

STROUD DISTRICT COUNCIL

STRATEGY AND RESOURCES COMMITTEE

TUESDAY, 12 JULY 2022

Report Title	Brimscombe Port Redevelopment
Purpose of Report	To set out the procurement and decision-making process to select a preferred tenderer from the three prospective tenderers to bring forward the redevelopment of Brimscombe Port, update members on the current position with demolition works, the proposed community centre for the site and with the Homes England Loan Agreement.
Decision(s)	<p>Strategy and Resources Committee RESOLVES to:</p> <ol style="list-style-type: none"> 1) Delegate authority to the Head of Property Services to agree amendments to the Homes England Funding Agreement in consultation with the Strategic Director of Resources and the Chair and Vice-Chair of this Committee. 2) support Brimscombe and Thrupp Parish Council's continuing work with regard to the delivery of a community centre within the site. 3) note the completion of the competitive dialogue stage, (by the procurement team) of the previously approved procurement process to select a preferred tenderer for this site. 4) approve the draft Heads of Terms for the Development Agreement at Appendix F to this report 5) Welcome and support the next steps and the start of the developer's public engagement programme set out in paragraph 8.0.
Consultation and Feedback	Discussions with regard to the Community Facility have been ongoing and Brimscombe and Thrupp Parish Council recently joined the consultation event in November 2021 to seek views on this. The consultation and community engagement plan on the redevelopment of the wider site will intensify once a preferred tenderer is selected and a plan will be agreed with the local community and Parish Council.
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Options	Amendments to the Homes England Loan Agreement and/or the Development Agreement could be brought back to Committee, which will delay the appointment of a developer as Homes England will not approve the Council entering into a Development Agreement, whilst the Loan Agreement is in default (since the key milestones have passed). It is expected that these matters can be resolved, in order for the developer to be appointed before the next meeting of Strategy and Resources Committee.			
Background Papers	None			
Appendices	Appendix A - Previous S&R Committee Approvals Schedule (Procurement) Appendix B - Members Information sheets schedule Appendix C - Output Specification Appendix D - Tender Evaluation Matrix Appendix E - Tender Report Template Appendix F - Procurement Process Flow Chart Appendix G - Draft Heads of Terms: Development Agreement			
Implications (further details at the end of the report)	Financial	Legal	Equality	Environmental
	Yes	Yes	No	Yes

1. INTRODUCTION

- 1.1 One of the Council's key priorities in the Council Plan is the redevelopment of Brimscombe Port, the destination at the eastern end of the canal; with a vision to deliver a sustainable new residential-led mixed use community that meets the needs of both existing and future residents.
- 1.2 The redevelopment of the Port has been the subject of various reports to this Committee over the last few years, as the Council has proceeded to de-risk the site to deliver a viable opportunity to the market and maximise the interest from potential partners.
- 1.3 At its meeting in March last year the Committee delegated authority to commence the procurement of a developer partner for the Port using the competitive dialogue process with the final selection of the partner to be presented to Committee for approval at the completion of the process.
- 1.4 That point has now been reached, and this report sets out:
 - the procurement process that has been undertaken and the key documents approved as part of this process (Section 2)
 - how the recommended preferred bidder will be presented to Committee (in the associated confidential report to this meeting) Section 3
 - updates on the redevelopment programme, next steps and community engagement (Section 8)
 - and updates on:
 - the position with the community facilities proposed for the site (Section 4)
 - the Homes England Loan Agreement (Section 5)
 - the Draft Development Agreement (Section 6)

