

EXECUTIVE MEETING, 7 FEBRUARY 2007

FACILITATING THE NORTON FITZWARREN DAM

JOINT REPORT OF THE HEAD OF DEVELOPMENT AND CHIEF SOLICITOR TO THE EXECUTIVE ON 7 FEBRUARY 2007

This matter is primarily the responsibility of Executive Councillors Mrs D Bradley and Mr C Bishop.

Executive Summary

The Taunton Deane Local Plan requires that a comprehensive off-site flood alleviation scheme be provided in order to facilitate the redevelopment of the former Cider Factory site at Norton Fitzwarren. The report below explains the basis of an Agreement between the Environment Agency, the Council and a consortium of developers whereby the Consortium would provide and fund an off-site dam to the north of the village, together with various works downstream of the dam, which will enable the redevelopment of the Cider Factory site whilst also affording protection to existing properties at risk of flooding. All costs will be borne by the Consortium. Subject to the signing of the Agreement, it is hoped the construction of the dam will commence by 1st April 2007. The Executive is asked to endorse the terms of the Agreement as set out in paragraph 2.6.

1. Background Information

- 1.1 In September 1999 the Environmental Services Committee agreed to use its powers under the Land Drainage Act 1991 to provide a flood alleviation scheme for Norton Fitzwarren provided a satisfactory agreement is reached with the developer of the Local Plan development site (ie the former Cider Factory site) which lies within the 100 year floodplain.
- 1.2 The approved flood alleviation scheme involves the construction of an earth dam on the Halse Water to the north of Norton Fitzwarren. The dam would serve the dual purpose of affording some flood alleviation to existing properties in the village and enable development of the Cider Factory site.
- 1.3 The Borough Council commissioned Hyder Consultancy to design the dam and planning permission was secured on the Council's behalf in February 2003. Initially it had been assumed that the dam would be procured by the Borough Council with the costs being redeemed from the developers of the cider factory site. The Council incurred costs of c. £147,000 in commissioning the design work for the initial planning application.

- 1.4 Subsequent to the grant of planning permission for the dam, the cider factory site was acquired by a Consortium of developers, comprising Barratt Homes, Bellway Homes and Strongvox. A series of discussions took place between the Consortium, the Council and the Environment Agency resulting in agreement in principle whereby the dam would be procured directly by the Consortium to the satisfaction of the Environment Agency and Borough Council in its role as Land Drainage Authority. Under this approach all costs would be borne by the Consortium.
- 1.5 The Consortium then commissioned Hyder to produce the more detailed design specification for the dam, with scrutiny and control through an independent "Panel Engineer" (selected from a Government approved panel). This further work identified the need for some relatively minor amendments to the configuration of the dam, which resulted in the submission of a revised application which was granted permission in February 2006.
- 1.6 The planning permission requires that various advance works take place before the start of construction of the dam. These include the widening of the access lane leading to the site (Monty's Lane) and the creation of a pond for the translocation of great crested newts (a protected species) which are affected by the access requirements. These advance works have now been carried out.
- 1.7 It was hoped that construction of the dam would have commenced in May 2006. However the very cold spring resulted in a longer than normal hibernation period for the protected newts and the advance works to translocate the newts could not be completed in time. The dam needs to be constructed in the drier months between spring and early autumn and it was therefore necessary to postpone construction of the dam until the spring of 2007.
- 1.8 The Consortium has submitted a planning application for the mixed use redevelopment of the former cider factory site which is to be considered by the Planning Committee on 14 February 2007. The dam has to be in place before any new development can take place on the cider factory site and therefore it is important that the dam is built as soon as possible.
- 1.9 The provision of the dam will have major benefits:-
- It enables the provision of much needed housing and community facilities on the former cider factory site, helping to address the current shortfall in housing land;
 - It will alleviate the flood risk to 93 existing properties in the village (including 31 properties at Wassail View);
 - It will enable removal of a derelict eyesore in the centre of the village.

2.0 The Draft Agreement

- 2.1 The Consortium has reached a separate agreement with the landowners for the site of the dam which overcomes their objection to the scheme.

