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Becketwell Performance Venue project update

Purpose

- 1.1 To present an update on and next steps for the Becketwell Performance Venue (BPV), noting that the project has developed in line with the financial parameters agreed by Cabinet in July 2020.

Recommendations

- 2.1 To note that the Becketwell Performance Venue capital costs remain within the parameters agreed at Cabinet meeting in July 2020.
- 2.2 To fund estimated capital project management costs and external professional fees of £0.412m from the MTFP Provision for Future Investment capital budget and to amend the 2021/22 -2023/24 capital programme accordingly.
- 2.3 To note that, with the exception of the £0.443m fees budget approved by Cabinet in July 2020, the scheme is subject to Gateway 3 approval from the Council's Programme Management Board before any commitment to spend is made.
- 2.4 To note the dependency with the acquisition of the Padley Centre that is also being considered by Cabinet at this meeting.

Reasons

- 3.1 To progress the delivery of the new Performance Venue in the city centre to support the economic and cultural vibrancy of Derby City in line with the City Centre Masterplan 2030 and to support the City's economic recovery following the impacts Covid-19.

Supporting information

Background

- 4.1 A new Performance Venue for the city centre and the regeneration of Becketwell are two key priorities within the City Centre Masterplan 2030. In July 2020, Cabinet approved the acquisition of a new Performance Venue in the Becketwell area through a developer-led delivery model. Cabinet approved delegated authority to officers to progress the project delivery, including negotiation of Heads of Terms with the developer, St James Securities (SJS) and ultimately entering into a Forward Funding Agreement.

- 4.2 The proposed Performance Venue at Becketwell will be designed to be extremely flexible and will comprise a main auditorium of up to 3,500 capacity, a secondary space up to a 400 capacity and will be designed to host a range of performances and events. Further detail on the venue and benefits to the city are contained within the report to July 2020 Cabinet.
- 4.3 The BPV will be operated by a private operator on a commercial basis. The delivery model for the project includes the assumption of a long-term lease agreement with an operator, generating a rental income and variable income from, for example, naming rights. The achievability of these financial assumptions is being tested through an operator procurement process led by SJS and their advisors IPW.
- 4.4 The new Performance Venue complements the Becketwell masterplan. Outline planning consent is in place for a mixed-use development including residential, new style offices designed for the post-Covid environment, car parking and a potential hotel all built around a new public square which opens the site to Victoria Street. The Performance Venue would stimulate further regeneration, investment and development of the Becketwell Regeneration area and the wider city centre. Detailed planning consent was granted in January for Phase 1 of Becketwell including the residential element (259 build to rent apartments) and the public square, and this phase is anticipated to start on site in May 2021.

Legal negotiations

- 4.5 Since Cabinet approved the proposal in July 2020, negotiations between the Council and SJS have been ongoing to develop the two agreements required to progress the project. The Council will acquire land from SJS via a Land Sale Agreement and subsequently enter into a Forward Funding Agreement to deliver the Performance Venue. The Becketwell Performance Venue (BPV) Project Board has steered the Council's negotiating position and has maintained oversight of the key terms agreed between the Council and SJS.
- 4.6 The commercial terms agreed and included in the Land Sale Agreement and Forward Funding agreement are detailed in the confidential version of this report to be considered by Cabinet.
- 4.7 The price agreed for the land combined with the development cost of the venue will not exceed the £45.8m cost approved by Cabinet in July 2020.

Site assembly and Construction

- 4.8 In order to complete the land assembly required for the Performance Venue, the Council will acquire a building owned by Metropolitan Thames Valley (MTVH) and leased by the Padley Group on Becket Street along with an associated warehouse owned by the Padley Group. This acquisition is the subject of a separate report to this Cabinet meeting.
- 4.9 SJS is responsible for acquiring other land required for the development and completion of this acquisition is a condition of the Land Sale Agreement.
- 4.10 The Council has appointed Faithful & Gould (F&G) to act as the Council's monitoring surveyor for the duration of the project. F&G will attend design team meetings and

advise the Council in approving the plans and specification through the RIBA design gateways. When construction has started on site, F&G will attend site meetings and approve monthly valuations that will be the basis for the Council's payments to SJS under the forward funding agreement.

