively Phase 2 is the largest residential allocation in central Bath (approx. 1000 new homes) and forms a central plank of B&NES 5-year housing supply. Despite benefitting from outline consent, the complex land ownership arrangements and significant infrastructure investment required to unlock the site renders proposed residential development challenged without public intervention. Funding agreements with Homes England provide funding for pre-defined infrastructure including: drainage, roads, remediation works, river walls, school, parks provision and waste relocation costs.

4 STATUTORY CONSIDERATIONS

- 4.1 The following section explains the need to appropriate the Site for planning purposes and the effect of Section 203 Housing & Planning Act 2016 Powers
- 4.2 Third party legal rights and easements (e.g. rights of way or of light) exist to benefit neighbouring land and will impact the Site at the time the development of the Site commences. However, if prior to commencement of the development, the land is appropriated formally to planning purposes (as defined in s.246 (1) of the Town & Country Planning Act 1990) under Section 122 Local Government Act 1972, then Section 203 of the Housing & Planning Act 2016 ("Section 203") will be enabled.
- 4.3 Section 203 of the Housing & Planning Act 2016 provides that where land has been appropriated for planning purposes then existing rights which could prevent the development of that land from being carried out in accordance with the planning permission can be overridden, subject to payment of compensation to the affected parties. The benefit of overriding easements and other rights can be transferred by the Council to the Council's development partner who will develop the Site.

- 4.4 The only power under which a local authority may dispose of land (including by the granting of any interests in that land, such as a lease), which it has acquired or appropriated for planning purposes, is under Section 233 Town & Country Planning Act 1990 ("Section 233"). Section 233(1) expressly provides, that the authority may dispose of the land "to such person, in such manner and subject to such conditions" as appear to the authority expedient to secure the best use of the land, or the construction or carrying out of any buildings or works needed for the proper planning of the area.
- 4.5 The disposal of land under Section 233 includes the sale of freehold interest, granting of lease, assignment of unexpired term of lease or granting of easements. The Council is required to obtain the best consideration that can be reasonably obtained.
- 4.6 However, before the land can be appropriated, the land must no longer be required for the purpose for which it was held immediately prior to appropriation. Therefore, this report seeks authority to delegate the decision to appropriate all or parts of the Site until such time as the development of the Site or each phase comes forward.
- 4.7 The power contained in Section 203 does not remove the legitimate rights of those persons taking the benefit of the easements or other rights to compensation arising from the interference with such rights, but it does remove the potential for such persons to frustrate the development by obtaining an injunction to prevent interference with their rights.
- 4.8 However, having regard to the potential interference with private rights, local authorities, in order to use Section 203 of the Housing & Planning Act 2016 should have regard to the following factors:-
- (i) whether the appropriation will facilitate the carrying out of the redevelopment of the Site;
 - (ii) whether the appropriation will contribute to the promotion or improvement of the economic, social or environmental well-being of the Site and the area;
 - (iii) whether it is in the public interest that the redevelopment of the Site as proposed in the planning permission should be carried out; and
 - (iv) whether the use of section 203 is proportionate with any interference with the human rights of those persons affected.
- 4.9 As indicated, when making the future decision(s) to exercise s.203 powers the Council will need to be satisfied that regard has been had to the factors as set out in this paragraph.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 The Councils adopted capital programme 19/20 made a provisional allowance of £12.5M for the future phases of Bath Riverside subject to confirmation of grant funding from Homes England.
- 5.2 Since then, the Council has sought and been formally offered additional funding to increase the capital budget to £29.8M. The project now draws together the external funding sources to enable the Council to take a strategic leadership role in the delivery of the remaining homes, infrastructure and outcomes.
- 5.3 WECA has allocated Land Investment Funding to B&NES to support the delivery of homes within the West of England. A provisional £16M is earmarked for use in FY19-20 to bring forward business cases for the acquisition of land to secure housing delivery. The Council have submitted a full business case to WECA to fund this purchase. WECA approval is delegated to the Chief Executive's Group on the 2nd September and therefore these funds remains at risk until approval is granted.

- 5.4 B&NES will fund £650K from a combination of £250k borrowing match and £400k capital contingency to finance pre-development activity.
- 5.5 In proceeding to increase public sector ownership of the remaining land, the Council will be liable to WECA to repay land investment on the terms set out within the Full business Case (exempt Appendix 1). Upon completion of land enabling activities comprising gas network rationalisation, land remediation and primary infrastructure, the Council can decide the option it employs to refund the WECA repayable grant facility.
- 5.6 Eligible infrastructure includes contributions to off-site relocation costs in relocating the Councils Waste Transfer Station in order to draw funds in line with the cash-flow within funding agreements. In doing so the Council will recycle a proportion of this initial infrastructure funding to deliver contracted affordable housing outcomes on the Midland Rd WTS site as development proceeds. The use of this funding source was delegated within Council Decision E3131 to enable the Council to progress its relocation plans for the operational waste facility.
- 5.7 The Council will need to consider how initial funding of land and enabling infrastructure recycles for the purposes of delivering additionality to the provision of affordable homes or school provision as part of the financial management of the project.

6 RISK MANAGEMENT

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

7 CLIMATE CHANGE

- 7.1 Bath Riverside is located within the Councils priority heat networks area defined in policy SB7. The first phase of the project benefited from significant public sector support enabling it to implement the only district heat network solution currently operation in B&NES. Whilst current policy can encourage development of low or zero carbon solutions, it cannot force their implementation if up front infrastructure does not exist to enable it.
- 7.2 This project provides the opportunity to deliver a low or zero carbon solution for over 1000 new homes with the potential of saving 55-60,000 tonnes of Co2 through the implementation and extension of the existing heat network. Future opportunities could then be explored to extend to adjoining sites.
- 7.3 Investment in land and infrastructure will provide the Council a mechanism to control and set the brief for low energy homes in a sustainable location with excellent connectivity to walk cycle and use public transport as the primary means of mobility.
- 7.4 Public ownership of land can enable the Council to control infrastructure development to deliver zero carbon homes in future.

8 OTHER OPTIONS CONSIDERED

- 8.1 The Council has considered the other options available to safeguard the delivery of new homes in Bath as;
- 8.2 Do Nothing – The Council leaves it to the market to bring the land forward once viable to do so. Given the complexity and expense of up front infrastructure and remediation, this is likely to continue to stall development for a number of years.

- 8.3 Do not exercise Council pre-emption - B&NES do not exercise pre-emption. B&NES could still act as contracting authority to administer the MVF; however the ability to draw this in is completely reliant upon private landowners to deliver the Council's contractual obligations to Homes England (infrastructure works and housing outcomes). This introduces an unacceptable commercial risk on the Council.

9 CONSULTATION

This report has been prepared in consultation with the Leader of the Council, the Cabinet Member for Economic & Community Regeneration; the Cabinet Member for Finance and Efficiency; the Section 151 and Monitoring Officers; the Corporate Director and the Director for Economy & Growth.

Contact person	Simon Martin
Background papers	E2216 Bath Western Riverside Corporate Agreement E3131 Capital Approval for Waste and ES Depot Relocation
Please contact the report author if you need to access this report in an alternative format	