2. THE PROCUREMENT PROCESS:

- 2.1 **Previous Committee Approvals:** Over the last four years, members of the Strategy and Resources Committee have approved the approach to the delivery of the project and the key documentation for the tender process, as set out in Appendix A, including key procurement documents, in particular the Output Specification and Tender Evaluation Matrix i.e. what the Council and key stakeholders wish to see delivered on the site and how bids will be scored against these outputs.
- 2.2 Regular information sheets and Member/Officer reports have also provided updates and information on the project in-between Committee decisions (see Appendix B).
- 2.3 **Key Documents: Output Specification.** This was approved by Strategy and Resources Committee at its meeting on the 11th of July 2019. This document sets out the Council's vision for the redevelopment of the Port and its aspirations and objectives with regard to design, site and developer partner requirements and provides information about the site and its existing condition.
- 2.4 The document is a result of all the feedback received by the Council following its public consultation event in December 2018 and following extensive consultation with key stakeholders including the Parish Council, Stroud Valleys Canal Company and Homes England and a wide range of officers and members from across the Council. A draft Output Specification was also uploaded to the Stroud District Council website for public comment to gain feedback and input from members of the public and local community prior to its approval. A copy of the Output Specification is contained in Appendix C.
- 2.5 **Tender Evaluation Matrix:** This sets out the criteria linked directly to the Output Specification that the bidders need to respond to and the score and weighting given to each (see Appendix D). It was developed by Gleeds and officers with input from the Project Board and Investment and Development Panel (now the Regeneration and Investment Board) prior to being approved by the Strategy and Resources Committee.
- 2.6 All these key reports and procurement documents can be found on the Council's website at: <https://www.stroud.gov.uk/environment/our-vision-for-brimscombe-port>
- 2.7 **Competitive Dialogue:** The procurement process for the selection of a Developer for Brimscombe Port has followed the OJEU compliant competitive dialogue route. Competitive dialogue is a public-sector tendering option that allows for bidders to develop alternative proposals in response to a client's outline requirements, where the outcome hasn't been predetermined or designed. The aims are to increase value by encouraging innovation and to maintain competitive pressure in bidding for complex contracts and sites.
- 2.8 The rules for the process are set out in the Public Contracts Regulations 2015 and need to be adhered to closely as any divergence could leave the Council open to legal challenge, which can be very expensive and time consuming to respond to. The process must adhere to the core principles of fairness, transparency, non-discrimination and proportionality.
- 2.9 The process followed by the council is set out in the diagram contained in Appendix E.

- 2.10 The shortlisting process was undertaken utilising the PAS 91 construction specific Selection Questionnaire (SQ), as approved by Members at the meeting of Strategy and Resources Committee on 17 December 2019, in order to shortlist potential bidders. SQ submissions were received from six applicants which were scored and moderated by officers and the Council's advisors.
- 2.11 This resulted in 3 tenderers being invited to participate in the competitive dialogue process and dialogue sessions were held separately with each of the tenderers, along with SDC's Procurement Consultant; Gleeds, Legal Advisors; K&L Gates, and officers with the appropriate knowledge and skill sets to enable the tenderers to develop their proposals in line with the Output Specification.
- 2.12 Topics covered within these sessions included design, affordable housing, community facility, public realm, commercial offering and sustainability amongst others and clarifications were issued to all tenderers as necessary to support the development of compliant bids. Once proposals had been developed to sufficient detail, and the procurement team (set out in paragraph 2.10 above) were satisfied that the bids were likely to be compliant, the tenderers were invited to submit final bids on 13 May 2022, by providing responses to the Council's tender evaluation criteria.
- 2.13 Final tenders were received on 10 June 2022, and following a compliance check, the submissions were scored against the tender evaluation matrix by Gleeds, K&L Gates and council officers. Each question was scored objectively against the set criteria by the specialists in that area in order that the final decision is clearly justifiable.
- 2.14 Moderation of the scoring was undertaken following individual evaluations to ensure a fair and balanced approach. The moderator from Gleeds was not involved in the dialogue sessions and did not look at the submissions prior to the moderation discussions to provide impartiality to the process.
- 2.15 A copy of the tender report template, (which has been populated and completed with the confidential scores and associated information in the confidential report to this Committee) is shown in Appendix F.

3. Approval of the preferred bidder

- 3.1 **Confidentiality – Risks and Reasons.** There are several risks associated with revealing the identity of the preferred bidder prior to contract award and legal and commercial reasons as to why it needs to remain confidential, with committee members approving the selection in closed session. These are summarised as follows:
- Tenderers will know where we are before a decision has been made and could try to lobby and influence the decision
 - It protects Members from allegations of breaches of confidentiality
 - It further reduces the opportunity for collusion between tenderers
 - To maintain commercial confidentiality of the tenderers' bids
 - Which in turn maintains the value for money aspect of the procurement (the key reason for competitive dialogue) ensuring all bidders remain in the process and maintain a competitive approach and mind-set

The whole process can be open to challenge if it is not seen to be run in accordance with the procurement rules and there is any leakage of information about individual bidder's

proposals. This could lead to delays in the programme or the whole process having to be re-run and/or may result in financial claims against the council

