

Committee Name and Date of Committee Meeting

Cabinet - 13 February 2023

Report Title

Waverley Medical Centre (Olive Lane) Funding and Development Agreement

Is this a Key Decision and has it been included on the Forward Plan?

No, but it has been included on the Forward Plan

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

Jonathan Marriott, Head of Asset Management, Regeneration and Environment Directorate

Ward(s) Affected

Rother Vale

Report Summary

This report summarises the request by what was the Rotherham Clinical Commissioning Group (the CCG), now the South Yorkshire Integrated Care Board (ICB) for the Council to act as a 'Partner' to facilitate the development of a proposed new medical centre at the Olive Lane development within the new Waverley Community. The report details the reasons why the ICB have made the request and the issues arising in relation to the Council entering into the Funding and Development Agreement.

Recommendations

It is recommended that Cabinet:

1. Approves the Council entering into the proposed Section 2 Funding Agreement and Development Agreement and the subsequent property lease agreements in order to facilitate the development of the proposed Medical Centre.
2. Authorises the Assistant Director for Planning, Regeneration and Transport in consultation with the Assistant Director for Legal Services to negotiate the terms and conditions of the Section 2 Funding Agreement, subject to final approval by the Section 151 Officer to facilitate the acceptance of funding and its subsequent distribution.

3. Authorises the Assistant Director for Planning, Regeneration and Transport in consultation with the Assistant Director for Legal Services to negotiate the terms and conditions of the proposed property leases, both as Landlord and Tenant, in order to comply with the Section 2 Funding Agreement.

List of Appendices Included

Appendix 1 – Proposed plans for Waverley Medical Centre, Olive Lane

Appendix 2 – Capital Funding & Development Information (Exempt)

Appendix 3 – Equalities Impact Assessment

Appendix 4 – Carbon Impact Assessment

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

An exemption is sought for Appendix 2 under Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A of the Local Government Act 1972 is requested, as this report contains sensitive commercial information with regards to commercial agreements which could disadvantage the Council in any negotiations if the information were to be made public.

It is considered that the public interest in maintaining the exemption would outweigh the public interest in disclosing the information, as the parties' commercial interests could be prejudiced by disclosure of commercial information

Waverley Medical Centre (Olive Lane) Funding and Development Agreement

1. Background

- 1.1 Waverley Housing Development is a new mixed-use community that is being developed by the Harworth Group (“Harworth”) to deliver over 3,000 new homes, commercial space and a range of social and green infrastructure on the land they own.
- 1.2 The new mixed-use development at Waverley is called Olive Lane and has been designed by Harworth. It is proposed to be developed on around 10 acres of land that sits between the Advanced Manufacturing Park and the site’s existing residential areas. Details of the proposals can be seen within the attached Appendix 1.
- 1.3 With this housing and population growth there is a clear need for an additional medical provision i.e. a new medical centre in Waverley to support the nearest existing GP Surgery (Treeton Medical Practice) which is located two miles away. For the avoidance of doubt, Treeton Medical Practice will continue to operate from its current site.
- 1.4 Planning Consent was obtained by Harworth Group on the 29 March 2022 under RB2021/1710 and is set out as follows;

“Construction of medical centre (Use Class E (e)) and associated car, cycle parking, landscaping, vehicular, pedestrian access / egress, and related infrastructure at land off Mitchell Way Waverley Rotherham”.
- 1.5 Harworth are obliged through a Section 106 agreement (S.106) dated 3rd March 2011, to provide a medical centre, subject to the availability of funding by Rotherham Primary Care Trust (though the funding will now be provided by NHS England “NHSE” via the ICB). The medical centre referred to in the S.106 will be a new build medical centre which will sit within the wider housing and mixed-use complex. The building will be a dedicated standalone facility of circa 600m2.
- 1.6 The ICB procured the Medical GP Provider (the Gateway Medical Practice) for the new medical centre situated on land that is owned by Harworth.
- 1.7 The ICB are still operating under the arrangement of the former CCG, and have confirmed that they are unable to enter into a property transaction directly with Harworth, nor subsequently hold a lease, and therefore the capital funding for the project can only be granted to another public body (i.e. the Council). Therefore, the ICB have sought the Council as a ‘Partner’ in order to facilitate this development and to channel the funding from NHSE to Harworth.
- 1.8 It is proposed that the capital funding for the project, which is subject to final business case submission by the ICB, will be provided by NHSE to the Council under section 2 of the NHS Act 2006 and through a section 2

funding agreement. Details of the funding arrangements and costs can be seen within the exempt Appendix 2.

