

Cabinet

Tuesday, 10th September 2024

Festival Gardens- Approval of Development Brief key principles and to commence a competitive procurement process for a developer

Lead Cabinet Member: Cabinet Member Councillor Nick Small –
Cabinet Member for Growth & Economy

Lead Corporate Director: Corporate Director City Development –
Nuala Gallagher

Exemption - Appendices 1, 2 and 3 are not for publication by virtue of paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972 due to information relating to the financial or business affairs of any particular person (including the authority holding that information) and includes contemplated, as well as past or current activities.

Report Summary

Bringing forward the regeneration of Festival Gardens has been a long-term ambition of the Council. Extensive remediation and enabling works to the Development Zone at Festival Gardens were successfully completed in January 2024, made possible through grant funding from Homes England and Liverpool City Region Combined Authority (the Combined Authority), as well as Council funding. Now ready for development, the site is a strategically important opportunity to create a new residential – led neighbourhood, delivering a significant number of homes (including affordable) to support the city's growth.

Since November 2023, the Council has been preparing, testing and defining an ambitious Development Brief to provide a framework for the marketing of the site. This Brief establishes the objectives and design principles to realise the unique opportunity to create a thriving, sustainable, healthy and inclusive neighbourhood with a strong identity and sense of community. The ambition is to create a balanced new residential community for lifetime living, supported by community facilities, infrastructure, and open space.

Cabinet approval is sought to enter a competitive procurement exercise to fully test and maximise the opportunity to deliver an innovative scheme for the City, that best realises the Council's aspirations and maximises the potential of the site. This report summarises the extensive visioning, research and market testing undertaken to create the Brief, ensuring the Brief captures and defines the ambition of the Council. The report outlines how this can be achieved (whilst being reflective of existing and future market conditions) and how the Council can secure a high calibre development partner with a successful track record of delivering similarly ambitious projects at pace and can best work with us to realise our ambitions.

Recommendations

For the reasons set out in this report, Cabinet is recommended to:

- I. Approve the key objectives and design principles within the Development Brief as detailed within paragraphs 4.7 to 4.9
- II. Approve the commencement of a procurement exercise for a developer for Festival Gardens as set out in paragraphs 4.1 to 4.6
- III. Approve the use of the remaining Festival Gardens capital budget as required for consultancy costs associated with the procurement of a developer.

It is recommended to the Corporate Director for City Development, under the scheme of delegation, to authorise the following:

- IV. Award a contract to DWF LLP to provide legal support during the procurement process and drafting the developer agreement until the end of December 2025, for a cost of up to £170,000 excluding VAT.
- V. Vary the existing contract with MACE Consult Ltd for the continued provision of the current Multi-Disciplinary Consultancy Team until the end of December 2025, for a cost of up to £180,000 excluding VAT.
- VI. Vary the existing contract with Ove Arup and Partners Ltd for the continued provision of Technical Advisory and Site Supervision Services until the end of December 2025, for a cost of up to £30,000 excluding VAT.

Decision Status

This is a key decision by virtue of

1. Expenditure over £500K
2. Significant impact on 2 or more wards

The proposed decision contributes to Pillar 3 and 5 of the Council Plan.

The proposed decision impacts Festival Gardens and St Michaels wards within the City.

1. Background and Context

Remediation Works Overview

1.1 Given its historic use, the Festival Gardens site required significant remediation to enable viable development to come forward. Following the granting of planning consent in April 2020 and entering a grant funding agreement with Homes England and the Combined Authority in July 2020, remediation of the Development Zone site is now complete giving a site of 7.97ha. 5.7ha of the Development Zone is fully remediated with the 2.27ha of land around the edge of

the site partially remediated. Early enabling works to support delivery have also been completed, including installation of permanent attenuation drainage, a drainage outfall and a primary substation with secured power supply.