- 3.2 The procedure for this meeting will be explained in the public session to this meeting and members will be asked to vote to exclude the public in order to consider the confidential report which recommends the preferred bidder. Assuming members support this, the report will be issued during the closed session of the meeting. The confidential report will be short and straightforward, setting out a recommendation to select a Tenderer – the preferred bidder.
- 3.3 An appendix to the confidential report will contain a copy of the completed Tender Evaluation Report and the preferred bidder's proposed scheme and design only, will be displayed for members to consider.
- 3.4 **The decision for members will be whether to approve the selection of the preferred bidder or not, based on the tender evaluation report and the scheme designs. The scoring process and evaluation cannot be altered.**
- 3.5 It is important to note that the subsequent appointment will be subject to Homes England's approval, as this is required before the Development Agreement can be entered into.
- 4. **The Community Facility**
 - 4.1 The output specification for the site requires the developer to provide community facilities, based on an initial specification provided by the Parish Council. The developers' proposed solutions have formed part of the evaluation of their bids.
 - 4.2 This is a key output for the development and a site by the reinstated canal basin has been earmarked for a new community building.
 - 4.3 The council agreed to give the land /space required for this facility to the Parish for £1, but the facility is expected to be paid for, owned, managed and maintained into the future by the Parish Council, due to the higher infrastructure costs that have to be met to bring forward the Port site and the public investment already committed to deliver this. These requirements are also set out in the draft development agreement (see draft Heads of Terms at Appendix G).
 - 4.4 The committee was advised in December 2019, that the Parish remained concerned at the potential cost and ongoing viability of the type of facility that had originally been envisaged and couldn't go ahead as planned. Officers have continued to meet with the Parish and offer support and at the most recent meeting in May 2022, the Parish's working group confirmed they were looking at different levels of outcome specifications so that there is something ready to discuss with a developer once their selection has been communicated and different costs for 3 options can be estimated. There could also be a phased approach to delivering this facility which could grow as the community's needs change and grow with the redevelopment and over time.
 - 4.5 Officers have offered additional support with the business planning for a facility through the council's Service Level Agreement with the Gloucestershire Rural Community Council. The working group is currently putting together a specification document and this will be shared with the Council shortly, once approved by the Parish Council.

5. Homes England Funding Agreement.

- 5.1 As part of the public investment into the project following viability assessments carried out in 2013, and again in 2015, which identified a funding gap due to the abnormally high infrastructure costs associated with the development, the Council were successful with a bid for a £2million loan from Homes England. A funding agreement was drawn up and entered into with Homes England which set out key milestones and long stop dates for the project.
- 5.2 A change request was submitted to Homes England principally to alter the project definition in the Agreement (removing the new bridge, river canal crossover infrastructure works due to the high costs of delivering these) and changing the key milestone dates. The proposed revisions were agreed by Homes England in September 2020, with the addition of the following clauses:
- a) Homes England to provide support to Stroud District Council on the tender process for the essential infrastructure to ensure value for money and the best opportunity for future repayment of the principal sum and any overage.*
 - b) Homes England to engage in the developer procurement process being run by Stroud District Council to maximise the potential commercial return from the development and therefore securing repayment of the principal sum and any overage.*
 - c) Introduce an obligation within the Funding Agreement for Stroud District Council to secure best consideration for the site recognising bids will need to be compliant with planning policy and based on deliverable schemes.*

This was reported to Committee in March 2021.

- 5.3 The legal documentation failed to progress during the pandemic and the opportunity to review the repayment provisions as part of amendments to the Agreement has been taken. A further change request is being negotiated to change the repayment terms of the loan as the first instalment of £250,000 is due on procurement of a Developer, or at the end of the loan agreement. It has been considered extremely unlikely that the site will produce this level of receipt as more detailed work has been completed on the infrastructure design.
- 5.4 However, the Port Mill building is not included with the redevelopment site and will be retained by the council, albeit with Homes England still holding a charge over it. It has been proposed that the council pays any surplus income to Homes England to repay its investment up to a long stop date.
- 5.5 Once changes to the funding agreement have been agreed with updated repayment terms, Homes England, as funding partner, will then be able to agree to the finalised Development Agreement. The proposed amendments to the funding agreement are due to be reported to Homes England Board for approval on 31 August 2022, with the additional evidence from the results of the current procurement exercise as regards the value of the site, supporting the recommendation.

