



DERBY CITY COUNCIL

COUNCIL CABINET
18 APRIL 2006

ITEM 5

Cabinet Member for Personnel, Performance Management and
Economic Development

Riverlights – Revisions to the Development Agreement

SUMMARY

- 1.1 A new developer has taken over Metroholst Riverlights Limited and therefore the Development Agreement that company had with the Council for Riverlights.
- 1.1 The new developer has now suggested the Council consider changes to the Development Agreement.

RECOMMENDATION

- 2.1 To consider authorising the demolition of the existing bus station subject to a bond of £2m being in place or any equivalent amount being deposited in an escrow account.
- 2.2 To approve the other proposed amendments to the Development Agreement in Appendix 3 of the report.
- 2.3 To authorise the Director of Corporate and Adult Social Services to conclude the necessary variations to the Development Agreement.

REASON FOR RECOMMENDATION

3. This issue arises as the Developer has indicated he is prepared to demolish the Bus Station at an early date if there are changes to the Development Agreement.



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Report of the Director of Corporate and Adult Social Services

Riverlights – Revisions to the Development Agreement

SUPPORTING INFORMATION

- 1.1 The Council entered into the current development agreement for the Riverlights scheme with Metroholst Riverlights Limited ("the Developer") on 2 June 2004, after Cabinet approval was given on 6 April 2004. This agreement superseded the original one which was made on 18 May 2001.
- 1.2 On 8 February 2005 Cabinet authorised a variation to the Agreement which, with certain safeguards, allowed the Developer to be granted a lease of the site prior to the Agreement going unconditional in order that it could raise funds.

1.3 Summary of Agreement

In brief the current agreement provides that:

- The Council will grant the Developer a 150 year lease of the site at a peppercorn rent (this was done on 24 March 2005).
- If sixteen preconditions (see Appendix 2) are fulfilled the Developer must, at its own cost and within a given timescale, construct the development including a new bus station and an improved road system.
- When the development is completed the Council will be granted a peppercorn lease of the new bus station for approximately 150 years
- After the Developer has recovered its costs incurred in the development and taken a priority return of 15% of development costs any further proceeds will be shared equally between the Developer and the Council.

Pre-conditions

- 1.4 The current Development Agreement does not allow the Developer to commence work, including demolition of the bus station until all 16 pre-conditions, summarised in Appendix 2, have been fulfilled or, where capable, waived (unconditionality).
- 1.5 At present conditions 1 to 4 (inclusive), 6, 7 and 10 have been satisfied and some others are we believe near being satisfied. However, if unconditionality is not achieved by the Long Stop Date of 30 June 2007 then either party may terminate the Development Agreement and the Council can bring the lease to the Developer to an immediate end.

1.6 Of the 16 pre-conditions the Developer could, under the present agreement, waive all but five of them. (The non-waivable conditions are shown marked with an * in Appendix 2). Of the five unwaivable conditions two remain outstanding:

- Requirement for a bond (Condition 14)
- The acquisition of the Westfield Land (Condition 16).

Bond

1.7 The bond pre-condition requires that a bond will be provided by a bank or other financial institution to secure the performance of the Developer in constructing the new bus station and carrying out the associated infrastructure road works. However, the amount of the bond has not yet been fixed as the construction costs have not been fully calculated.

New Developer

1.8 Earlier this year Metroholst Riverlights Limited's (Metroholst) parent company, Metropolitan and District Developments Ltd, had significant financial problems and was put into administration. Bids for Metroholst were then sought from companies who effectively wanted to take over the Riverlights Scheme.

1.9 The Council were made aware of the three main bidders and had discussions with each bidder. The final choice of successful bidder was, however, solely a matter for Metroholst and on 29 March 2006 the Council was notified that ownership in Metroholst had transferred to Derby Riverlights Limited.

1.10 The new Developer has indicated he is prepared to demolish the existing bus station at an early date if this is required by the Council. He is willing to provide a £2m bond, or an equivalent amount in an escrow account, before doing so. The bond could be called on by the Council if the Agreement does not subsequently go unconditional and could be used to provide a new or enhanced bus station either on the site or elsewhere. It would not, however, be sufficient to pay for the new bus station envisaged in the Development Agreement.