1.2 A public benefit already secured through the remediation and infrastructure works is the creation of an improved 20-acre recreational space within the Southern Grasslands which opened in August 2023. The re-landscaped green space, which was previously landfill, rises more than 30 feet high and features 5,700 new trees and shrubs as well as 2 kilometres of footpaths. It will help to act as a carbon sink to tackle climate change and enhance biodiversity by bolstering the city's unique coastal habitat.

1.3 Fully exempt Cabinet report EDR/31/22 (September 2022) gave approval to:

- Enter into an alternative procurement exercise to procure a developer for Festival Gardens
- Procure consultancy support (including legal) required to undertake this exercise including preparation of all necessary documentation.
- Negotiate and complete the associated documentation and legal agreements required to vary the outputs of the Grant Funding Agreement (GFA).

1.4 The approval to enter into an alternative procurement exercise did not specify a route to procurement, nor set out the project objectives or design principles, therefore cabinet approval is still required by virtue of this report.

1.5 Following this approval, a highly experienced multidisciplinary team – Mace, Montagu Evans, ShedKM and Metropolitan Workshop - were procured by a competitive procurement process and appointed in November 2023 to prepare an ambitious development brief and design principles for Festival Gardens and

advise and manage a developer procurement exercise. To create this, the team have worked collaboratively with LCC officers from across the Council and external legal support researching and developing the following:

- Most suitable procurement route to identify the right development partner
- Define Key objectives for Festival Gardens
- Define Design principles
- Key commercial structure to ensure control over outcomes and delivery of the scheme
- Detailed density and viability analysis, supported by market testing to understand the parameters for maximising the potential of the site

1.6 Soft market testing has also taken place to inform the above and test the assumptions and conclusions made by the project team.

2. Reasons for the Recommendations

Procurement Strategy

2.1 The procurement strategy will have a decisive impact on the quality of developer the Council is able to procure, and the terms of the partnership ultimately negotiated.

2.2 The Council wishes to adopt a contractual arrangement which minimises financial risk but allows the Council to retain a level of control and influence over the development outcomes, including timescale and quality. A development agreement contractual arrangement will allow the Council to achieve this.

2.3 The strategy adopted must be robust in its ability to test the capabilities and suitability of the bidding parties and flexible enough (within reason) to

accommodate a degree of diversity and innovation of business models and development solutions that the bidders may bring.

- 2.4 A full options analysis of procurement routes has been explored. A competitive dialogue procurement route is recommended because it allows for a dialogue with the bidders, enabling ideas to be reviewed and revised. This provides flexibility and engagement with the market to find the optimum development solution and innovation for the site, allowing the Council to use the dialogue and evaluation process to maximise the development potential of the site.
- 2.5 The procurement strategy to procure a developer for Festival Gardens set out in this report was recommended by the Council's appointed Multi-Disciplinary Team, in consultation with the Commercial Procurement Unit (CPU) through the procurement governance process and endorsed by the Council's gateway review group (GRG) on 6 August 2024. The GRG serves as a checkpoint at various stages of the procurement process to assess the alignment of procurement decisions with the Council's strategic goals and objectives. Any revisions to the procurement strategy will be subject to further review by GRG.
- 2.6 Further information on procurement options considered can be found at Exempt Appendix 2.

Project Objectives

- 2.7 The Council's overarching objectives for the site, derived through work to date, are shown below. They are separate from the project vision and design objectives but form part of the brief and will help inform the evaluation basis for the developer selection. These are:
- To deliver a scheme that meets the Project Objectives, achieves the Vision & Design Principles and seeks to exceed these wherever possible

- To deliver a scheme of exemplar design quality place-making and sustainability, reflecting the Vision & Design Principles set out in the Development Brief
- To ensure robust long-term maintenance and management arrangements are put in place for the Development Site and identify ways of supporting the long-term maintenance of the adjacent Festival Gardens
- To undertake proactive and meaningful engagement of key stakeholders and the local community in the design, delivery and management of development, maximising social value benefits through construction and operation
- To establish an optimal development solution based on robust market assessment to bring forward a viable and deliverable scheme that responds to the existing and emerging market
- To secure a commercial return for the Council's land interest in accordance with its obligations under S123 Local Government Act 1972
- To provide the Council with sufficient oversight and approvals over scheme delivery to strategically manage delivery of the Project Objectives, whilst minimising Council exposure to development risk

