



Meeting: Adjourned Annual Council

Date: 15 May 2013

Wards Affected: Berry Head with Furzeham, St Mary's with Summercombe

Report Title: Brixham Town Centre Car Park Redevelopment

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1. Purpose and Introduction

- 1.1 In May 2011, the Council entered into a Contract with Tesco Stores Ltd (Tesco) for the redevelopment of the above site. A principal term of the Contract was that the purchase price of £2,000,000 was calculated on the assumption of an "off site" cost limit of £1 (i.e. the Developer would not be required to make any further payments to the Council acting in a capacity other than landowner or any further payments to third parties).
- 1.2 On the 6th March 2013, the Council agreed to grant Planning Permission for the development, subject to a number of conditions. One of these was that the Developer should enter into a Section 106 agreement obliging it to pay a contribution of approximately £285,000. As this exceeds the "off site" cost limit, Tesco has requested that the purchase price be reduced by the required contribution. The Developer would then be directly responsible for the Section 106 payment.
- 1.3 The planning application was submitted by Tesco's developer partner (Albourne Developments (Brixham) Limited ('Albourne')),

2. Proposed Decision

That the Mayor be recommended:

- 2.1 That the purchase price payable pursuant to the Contract be reduced by the same amount as that to be paid directly by the Developer to the Council in Section 106 contributions.

3. Reason for Decision

- 3.1 The reason for the decision being required is that given the significant site contamination and flood alleviation works necessary, the payment of an additional sum to that payable pursuant to the Contract makes the development unviable.

Having given careful consideration, the TDA is satisfied that the development does not remain viable with the cost of the required s106 contributions taken into account if the capital receipt is not reduced by the amount recommended. The TDA is also satisfied that the Council is still obtaining the best consideration that can reasonably be obtained for the disposal of the site.

The decision to alter the Capital Receipt has no negative impact upon the community. Indeed, it will have a positive effect in so far as it ensures the section 106 monies are spent on Brixham and its community rather than elsewhere in the Bay.

Supporting Information

4. Position

- 4.1 In May 2011 the Council entered into a contract with Tesco which met the following objectives of the Council at the time the transaction was entered into:

4.1.1 Securing a net Capital receipt.

Given the serious ground contamination; the massive flood alleviation works required by the Environment Agency; and the requirement for the design of the development to be acceptable on planning terms; Tesco's offer was for £2,000,000, subject to it not being required to make any further payments such as Section 106 contributions.

4.1.2 Securing an income stream to replace that currently received from the existing car park.

If Tesco were to pay a capital receipt of £2,000,000, they were unable to pay any Ground Rent. However, the deal finally negotiated means the Council will receive all of the net car park income after the 1.5 hour free parking for Tesco customers. This will be reflected within the council's revenue budget in future years.

4.1.3 Securing a major boost to the economic regeneration of Brixham.

The completion of the proposed redevelopment will meet this objective.

- 4.2 The approval of the planning application is subject to the developer entering into a s106 agreement securing the following primary contributions amongst others:-

1. Education Contribution of £14,880
2. Lifelong Learning Contribution of £5,170
3. Contribution towards the provision of a Shuttlebus £15,000

4. Stronger Community Contribution of £2,550
5. Sustainable Transport Contribution of £35,010
6. Retail Sustainable Transport Contribution of £207,930

- 4.3 The total contribution to be paid pursuant to the s106 agreement is less than £285,000 and in order for the development to proceed the Council has two options:
- A. Albourne to prepare a justification that the viability of the project precludes the payment of a Section 106 payment.
 - B. Albourne agree to pay the Section 106 payment and deduct this from the Capital receipt given to the Council.
- 4.4 The recommendation is that Option B is chosen in order to allow development to commence on the site as soon as possible.
- 4.5 Under the terms of the Contract, the gross capital receipt is £2,000,000. From this, a maximum of £670,000 is to be returned to Tesco to cover the cost of their buying the necessary third party land holdings which are not currently in the Council's ownership. Having acquired this land, Tesco are to transfer the freehold interest at nil cost to the Council. Tesco will then be granted a 150 year lease over the entire site. A further £200,000 of the receipt has been allocated to fund the Council's costs in employing external Estate Agents and Lawyers used to secure the sale to Tesco. The effect of this was to leave the Council with a net Capital receipt of £1,130,000. The actual out-turn is slightly higher at £1,146,000 as Tesco have been able to acquire the third party land interests at slightly below the £670,000 maximum allowance.
- 4.6 The effect of the above is that if the Capital receipt is reduced, the Council will have a shortfall of approximately £260,000. This will be recognised in the next Capital Plan Update Report, with funding options identified.

5. Possibilities and Options

- 5.1 If the scheme is to proceed, there are no further options.

6. Equal Opportunities

- 6.1 This proposal will not impact upon the protected characteristics set out in the Public Sector Equality Duty.

7. Public Services (Social Value) Act 2012

- 7.1 The proposals do not require the procurement of services etc or the carrying out of works.

8. Consultation

8.1 As the decision does not directly impact on the community no consultation has been undertaken

9. Risks

9.1 If the decision is not made, there is a significant risk that the developer will not proceed with the development.

Appendices

None

Additional Information

None