6. Development Agreement

- 6.1 In September 2021 a members information sheet on the redevelopment confirmed that: 'Legal Advisors for the procurement of a developer partner have been appointed and are drafting the Development Agreement and associated documents which will reduce clarifications during the procurement process. Whilst this means more time is being taken at this point in the process it will lead to a shortening of timescales further on, keeping the programme on track overall'.
- 6.2 The draft Heads of Terms that form the basis of the draft Development Agreement are set out in Appendix G. As part of the procurement process bidders have been asked to return a high-level mark up of this draft to establish whether there are any significant areas of concern that the Council should be aware of. The response from the preferred developer will be commented on in the confidential report to this meeting.
- 6.3 In order to maintain momentum with the project it will be important to enter into the Development Agreement as soon as Homes England's approval is received, and the funding agreement changes have also been agreed. Delegated authority is therefore being sought for this in the confidential report to this Committee, noting that the Development Agreement will be conditional on a satisfactory planning permission being achieved by the developer.

7. Redevelopment Programme Update

- 7.1 **Demolition works** at Brimscombe Port completed on 17 June 2022, with site cabins leaving site on 20 June 2022. All buildings on both the industrial and business sides have been demolished to slab level. Part of the back wall to Unit 3 and part of the river facing wall to the Port House have been left in-situ to provide safety and security to the site.
- 7.2 98.5% of the material by tonnage overall from the demolition works was recycled or reused:
- 1960m³ Hardcore (class 6F2) for reuse on site
 - 460 tonnes of steel and light iron recycled
 - Staircases salvaged to be sold and reused in buildings
 - 24 tonne bags of Cotswold stone salvaged for reuse
 - Over 75 tonnes of timber sent for recycling/shredding
- 7.3 The crushed hardcore (6F2) remaining on site has been retained for reuse by the Developer for the redevelopment to assist in the requirement to raise site levels to take the site out of the flood plain. This reduces vehicular movements from both the demolition works that have been carried out and the future construction works.
- 7.4 **Budget position**
- 7.5 The financial receipt/cost to the Council of the preferred bid is set out in the confidential report to this Committee. This may be subject to change as the planning application progresses.
- 7.6 The funding committed to the development costs was set at £3.526m to provide certainty to bidders. Further surplus income from the site from 2022/23 onwards is expected to offset the forecast shortfall (£222k) in the budget, as the letting of the refurbished Mill buildings continued and it is now almost fully let.

- 7.7 Any capital receipt and surplus income is due to repay the £2m loan from Homes England. The table below summarises the current financial position for the redevelopment

Table 2: Project Budget

Funding Source	Funding £000's	Expenditure to 2022/23 £000's
SDC Capital	(2,600)	
Homes England Loan	(2,000)	
LRF	(776)	
SDC revenue to end of 2021/22 (income from the site)	(397)	
Total funding to 2021/22	(5,773)	
Funding committed to developer		3,526
Forecast expenditure		2,469
		5,995
Forecast shortfall		222

8. Next Steps

- 8.1 If the preferred bidder is selected at this meeting, the preferred bidder status will be conveyed to the Developer and the two unsuccessful bidders, initiating the 10-day standstill period, which provides a pause between the point when the contract decision is notified to the bidders, and the declaration of intent to appoint is issued, during which time other bidders can challenge the decision. This is a legal requirement imposed through the Remedies Directives and it is still important to maintain confidentiality through this period.
- 8.2 Following the 10-day standstill period, which will end at close of business on 25 July 2022, a declaration of intent will be entered into with the preferred developer and finalisation of the Development Agreement will commence. The identity of the Developer can then be shared on 26 July 2022. The identity of the unsuccessful tenderers/developers will not be revealed due to commercial sensitivity unless they give their permission as this could affect their market image and financial positioning.
- 8.3 An introduction meeting with all members is proposed after the standstill period and the developer will also meet with Brimscombe and Thrupp Parish Council (week commencing 1 August 2022) to build on previous discussions between Stroud District Council and the Parish Council regarding the community facility and begin setting more definitive solutions.
- 8.4 This programme, assuming the preferred bidder is approved is set out below:

