

Agenda Item

Executive Board

06 October 2010

10/1022



Seaton Regeneration – Land agreement

Exempt Information

Para 3 Schedule 12A Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Summary

Further to the Executive Board Report 02 December 2009, titled 'Seaton Regeneration', and following the resolutions made, the Principal Estates Surveyor has now settled the final terms of a conditional land agreement between the Council and Tesco Stores Ltd (TSL). Members are asked to consider the implications for the Council.

Recommendation

- 1) That the Council enter into a conditional land agreement with Tesco Stores Ltd (TSL) for (inter alia):
 - a. The grant of an easement in perpetuity, comprising a right of way over land at the Underfleet, Seaton in favour of TSL and the owners and occupiers of TSL's landholding to the north of Harbour Road Seaton for all purposes connected with the use of that land, together with rights of entry onto the land for the purposes of constructing landscaping and footpath works; and
 - b. The transfer to the Council of an area of marsh land to the north of TSL's land known as Sheep's Marsh
 - c. The payment by TSL to the Council of a premium of £1,955,000, paid in tranches as referred to in the report;
 - d. The carrying out by TSL of landscaping works to Council land at the corner of Harbour road and the Underfleet, including the area subject to the easement, together with the grant of access rights to TSL for the purposes of such works; and
 - e. The carrying out by TSL, if required by the Council within a timescale consistent with TSL's own supermarket store development on its adjoining land, of preparation works in connection with the proposed Visitor Centre scheme.
- 2) That the Council relies on powers available to it under the General Disposal Consent 2003 under economic and social well-being grounds.
- 3) That the Council grants rights to TSL under a 'Pipeline Licence' to enable engineering works to be undertaken over land owned by the Council on Seaton Beach, at Harbour Road and at Riverside Way.

a) Reasons for Recommendation

The resolutions sought are imperative to the delivery of the Seaton Regeneration agenda.

b) Alternative Options

To not agree to the recommendations.

c) Risk Considerations

Any delay in finalising the contracts will jeopardise the delivery of the regeneration scheme.

d) Policy and Budgetary Considerations

The contents of the report detail how the Council, as a landowner, is working with a developer to bring forward private sector investment into Seaton as part of the overall Regeneration agenda.

The payments will be made in stages: £100,000 will be paid on the signing of the agreement. In addition, the Council's historic costs in relation to professional fees incurred, and in the sum of just under £62,000, will be paid back into the Council's LABGI budget. It is currently anticipated that, subject to Member authority, the £100,000 payment will be used, in part, to continue work in relation to the delivery of the Visitor Centre. At this time, Members may also then wish to review the possibility of an upfront matchfunding contribution to enable the appointment of a Town Manager.

£1.7m will be paid prior to commencement of the Store construction. The remainder will be paid once the store is completed and the easement granted.

Positive Impact Overall

Affordable Homes.

Thriving Economy.

Green Environment.

e) Date for Review of Decision

Not applicable

1 Main Body of the Report**Principal terms of the land agreement**

- 1.0 The land agreement is conditional; an agreement map is attached at Appendix 2 which sets out in summary how the conditionality works. As a conditional agreement, there are termination rights for both parties if certain conditions are not satisfied by particular longstop dates; these dates are also set out on the agreement map.
- 2.0 Subject to the satisfaction of the conditions:
 - 2.1 TSL will pay the Council £100,000 on exchange of the land agreement;
 - 2.2 The Council will grant to TSL the Pipeline Licence;
 - 2.3 TSL will pay the Council £1,700,000 after completion of the "fill" exercise on TSL land and prior to commencement of the Access Land Works;
 - 2.4 TSL will carry out the Access Land Works;

- 2.5 TSL will carry out the VC Preparation Works;
- 2.6 TSL will pay to the Council £155,000 on completion of the Access Easement;
and
- 2.7 The Council will grant to TSL the Access Easement
- 3.0 The total monetary consideration payable by TSL to the Council under the land agreement is £1,955,000.
- 4.0 The Council will grant to TSL a licence, for a period of 12 months, to install and operate a pipeline over (inter alia) Council land at Seaton beach, Axmouth Harbour, Harbour Road and Riverside Workshops. TSL may transport fill material through this pipeline from a boat anchored off Seaton beach onto the TSL land. This will assist TSL to comply with its planning obligations to raise the height of the TSL land prior to commencement of its development of the land (including, inter alia, the supermarket). The pipeline licence is granted subject to the interests of the Council's tenants and other occupiers.
- 5.0 TSL will, following completion of the fill exercise, carry out works to demolish the existing youth centre building and toilets on the corner of Harbour Road and the Underfleet and will landscape this area of Council land using a pre-approved scheme shown at Appendix [] (the "Access Land Works"). If the area is the subject of a village green application by third parties, then a reduced area will be substituted.
- 6.0 TSL will, if requested by the Council and provided that the Council has obtained its requisite consents by a pre-agreed point in time, carry out preparation works for the proposed Visitor Centre scheme. These will comprise demolition of the existing tourist information centre, creation of a new entrance into the car park and provision of fill material for the purpose of raising the level of the proposed Visitor Centre site (the "VC Preparation Works").
- 7.0 The easement will be granted to TSL on the later of the payment of the final tranche of consideration and practical completion of the supermarket store development, the Access Land Works and the VC Preparation Works. It grants a right of way to TSL and its successors in title over an area of Council land to the Underfleet (the "Access Land"). The Council is permitted to develop the Access Land provided a 5m access way is maintained over it between the points marked A and B on the plan shown at Appendix 1 at all times. In the event that the Council wishes to carry out a major redevelopment of the Access Land and to relocate the area over which the easement has been granted, there are redevelopment rights subject to conditions protecting TSL including the provision of a permanent alternative right of way to the Underfleet.