- 2.2 The dam is now to be built by the Consortium to the design and maintenance approval of the Environment Agency and independent Panel Engineer. Strictly speaking the Council need not be party to the Agreement, but the Environment Agency has asked for the Council's involvement as the Halse Water is not a 'main' river at the present time and therefore falls under the Council's responsibilities as the Land Drainage Authority. The Environment Agency will adopt the dam after a monitoring period of about 3 years. The Halse Water will then be upgraded to 'main' river and come under the Environment Agency's control. In the meantime the Environment Agency would agree to operate and maintain the dam at the Consortium's cost. In effect the Council will be a dormant partner and only be called to act in the extremely unlikely event of the construction works being abandoned prior to completion. The Council could then intervene to ensure that the works are made safe. Under the terms of the Agreement a bond would be secured to ensure that there is no risk or cost to the Council should this unlikely situation arise. Also, the Panel Engineer is retained throughout the monitoring period and can advise the Council on what would need to be done to make the unfinished dam safe.
- 2.3 The Environment Agency will only agree to adopt the dam if additional flood protection works downstream of the dam are funded by the Consortium. The dam on its own will reduce flood flows in the Halse Water by about half. It will protect 68 of the 93 existing properties in Norton Fitzwarren (77 houses and 16 caravans) that are currently at risk of flooding from 'the 1 in 100 year' event plus an allowance of an extra 20% for the effects of climate change. The remaining properties will benefit from less frequent and less severe flooding.
- 2.4 Additional works will be done in connection with the cider factory development that will protect a further 15 properties.
- 2.5 There remains 10 properties at Wassail View that will need some further works to protect them from flooding (referred to as "the residual works"). These works are likely to involve some minor earth bunding and/or low walls. The Environment Agency requires that protection from flooding to the 1 in 100 year (+ 20%) be afforded to all of these properties (93 in total) as part of this comprehensive flood alleviation scheme.
- 2.6 The terms of the Agreement are as follows:-
- The Consortium commissions and builds the dam and pays for all the design and construction costs.
 - The Consortium pays a commuted sum (up to a maximum of £1 million) to the Environment Agency for the maintenance of the dam.
 - The Environment Agency adopts the dam at the end of a 3 year monitoring period and upgrades the Halse Water to a 'main river' (which then falls under their control).
 - The Environment Agency maintains and operates the dam on behalf of the Consortium over the 3 year monitoring period.
 - TDBC has the power to intervene under its Land Drainage Act responsibilities to make safe the unfinished dam in the unlikely event of the Consortium or contractor not finishing the works (eg as a result of insolvency or leaving the site)

- A bond or other financial mechanism is secured to indemnify the Council against any risk or cost.
 - The Environment Agency agrees to implement the 'residual works' for the protection of existing properties at risk from the 1 in 100 year event (+20% allowance for climate change), funded by the Consortium. The Environment Agency accepts responsibility for future maintenance.
- 2.7 The Consortium will also reimburse the Council for the costs of the initial design work on the dam (c. £147k). This will be covered in the Section 106 Agreement for the Cider Factory site development.
- 2.8 Under these arrangements, the Council only becomes directly involved if work on the construction of the dam stops and the dam needs to be made safe. In all probability it will not be involved at all, other than signing the Agreement on these terms. The Council will be indemnified against all risks and costs.
3. Financial Implications
- 3.1 The costs of designing and constructing the dam have more than doubled since the preliminary estimates were prepared on behalf of the Council. At the time of land purchase the Consortium had assumed a total cost of c.£2.25million (excluding the 'residual works'). The current estimated cost is in excess of £6 million (including the 'residual works'). The initial estimates may have been over optimistic but much of the increase derives from the need to amend the design in response to current good practice.
- 3.2 None of these costs will be directly borne by the Council. However there is an indirect cost in that the amount available for Section 106 contributions from the development of the Cider Factory site is substantially less than it would otherwise have been. This is a matter for the Planning Committee. The main consequence is a reduction in the number of affordable housing units financed by the scheme – with 24 units proposed, compared to a target figure of 68 units (the development comprises 340 dwellings in total).
4. Conclusion
- 4.1 The Local Plan requires that a comprehensive flood alleviation scheme be provided prior to the redevelopment of the Cider Factory site. The Local Plan Inspector acknowledged that this could be achieved by an off-site dam on the Halse Water, which would have the benefit of reducing the flood risk to existing properties at Norton Fitzwarren. The provision of the dam and 'residual works' by the Consortium will facilitate the redevelopment of the brownfield Cider Factory site and provide flood protection up to the 1 in 100 year event (plus an allowance of 20% for climate change) for 93 existing properties in the village. It will release much needed housing land and remove a vacant and derelict site.
- 4.2 It is in everyone's interest that the flood alleviation scheme is provided as soon as possible. Subject to the signing of the Agreement, construction is intended to commence by 1st April with completion in the autumn of 2007. Any delay in the signing of the Agreement would delay construction by at least a year.

4.3 All costs will be met by the Consortium. The Council will be faced with a reduced affordable housing provision on the Cider Factory development owing to the increased costs associated with the flood alleviation scheme. The Head of Development considers that the benefits of this scheme outweigh the reduction in the number of affordable housing units. In short, without the flood alleviation scheme, no development will take place and no benefit is derived to the local community.

5. Recommendations

5.1 The Executive is recommended to agree to the Council entering into the Agreement on the terms set out in para 2.6 above.

5.2 Authority be given to the Head of Development and/or Chief Solicitor to approve any slight amendments to these terms, in consultation with the Executive Members for Environmental Services and Planning Policy and Transportation.