Table 2 – Next Steps Programme

Date	Action	Details
Tues 12th July	Public Report and Confidential Report and Appendices	S&R Committee
Wed 13th July	Issue contract decision	Decision embargoed
Wed 13th July to Mon 25th July	10-day standstill period	
Tues 26th July	If no challenges submitted - Declaration of intent entered into with Developer and Finalisation of Development Agreement commences	Press release & update website Developer name can be made public
Wed 27th July/ Thurs 28th July (Provisional)	All Members meet Developer (in person/virtual to be agreed)	
W/C 1st Aug (Provisional)	Parish Council meet Developer in person	
W/C 8th Aug (Provisional)	Developer introduction/presentation to public in person	
Wed 31st Aug	Homes England approval	
w/c 5th Sept	Enter into Development Agreement	

- 8.5 **Public Engagement:** A developer introduction/presentation will be arranged and publicised for the week commencing the 8th of August 2022, after the meetings with members and the Parish Council. This will be the first of several community engagement events with the Developer. A community engagement plan will then be agreed with input from the local community and the council, and the feedback and suggestions already received from the local community will be shared with the developer. More public consultation will take place prior to a planning submission to enable the community views to be input into and help shape the process. Members of the community will of course be able to input into the planning process in the usual way.

9. CONCLUSION

- 9.1 The Council is now at a critical point of this exciting project after many years of hard work and investment. If a developer is selected for appointment at tonight's meeting, the legal

documentation required can be progressed and the developer can share the detail of their proposals and programme with the council, key stakeholders and the wider community.

- 9.2 It is, therefore recommended that the Committee approves the delegation set out in this report to enable the Homes England Funding Agreement to be amended, to ensure that this supports the continuing progress of the regeneration of this important brownfield site enabling the council to deliver the outputs and the vision that has been drawn together with the support of all the key stakeholders and local community.

10. IMPLICATIONS

10.1 Financial Implications

Table 2 at Para 7.7 sets out the financial contribution that the Council has made to the development. The Output Specification and Development agreement are clear that this is the limit of the Council financial contribution to the project. Although the table shows a current shortfall in the funds expected to make the set level of financial contribution, it is expected that surpluses from rental income at the mill building from 2021/22, and future years, will be used to make up the total with no wider impact on Council budgets. If Homes England agree to changes in the repayment provisions of the loan, as set out in the report, it will resolve a key area of financial risk to the project and the Council.

Andrew Cummings, Strategic Director of Resources

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10.2 Legal Implications

The following bullet points set out details of significant implications identified by officers:

- a) Gleeds, as procurement consultant, has confirmed that the procurement process for the Brimscombe Port development has been run in compliance with the procurement legislation, regulations and the previously authorised process. By means of the now concluded procurement process, the prospective tenderers have been narrowed to the three bids presented to you at this committee meeting following thorough evaluation and moderation.
- b) Pending the decision by the Strategy and Resources Committee at this meeting based on the evidence and scoring of the prospective tenderers' presented bids, one tenderer from these three bids shall be selected as the preferred tenderer for the Brimscombe Port development project.
- c) Following the Committee's selection of the preferred tenderer, the procurement consultants will issue a letter to all three tenderers identifying the preferred tenderer and commencing a 10-day standstill period in compliance with the Public Contract Regulations 2015 and the Remedies Directive. During this time the identity of the preferred tenderer must remain confidential to all parties not involved in this process, and the two unsuccessful tenderers will have the opportunity to challenge the Committee's decision should they so choose.
- d) Provided that no challenge to the selection of the preferred tenderer has been submitted during the standstill period, once the standstill period has concluded the Council will proceed to issue a declaration of intent to appoint the selected preferred tenderer as the Developer in due course. Following this announcement, the Council

will proceed to finalise the terms of the Development Agreement with the Developer, and to finalise the terms of the funding agreement with Homes England regarding the development grant. Following the agreement of terms in both documents, the Council will appoint the preferred tenderer as the Developer and will enter into the Development Agreement along with any necessary ancillary documents thereto.

Matthew Powell, Senior Associate, K&L Gates LLP

10.2 Equality Implications

An EIA is not required because there are not any specific changes to service delivery proposed within this decision.

10.3 Environmental Implications

The report above sets out details of implications with regard to the recycling and reuse of materials in respect of the demolition works in paragraphs 7.2 and 7.3.