- 1.9 The Council will then provide this funding to Harworth through a development agreement between Harworth and the Council. Harworth have procured the building of the Medical Centre by competitive tender and by means of the development agreement the Council will make payments to Harworth at different stages of completion.
- 1.10 In order to comply with the NHSE funding requirements, the Council is required to enter into a lease to hold the asset for the majority of the proposed building's lifespan. Therefore, Harworth will grant a headlease of the site that will incorporate the proposed new medical centre to the Council at a peppercorn rent, on full repairing and insuring terms, for a period of 45years, with the potential to extend by a further 15 years, subject to negotiation of the funding agreement.
- 1.11 The Council will make the new medical centre available to NHSE/ICB nominated provider, the Gateway Medical Practice, at a peppercorn rent on effective full repairing terms. The initial sublease agreement will be for a period of 15 years.
- 1.12 At the end of the Council's headlease period (45 years with potentially an additional 15 years) the building will then revert back to Harworth and the Council will no longer have any interest in the buildings or site.
- 1.13 The Council will be responsible for the management of this legal interest for the duration of the headlease and will hold responsibility for ensuring lease compliance of the subtenant, Gateway Medical Practice, though retaining the ability to recover any such costs incurred. The lease arrangements, whilst substantially agreed, are still under negotiation.

2. Key Issues

- 2.1 The S.106 attached to the Waverley New Community planning permission requires Harworth to provide a building to be used for healthcare purposes of at least 550 square metres gross external area. The Agreement goes on to obligate Harworth to procure the centre and adjoining car park according to a programme to be agreed with the ICB subject to the availability of funding by the ICB.
- 2.2 This obligation takes effect on the occupation of the 915th dwelling, and as occupation rates at Waverley have now passed the 1000 mark, this obligation has now been triggered.
- 2.3 South Yorkshire ICB, as a commissioner, are currently unable to hold lease agreements or enter into development agreements directly with Harworth. These property functions can only be conducted by NHS Property Services, which is an independent government organisation separate to the ICB and NHSE. Due to the unique circumstances of this project with Harworth owning the site and controlling the development, alongside the S.106

obligations and the property recharging arrangements between NHS Property Services and the ICB, the only viable way of ensuring that this project is delivered within the funding timescales at a local level is through the Council as Partner. This arrangement is not unique to Rotherham, there are a number of similar schemes in England already in place and similar arrangements are being put in place in Sheffield and Doncaster.

- 2.4 The Council would not see any direct financial incentive in entering into such an agreement, as there would be no element of 'profit rent' on this transaction. However, there may be the opportunity to generate external fee income on both the construction side of the project, alongside the ongoing maintenance and management of the building and lease arrangement through a 'Management Service Level Agreement' or via a service charge.
- 2.5 The Borough would also see a multi-million pound investment into the area whilst ensuring that a much needed medical centre is delivered to this new community.

Current Status

- 2.6 Heads of Terms for the development agreement and proposed lease agreements have been exchanged in draft, which are subject to formal final agreement.
- 2.7 Legal Teams have been engaged to draft a Section 2 Funding agreement, and potential costings being obtained from Harworth. Further details of the funding and costings can be seen within Appendix 2.
- 2.8 Due to the time constraints imposed upon Harworth as a result of the NHSE funding requirements, Harworth sought tenders for the construction of the Medical Centre in December 2022, in order for the ICB to meet its final business case deadline, and to be able to let any tender for construction to meet the completion deadline of September 2024.
- 2.9 The Tenders received by Harworth are being evaluated between the 16th December 2022 and the 3rd February 2023, with a view to then submitting a final business case to NHS England/Treasury with an outcome expected by the summer to enable the contractor to commence by the Autumn 2023.

3. Options considered and recommended proposal

- 3.1 Option 1 – That the Council does not continue with the proposals to enter into the Development Agreement, Section 2 Funding Agreement and the subsequent property lease agreements leaving the ICB/NHSE and Harworth to develop the Medical Centre without the Council. Without the Council as Partner the likely scenario is that this development will not proceed.
- 3.2 Option 2 – That the Council enters into the Development Agreement, Section 2 Funding Agreement and the subsequent property lease

agreements in order to facilitate the development of the Medical Centre.

This is the recommended option.

4. Consultation on proposal

- 4.1 The proposals are in line with the planning approval which underwent a full public consultation exercise. The ICB have also conducted comprehensive health-based consultations on the proposals through the local Practice Participation Groups, who champion the voice of patients.

5 Timetable and Accountability for Implementing this Decision

- 5.1 The ICB submitted an outline business case to the funding authority in October 2022, which was approved, and following receipt of the agreed tender report will be submitting the full business case in February 2023. If the business case is agreed all costs will need to have been spent and the project completed by September 2024, so Harworth would need to commence construction Autumn 2023.
- 5.2 If Cabinet approves the Council entering into the agreements as detailed above, and on the basis that the funding is made available by NHSE to deliver the project in full, covering all development, project fees and costs (including any Council incurred costs) and VAT charges, then the necessary documentation can be processed as soon as possible allowing construction to commence Autumn 2023.
- 5.3 At the time of writing, the terms and conditions of the Development Agreement, Section 2 Funding Agreement and the subsequent property lease agreements are being negotiated by the Assistant Director for Legal Services alongside the Assistant Director for Planning, Regeneration and Transport through externally appointed legal advisors. If Cabinet approves the entering into of these agreements, then these can be formally completed following the presentation of this report.