2.8 Several internal design workshops have been held to establish a vision and design principles which reflects the design and quality aspiration for Festival Gardens. This vision can be summarised as follows:

- An aspirational development of exemplar contextual design, quality, place-making and sustainability that preserves and enhances the natural environment for recreation use, creates biodiversity net gain and provides for high standards of amenity and living
- To deliver a truly thriving, sustainable, healthy and genuinely inclusive neighbourhood with a strong identity, that encourages social interaction and fosters a strong sense of community

- Acknowledge that Festival Garden's desirability as a place to live and spend time is, in part, derived from the quality of environment – green and leafy parks, quality open spaces and a streetscape to support diverse neighbourhoods, which are integrated seamlessly with nature
- The River Mersey is synonymous with Liverpool's identity and, as such, the development should optimise opportunities to connect to the river front, fostering a unique sense of place in the connection between urban life, the River, the Gardens and the Grasslands
- Ensure ease of movement and strong connections between Festival Gardens and neighbouring areas will help stitch together new and existing communities and reinforce the site's vibrant history as a focal point for the local neighbourhood. Ensure we create a neighbourhood with active and inclusive travel, minimising car travel and enhancing movement by public transport, walking and cycling
- Creation of a new neighbourhood offering multi-generational living with a range and mix of housing types, sizes and tenures, supported by community facilities, high quality public open space and other infrastructure to cater for the needs of a growing residential and working population
- Deliver a flagship sustainable project that maximises the use of renewable energy sources and minimises whole life-cycle costs and carbon emissions, whilst being resilient and futureproofed to climate change
- Ensure comprehensive, robust and sustainable site management for the lifetime of development
- Ensure proactive and meaningful engagement of key stakeholders and the local community in the design, delivery and management of development, maximising social value in construction and operation
- Enable comprehensively planned and sequenced delivery that ensures appropriate amenity and quality of life for established and new residential communities

- Thoroughly exploring and innovating to apply the use of Modern Methods of Construction (off site and other advanced technology) to support delivery at pace

2.9 This vision summarises the ambition, approach to and design quality expectations for the site. These have been tested and refined as part of the soft market testing and reviewed internally. They also link back to the overall Project Objectives to ensure a consistency in approach.

Density and Viability

2.10 A requirement of the procurement process will be to demonstrate a viable scheme that seeks to seek to maximise development potential and unit numbers, driven by the grant funding outputs and city's housing supply targets, whilst ensuring the qualities of good placemaking are balanced and maximised. Due regard will be made to best consideration when evaluation of tenders takes place.

2.11 As with many such brownfield sites, the scheme is likely to experience viability challenges, especially due to the current economic climate and construction costs, including costs for foundation design relative to site ground conditions, which increases as the density of development increases. Scenario testing of a range of densities, typology and tenure mix has taken place to understand the most suitable range of densities for the site, which will be further tested through the procurement process. Details of this scenario testing can be found at exempt Appendix 1.

Timetable

Figure 1: Competitive dialogue

Time Period	Action
First week of October 2024	Launch of procurement
6 weeks - to mid November 2024	Selection Questionnaire and Evaluation
16 weeks - to mid February 2025	Outline solutions - invitation to submit, deadline and evaluation period
14 weeks - to end of May 2025	Full dialogue period
1 week - end of May 2025	Call for final tenders
4 weeks - end of June 2025	Final tender deadline
5 weeks - end of July 2025	Final tender evaluation and bidder selection process
8 weeks - end of September	Legal negotiation
October 2025	Contract award (cabinet decision)

Council Consultant Team

2.12 The Council has a continued requirement for the external consultancy support currently provided by DWF LLP, MACE Consult Ltd and Ove Arup and Partners Ltd to deliver to the timetabled programme, as set out in the Financial and Legal Implications sections of this report. This will allow skilled specialists to continue to support the Council throughout the procurement, evaluation and legal negotiation stage, in conjunction with the Council's Commercial Procurement Unit.