- 4.11 Under their appointment, F&G have also undertaken a value for money assessment of the development cost of £45.8m. F&G have confirmed that the costs within the development appraisal for the project are within industry benchmarks.

Operator Selection

- 4.12 SJS are responsible for securing an operator contracted on a long-term FRI (Full Repairing and Insuring) lease satisfying a set of agreed requirements and have appointed IPW to procure an operator for the venue. Good progress has been made on the operator selection process and final bids were received on 19th February.
- 4.13 The operators' bids, accompanying business plans and financial covenant have been assessed by IPW and a preferred bidder has been identified. Following exchange of contracts, SJS will work with the preferred operator to develop the design for the Venue and also negotiate an Agreement for Lease. This will convert to a lease between the Council and the operator upon practical completion of the venue.
- 4.14 The Council has commissioned an independent review of the preferred operator's business plan to ascertain whether it is robust, sustainable and deliverable. The Council's income projections from the operator lease, combined with the development costs will be used to support the Investment Appraisal within the project Business Case.
- 4.15 For the duration of the lease, the operator would be responsible for marketing and operating the Performance Arena and would receive income from the Performance Arena. They would be responsible for all operational risks under a lease agreement with the Council, including repair risks, booking risks and be responsible for making fixed rental payments and sharing variable revenue streams with the Council.
- 4.16 Within the Forward Funding Agreement there is provision and mitigation for risk scenarios leading to the operator withdrawing from the project prior to practical completion. Risks are detailed in the project risk log and managed by the Project Board.

Project Management / Governance

- 4.17 Following the approval of the project at Cabinet in July 2020, a project team consisting of internal and external expertise has been assembled for project delivery. A Project Board has been meeting to oversee, scrutinise and provide the project assurance required to ensure the project is delivered within the parameters approved by Cabinet.
- 4.18 Initial assessment has forecast client costs of £0.855m to cover the Council's own project management costs for the duration of the project. This includes the £0.443m approved by Cabinet in July 2020 that has enabled progression of the project to exchange of contracts.

- 4.19 A Full Business Case is scheduled to be considered by the Programme Management Board to seek Gateway approval to exchange contracts with SJS.

Derby Arena

- 4.20 In the overall interests of the city, there is a keen interest from all parties to explore a joined up approach to programming of events across the two venues, between the Council and the operator of the Becketwell Venue, to maximise event content within the city. These discussions will take place once an operator is appointed. Once an operator is appointed a revised operating model will be developed for Derby Arena that will be complementary and not in competition with the Performance Venue at Becketwell. The Derby Arena will continue to provide a cultural and entertainment events programme whilst the Performance Venue at Becketwell is developed to ensure that the city has a current cultural and entertainment programme as well as continued audience development, especially post Covid-19.

Public/stakeholder engagement

- 5.1 Engagement regarding Becketwell regeneration has been ongoing with local stakeholders including the St Peters Quarter BID, land-owners and local businesses.
- 5.2 Public consultation was undertaken by SJS in March 2019 as part of their preparation of planning applications for Becketwell and consideration of their planning application submission was also subject to a statutory consultation process.
- 5.3 A public consultation exercise was carried out in the Autumn of 2018 to guide the Council's decision making on the provision of a new Performance Venue in the city which gave an overwhelming mandate to the Council's role in providing this.
- 5.4 Public consultation to inform the planning application for the Becketwell Performance Venue will be carried out by SJS in Spring 2021, subject to exchange of contracts.

Other options

- 6.1 Having entered into an Exclusivity Agreement with SJS, the Council cannot legally pursue any alternative proposal for a venue of comparable specification to the project proposed by in this report.