Consent to undervalue

- 8.0 The monetary consideration accepted by the Council for the grant of the easement, comprising a right of way over land at the Underfleet, remains as reported in December 2009, at £1,955,000. However, construed together with discharge by the Council of the £1.7m Tesco planning obligation, this leaves a residual premium received for the grant of the easement in the amount of £255,000.

- 9.0 The Council is under a statutory duty to secure the best consideration reasonably available on the open market for any disposal of land, which would include a grant of easement. This is subject to an ability for the Council to accept an undervalue in certain circumstances where consent to that undervalue is given by the Secretary of State, either in a specific instance or under a general consent.
- 10.0 It is therefore advised that the sum allocated to the Visitor Centre be disregarded in assessing the monetary consideration actually received for the grant of the easement and instead the Council rely upon the General Disposal Consent 2003 permitting disposals at an undervalue (up to a maximum of £2 million) where the Council believe such disposal would secure or promote the well-being of all or part of its area.
- 11.0 The District Valuer has provided evidence that the extent of the undervalue is less than £2million. The Council now needs to satisfy itself that the specified circumstances set out at paragraph 2 to the General Disposal Consent 2003 exist. These are that the disposal at an undervalue is justified on the grounds that economic well-being, social well-being or environmental well-being of the Council's area is secured or promoted by the proposed transaction.
- 12.0 The District Valuer is currently finalising the valuation report but Members should be advised that the maximum undervalue is likely to be in the region of £345,000.
- 13.0 The regeneration area primarily constitutes derelict land, the majority of which comprises a former holiday camp and a former employment site. The regeneration agenda includes proposals for a supermarket, some 400 new dwellings, a hotel, land for expansion of the Axe Wetlands Nature Reserve, and a visitor centre. Through negotiations undertaken with the Council, both as a land owner and a planning authority, other benefits have been secured for the community such as match funding for the appointment of a town manager, funding towards employment, affordable housing and open space.
- 14.0 Based on the benefits the proposed developments will bring to the town, all of which would be facilitated by the Council entering into the Land Agreement with TSL, it is considered that the social and economic wellbeing grounds required to sell the Council's interest at an undervalue, are fully met.
- 15.0 The land agreement contains a challenge period condition, allowing the Council to determine the Agreement if there is a challenge to its decision to enter into the agreement made within 3 months and 2 weeks of the exchange of the agreement, which is not disposed of by the second anniversary of the date of exchange (there is no obligation on the Council to oppose a challenge).

Legal Implications

The implications of the disposal in terms of the proposed undervalue are discussed in the main body of the report.

As a conditional agreement, there is no guarantee at the point of exchanging this land agreement that the agreement will complete and the easement be granted. Further detail on the conditionality is provided in the body of the report. Only if TSL is satisfied with the planning permissions which it obtains for development on its site, and commences and completes the fill exercise on the TSL site, will the Council be obliged to grant the easement and TSL to pay the second irrevocable instalment (£1.7 million) of the purchase price.

In the event that a Village Green application is made in respect of the area the subject of the proposed Access Land Works, the extent of these works will be reduced and a “fallback area” substituted which represents the footprint of the former youth club building.

As a result of the creation of the legal easement to provide access to the TSL site across the Council’s land at the corner of Harbour road and the Underfleet, the Council will not be able to use the land that is the subject of the proposed easement without having regard to the rights granted by the easement. An access way with a minimum width of 5 metres must be kept open by the Council at all times. In the usual way, the Council will owe a duty of care to those exercising their right of way under the easement over this Council land; it will also owe a duty of care to those members of the general public walking over and using the wider public realm area created by the Access Land Works. The Council may take appropriate steps in relation to signage, to ensure that members of the public do not obtain public rights of way across the wider public realm area created by the landscaping works. The long term maintenance liability for this public realm area, including the part the subject of the easement remains – as it is at present – with the Council.

The Council has reserved the ability to redevelop the land over which TSL will be granted an easement, provided it fulfils certain conditions for the relocation of the easement.

In relation to the proposed pipeline licence, the Council is permitting an engineering operation to take place on and over its land. As the landowner, the Council does potentially face liabilities for public and third party claims in the event of an accident occurring during the engineering operation. There are contractual protections and indemnities from TSL for the Council contained within the pipeline licence. But, the Council is reliant during the period of the engineering operations on the covenant strength of TSL to comply with its obligations and indemnities and on the public liability insurance which must be obtained by contractor prior to access.

The Council will not be able to dispose of its interest in the land over which the pipeline licence is granted without having first secured a new licence in favour of TSL from the intended owner. Given the relatively short duration of the licence and the Council not having any imminent plans for the disposal of the licence land, this is unlikely to be an issue in practice.

William Akerman
Bond Pearce

Financial Implications

This will not affect the capital receipt of £1,955k.

The staged receipts will be incorporated into the council's Capital programme, and the Fixed Asset Register updated with relevant valuation and disposal transactions.

Consultation on Reports to the Executive

Not applicable

Background Papers

- Seaton Regeneration – 02 December 2009
- Seaton Regeneration Update – 15 July 2009

Donna Best Ext 1584
Principal Estates Surveyor

Executive Board Committee
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