2.13 When cabinet approval is sought to enter into the Development Agreement, approval will be sought to appoint part of the existing consultancy team into a Quality Assurance role to ensure obligations and expectations within the Development Brief and Development Agreement are met by the future developer.

3. Alternative Options

3.1 Do nothing - by not seeking a development partner for the site, the Council would be required to pay back grant funding from Homes England, would not be eligible for drawdown grant funding from the Combined Authority, and would not see a return on Council monies invested in the site to date. The Council would also incur borrowing costs not included in the current MTFS due to funding already expended via internal resources. Circa £60 million of public sector funds have been invested on acquiring and remediating the site to get it ready to go to market so that the benefits of redeveloping the site can be realised – realisation of which would be further delayed. The Council have also committed publicly that the site will be regenerated since reacquiring it in 2016 and that it will be marketed for residential development in September 2024. If this is not done, there will be reputational damage for the Council.

3.2 Alternative use of the site – if the Council were to directly dispose of the site for an alternative use, this would be in breach of the grant funding agreement and would require the Council to pay back grant funding from Homes England and the Combined Authority. There is a need for the Council to deliver new houses within the city to meet its housing demand and the Festival Gardens site has been remediated to a residential standard; to use the site for another use would result in abortive remediation costs.

3.3 A number of alternative procurement options were considered and have been discounted for the following reasons:

- Framework Procurement route – using a framework reduces the ability for the Council to examine and influence qualitative aspects of bids submitted, as well as excluding specific parties and developers who are not a part of the chosen framework and potentially losing out on high quality bids.
- Land disposal to developer – discounted due to the Council’s lack of ability to control the quality and size of development to align to Council policy objectives and GFA outputs and obligations. This method was previously used and abandoned due to the lack of control over delivery of the development. Cabinet approval EDR/31/22 authorised a change of procurement approach.
- Open Restricted Procedure – to maximise the innovation and ambition for the site and engage proactively to overcome site constraints and viability challenges, open engagement with bidders during the procurement process is required and this procedure does not offer that ability to discuss and shape submissions. This approach was discounted due to this inflexibility.

4. Impact of the Decision

Equality and Diversity

- 4.1 Positive impacts are anticipated for age, disability, sexual orientation and socio-economic status. Neutral impacts are anticipated for gender reassignment, sex, pregnancy and maternity, race and marriage and civil partnership. Unknown impacts are anticipated for religion and beliefs and care experienced people.
- 4.2 Once a development partner is appointed and detailed proposals are known, an in-depth analysis on the anticipated impacts on protected characteristics will be conducted.

- 4.3 Through this proposal, ambitious high-level objectives have been set which positively influence and reward developers who look to include high level public realm design and improved accessibility/permeability of the development within their proposals. Therefore, it is expected that future proposals brought forward by developers will positively benefit most protected characteristics groups.
- 4.4 As the scheme proposals develop, the appointed developer will be required to assess EIA implications as part of the design process and a phased land drawdown approach is proposed to manage the ongoing quality and design of the development and in turn any proposed positive impacts are not weakened as the land develops.

Environment and Sustainability

- 4.5 The Council has a priority to delivery homes for its residents. This procurement exercise is the next stage in ensuring new homes are delivered at Festival Gardens. The project and design objectives will ensure the Council's aims to deliver thriving communities, and a well-connected, sustainable, and accessible city, supporting the aims of the Council plan.
- 4.6 The Council has set an aspiration for Festival Gardens to become a flagship sustainable development and project that maximises the use of renewable energy sources and to minimise the whole life cycle carbon emissions for the development while being designed to be resilient to climate change and futureproofed. The development brief will reflect the sustainability ambition for the site.