1.11 The new Developer has paid a significant price to acquire Metroholst and the right to carry out the Riverlights development. This, together with the size of the bond being offered, reflects the new Developer's belief in the viability of the scheme and could be sufficient to enable members to relax the existing bond requirement of the Development Agreement. Early demolition of the bus station would be a positive step, demonstrating confidence in the scheme; and pave the way for an early start to the redevelopment.

1.12 The Developer would remain obliged to provide a full bond before commencing.

Other Amendments

- 1.13 The new developer has identified two points in the Development Agreement that need clarification/amendment in order to take account of new planning legislation that the Government is proposing to introduce and new Building Regulations requirements that have just come into force. These requests are regarded as reasonable and acceptable.

OTHER OPTIONS CONSIDERED

2. To continue with the existing Agreement.

**For more information
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Background papers:

Letter from Metroholst dated 29.3.06

List of appendices:

Appendix 1 – Implications

Appendix 2 – Summary of pre-conditions

Appendix 3 – Further proposed amendments to the Development Agreement

IMPLICATIONS

Financial

1. There are no direct financial implications for the Council arising from this report.

Legal

2. The Development Agreement will need to be amended if Cabinet approves the changes.

Personnel

3. There are no personnel implications arising from this report.

Equalities impact

4. There are no equalities implications from this report.

Corporate objectives and priorities for change

- 5.1 Riverlights will provide job opportunities during the construction process and in offices, the bus station and leisure units.
- 5.2 It also promotes the priority of providing shops, commercial and leisure activities, all of which will be incorporated in Riverlights.

SUMMARY OF PRE CONDITIONS

1. Developer applied for:
 - (a) highway consents for new road system
 - (b) outline planning position for residential, leisure and office use
 - (c) reserved matters approval for the bus station and residential and leisure elements.
2. Developer applied for all detailed planning permission for the building construction works, road works and use of the completed development.
3. Highway consents have been granted.
4. Planning permission for the development granted.
5. Developer issued satisfactory ground condition certificate to the Council.
6. New bus station specification agreed with Council*.
7. Temporary bus station location, specification and programme agreed and any necessary planning application submitted*.
8. Pre-Letting Requirements have been satisfied (ie Letting agreements securing 75% of the anticipated rental income entered into).
9. Building consents (eg for use of cranes) have been obtained
10. Council obtained vacant possession of the site and obtained necessary statutory approval to dispose of relevant part of the Riverside Gardens*.
11. Funding requirements and/or Forward Sale Requirement and/or Forward Funding Requirement satisfied.
12. Developer obtained satisfactory licences (eg liquor)
13. Developer been granted Title Policy (Covenant indemnity policy).
14. Developer procured the Bond*
15. Developer:
 - (a) prepared detailed specifications and drawings required to implement the Road Works
 - (b) obtained approval of highway authority to the Road Works specification and drawings.
 - (c) obtained approval in writing of Westfield to Road Works, required under lease of Cockpit car park
 - (d) entered into a deed of covenant with Westfield relating to, the Road Works to be carried out within their land.

- (e) Entered into all statutory agreements relating to the Road Works
- (f) Obtained any necessary traffic order.

16. The Council or the Developer has acquired the Westfield land necessary for the scheme*.

* These pre-conditions cannot be waived by the Developer.

FURTHER PROPOSED AMENDMENTS TO THE DEVELOPMENT AGREEMENT

- That any Planning Gain Supplement (PGS) on the project should be treated as a Development Expenditure and borne equally by the Council and the Developer.

PGS has not yet come into force but the Government's current proposal is that it will be introduced in 2008. As the Riverlights current scheme already has planning permission it probably will not be caught by this new "tax" but if it is it seems equitable and in line with the principles of the existing Agreement that it is borne equally by the Council and the Developer.

- That the pre-conditions in the Agreement should take account of the possible need to seek new or revised planning permissions for the Development occasioned by the New Building Regulation requirements (Part L).

The new Building Regulations may effect the design of the development, for example the amount of glazing, and this in turn may result in the need to seek new or revised planning permissions. In these limited circumstances it does not appear unreasonable for the Developer to make it a pre-condition that it can obtain such permission.