6. Financial and Procurement Advice and Implications

- 6.1 The ICB/NHSE have been made fully aware from the outset that the Council are unable to provide any funding towards the project, carry any financial risks in relation to the proposed development or cover the financial impact of any holding costs in relation to the site whilst it is in development. The Council's involvement in the scheme rests on progress with the submission, acceptance and approval of the ICB business case.
- 6.2 Therefore, as part of the negotiation of the Section 2 Funding and Development Agreement, the Council will need to ensure that any monies paid to Harworth by the Council must first have been received in full from ICB/NHSE. If funding from ICB/NHSE has not been received the Council will not be in a position to make payments to Harworth and the project will be on hold until funding is provided. The proposal is that the Council are facilitating the development to take place but with a financial agreement in

place that removes any financial risk from the Council in terms of revenue and capital costs.

- 6.3 The Section 2 Funding Agreement will need to be clear on the mechanisms for receipt of the funding from ICB/NHSE and for claims to be received from Harworth. It will also need to be clear on what the approaches will be should ICB/NHSE not be able to deliver a GP Practice to take on the developed site, or not be able to replace them after the initial 15 year lease period. It is envisaged that the ICB/NHSE's position on its ability to hold property may change and, if this is the case, the lease of the site would be transferred to the ICB/NHSE and the Council's involvement would cease. This will also need to be clearly outlined within the funding agreement.
- 6.4 Once the development takes place, should the costs exceed the funding available as specified within the Section 2 Funding Agreement, then if NHSE are unable to provide additional funding the project will either not proceed or will halt until the NHSE can provide additional funding.
- 6.5 Furthermore, the ICB have agreed to fund the Council's Legal and Professional Fees in dealing with this matter as part of the overall funding for the project.
- 6.6 The cost of the development is set out in Exempt Appendix 2

7. Legal Advice and Implications

- 7.1 The structure of the arrangements between the ICB, the Council, Harworth and the appointed builders is set out within the body of the report. Appropriate terms and conditions will be concluded in respect of each agreement to protect the Council's interests and ensure the delivery of the development.

8. Human Resources Advice and Implications

- 8.1 There are no direct human resources implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 The provision of new medical facilities within the new community of Waverley will have a positive impact on Children and Young People and Vulnerable Adults.

10. Equalities and Human Rights Advice and Implications

- 10.1 The provision of new medical facilities within the new community of Waverley will have a positive impact upon health inequality by ensuring that there is adequate health provision within the area.

11. Implications for CO2 Emissions and Climate Change

- 11.1 The development of a new building will increase the CO2 emissions which is considered within the attached Carbon Impact Assessment within Appendix 4.

12. Implications for Partners

- 12.1 This is a Rotherham Place led project which has full engagement with Health Partners. This will have a positive impact upon Health partners if the Council are able to facilitate the development of the new Medical Centre as discussed in the main body of the report.

13. Risks and Mitigation

- 13.1 Whilst the outline business case was received by NHSE positively, there is no guarantee that the final business case will be successful. Without a successful application the project will not proceed as there are no other funding opportunities currently available. Therefore, there are no mitigations for this risk.
- 13.2 The construction industry is experiencing considerable price inflations, supply chain issues and other factors that are affecting tender pricing. Therefore, should the costs exceed the outline business case funding, then if NHSE are unable to provide additional funding the project will not proceed.
- 13.3 Design quality and standards, construction warranties and other mitigation measures will be included within the agreements, including the requirement for NHSE to provide additional funding if needed.
- 13.4 There are further risks to holding the headlease of the property up to 60 years whilst the initial sublease to the NHSE/ICB nominated provider, the Gateway Medical Practice, will be for an initial 15 years. If, at the end of the initial 15-year period the Medical Practice does not renew its agreement then there is the risk that the Council could be left with a vacant building. As part of the mitigation of this risk, should an alternative medical use for the building not be forthcoming within a reasonable time period (i.e. another medical practice or other health provision), then the Council will have the ability to let or utilise the building for an alternative use until the Council's lease comes to an end.
- 13.5 The risks of the Council incurring property costs in the holding of the property under the headlease will be mitigated by ensuring that the sublease is on effective full repairing and insuring terms, so that all property costs are either the responsibility of the tenant (the medical practice) direct or can be recovered in full through a service charge. A further mitigation is that if the ICB are in a position to hold property leases, the headlease interest would be transferred from the Council to the ICB.

14. Accountable Officers

Paul Woodcock, Strategic Director of Regeneration and Environment

Jonathan Marriott, Head of Asset Management, Regeneration and Environment Directorate

15. Approvals obtained on behalf of Statutory Officers:

	Named Officer	Date
Chief Executive	Sharon Kemp	30/01/23
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	26/01/23
Assistant Director, Legal Services (Monitoring Officer)	Phillip Horsfield	26/01/23

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