Social Value

- 4.7 Social value will form part of the contract award to a developer, the outcome and measurement of this social value will be reported to cabinet at contract award stage.

Other Relevant Implications

- 4.8 A competitive dialogue process requires intensive resource to manage and deliver the process. Subject to approval within this report, there will be a specialist consultant team in place to deliver this process, sitting alongside Council procurement and legal colleagues.
- 4.9 Procurement and legal colleagues are aware of the resource requirement and are putting measures in place to ensure the resource is available.

5. Consultation or Engagement Outcomes

- 5.1 A cross departmental working group and project board consisting of colleagues from planning (placemaking and development management), procurement, legal, finance, transport and sustainability have been involved throughout the design evolution process to ensure the brief meets the aspirations of the Council. Agreement on the procurement route has also been discussed at this cross departmental group to ensure colleagues are aware of the resource commitment required during evaluation and dialogue which will allow ambition to be maximised.
- 5.2 The working group and project board have been consulted upon and agree with the key design principles, project objectives and the recommended procurement route.

Cabinet Member Briefing

- 5.3 The Cabinet Member for Housing, Sam East, has been fully briefed on 16th August and is in support of the recommendations within this report. Members are supportive of a development brief that encourages a balanced residential development that complements the amenity of the surrounding community, whilst providing essential amenities that meet current and future local needs.

They would also encourage the enhancement of pedestrian and cycling connectivity across Riverside Drive to Festival Gardens and the waterfront.

- 5.4 Ward councillors Peter Norris and Tom Crone have been regularly briefed on the project and will be briefed on the contents of the cabinet report before publication.

6. Financial Implications and Risk

- 6.1 Please see financial implications within exempt appendix 3 (Financial Implications and Risk)
- 6.2 This report seeks authority to use the remaining £2.138m as follows:
- Payment of continued consultant appointments required to support the procurement of a developer at a cost of up to £0.350m
 - Payment to safeguard electrical power supply until a developer is in place to do so, at an indicative cost of £0.030m
 - Use of remaining Festival Gardens capital budget of £1.758m for additional consultancy costs and legal costs associated with the procurement of a developer

7. Legal and Governance Implications

- 7.1 Procurement - The procurement options analysis, as discussed at section 5 of this report, has been fully reviewed by DWF LLP. The recommended route of a competitive dialogue has been fully risk assessed by DWF and it has been confirmed that, for LCC to maximise ambition and have a procurement compliant dialogue with developers, this route to market is the most suitable.
- 7.2 Both DWF and Montagu Evans will be supporting LCC throughout the entire procurement process, sharing their skills and expertise. LCC Procurement

colleagues have been briefed on the preferred route to market and are in support of this process.

- 7.3 GFA - approval is in place to vary the GFA outputs and milestones. This workstream is ongoing see Section 8, Risk Register. Cabinet will be informed of the full implications of the GFA variation once this is agreed with all parties.
- 7.4 Development Agreement – using a development agreement contractual structure will give the Council the best level of protection and control that can be provided to realise the ambition for the site, delivery of each phase, step in rights and best value. Both LCC internal legal and property colleagues and DWF are involved in agreeing the Heads of Terms to go to market and the Development Agreement structure. Cabinet will be asked to approve the Development Agreement at contract award stage.
- 7.5 Governance – Governance will be at internal and external levels, along with a continued governance structure with the funders (Combined Authority and Homes England). Internally, the progress will be monitored and reported at a programme and board level.
- 7.6 Via the Development Agreement, there will be regular officer level meetings to enable LCC oversight on a regular basis. At a more senior level, there will be a quarterly governance arrangement in place. The Development Agreement will have mechanisms in place that require the Council landowner to approve which strengthens the oversight and governance process.

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Exempt Appendices: Appendix 1, Appendix 2 and Appendix 3

Background Papers: None