Financial and value for money issues

Capital

- 7.1 In July 2020, Cabinet approved the capital funding required for the project and the capital cost of the forward funding development remains within this financial envelope of £45.894m excluding Council fees. PMO Board Gateway 3 approval is required before any commitment can be made against this.
- 7.2 Client-side capital fees for internal project management and external professional services for the duration of the project are estimated at £0.855m. Of this, £0.443m is already included in the budget envelope approved in July 2020. It is proposed that the further £0.412m required is transferred from the MTFP Provision for Future

Investment capital budget to the Becketwell Performance Venue scheme, and the capital programme updated accordingly.

- 7.3 As stated in the main body of this report, the forward funding agreement means that the Developer (SJS) will bear 100% of the construction risk.

Revenue

- 7.4 The operator procurement process will identify a preferred bidder whose offer is in line with the financial parameters approved by Cabinet in July 2020.
- 7.5 An element of Council project management and external professional services may not be able to be capitalised – these revenue costs will be managed within Directorate budgets and in-year revenue monitoring.
- 7.6 If the project does not proceed then there is an abortive cost risk to the Council, comprising the costs incurred to date on project management, legal and cost review. Until conditions attached to both agreements are satisfied, there is a further abortive cost risk to the Council comprising project management, the external monitoring surveyor and legal fees.

Value for Money

- 7.7 The deal structure for this project involves the developer spending at risk to secure a planning consent for the venue and satisfy conditions attached to the Land Sale and Forward Funding Agreements. This structure has minimised the Council's exposure to abortive cost risk, which comprises the sum spent by the Council on legal fees and independent advice required to negotiate the contractual arrangements and undertake necessary reviews and checks.
- 7.8 In addition to minimising the Council's exposure to abortive cost risk, the deal structure also requires the developer to take construction risk. The Council has agreed to pay a fixed sum of £45.8m for the development, including a contingency allocation – if costs exceed this sum then the developer will be required to fund these extra costs to complete the project.
- 7.9 The Council commissioned an independent value for money assessment of the development costs associated with the project, as provided for in a development appraisal supplied by SJS. This assessment has confirmed that the costs within the development appraisal for the project are within industry benchmarks.

Legal Implications

- 8.1 Geldards LLP provided advice on the deal structure for this proposal which informed the Cabinet decision on the project in July 2020 and Geldards have continued to advise and assist the Council with the drafting and negotiation of Heads of Terms and the contractual agreements referenced in this report.

Climate implications

- 9.1 The city centre is the most sustainable location for a venue of this size, given the access to public transport links.

- 9.2 The specification, design and construction of the Arena will include industry standard carbon technologies. Energy efficient technologies will be considered when designing the venue so as to minimise the potential carbon impact of the building's operations.
- 9.3 SJS have confirmed that the building will achieve a 'Very Good' BREEAM rating.

Other significant implications

- 10.1 The key risks identified in the July 2020 Cabinet report were capital cost increase, land ownership and planning consent and operator procurement. These risks have been managed and mitigated during progression of the project and the negotiation of contractual arrangements with SJS. A comprehensive risk register is held for the project and managed by the BPV Project Board.
- 10.2 Given the BPV will be forward funded and ultimately owned by the Council, the Property Services Department have been heavily engaged in the project work undertaken since July 2020, through involvement in the negotiation team, procurement of the value for money advice and monitoring surveyor services and membership of the Project Board.
- 10.3 An Equalities Impact Assessment is being undertaken for the project and will be included in the Project Business Case that will be considered by the Programme Management Board as referenced in paragraph 4.19.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Emily Feenan, Director of Legal, Procurement & Democratic Services	23 rd February 2020
Finance	Simon Riley, Strategic Director of Corporate Resources	23 rd February 2020
Service Director(s)	David Fletcher, Director of City Development & Growth	23 rd February 2020
Report sponsor	Rachel North, Strategic Director of Corporate Resources	23 rd February 2020
Other(s)	Catherine Williams, Head of Regeneration & Major Projects	

Background papers: None

List of appendices: None