

Classification: Open	Decision Type: Key
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Report to:	Cabinet	Date: 13 October 2021
Subject:	Prestwich Regeneration – Joint Venture	
Report of	Leader and Cabinet Member for Finance and Growth	

1.0 Summary

- 1.1 Following cabinet approvals in March and May 2021, Bury Council is building momentum to establish the regeneration programme in Prestwich. The Council acquired the last remaining piece of the land assembly, the Longfield Shopping Centre in July.
- 1.2 The Council is now refocusing on the delivery phase of the project and in doing so this paper outlines the proposed 50:50 Joint Venture vehicle between Bury Council and Muse Developments.
- 1.3 The Council has obtained external legal and property advice to support the proposed terms of the Joint Venture and the recommendations outlined in this paper.

2.0 Recommendations for Cabinet to:

- 2.1 Approve the Heads of Terms and the formation of a JV with Muse Developments contained within Part B of this report with final approvals delegated to the Director of Regeneration, the Section 151 and Monitoring Officer's.
- 2.2 Approve the principle of underwriting predevelopment costs to enable the acceleration of the planning submission. This will be limited to works completed prior to entering into the JV agreement over the next 3 months
- 2.3 Note the Councils ongoing work to manage the Longfield Shopping Centre and achieve vacant possession.

3.0 Reasons for recommendation(s)

- 3.1 Muse have an Option Agreement on the leasehold of the Longfield Shopping Centre, this puts Muse in a unique position, the Longfield Shopping Centre is integral to the regeneration scheme, and the Council could not have purchased the Shopping Centre without Option Agreement remaining in place.
- 3.2 Muses' exclusive rights position is based upon the fact that their consent would be required for any entity (including the Council) to develop the Longfield Shopping Centre and deliver the wider regeneration programme.

3.3 Addleshaw Goddard have provided clear legal advice to the Council regarding the exclusive rights position and procurement considerations when using the proposed JV. Details of set out in Appendix 1.

4.0 Alternative options considered and rejected

4.1 Following acquisition of the Longfield Shopping Centre and the acknowledgment that the centre needs significant investment and must be regenerated, the council has an alternative option to redevelop:

4.2 Muses' option agreement expires in 2025. Council retains the income producing asset until expiration then procure an OJEU compliant developer. However, this is not the preferred option. This would delay the project by 6+ years and would cause significant uncertainty to local businesses and the community.

5.0 Preferred option and benefits

5.1 Council partners with Muse. Council retains the income until development commences. The Muse option agreement remains in place until a JV is formed. This option accelerates progress and unlocks planning submission to Spring 2022 with commencement as soon as 2023.

5.2 One of the significant benefits of entering into a JV partnership with Muse is to enable the Council to influence the quality of the developments carried out, in its capacity as 50% shareholder, as well as in its capacity as planning authority. This is key to ensuring high design standards and quality place-making, ensuring that the JV delivers a regeneration scheme in Prestwich that people will aspire to live in, not just when they are new but when the neighbourhoods are 30 years old.

5.3 In the unlikely event negotiations fail with Muse and the Council is unable to establish a JV partnership, the Council would be in an advantageous position (once the Option Agreement has expired as per alternative option above) in that the Council would have significant value in the development land in Prestwich, having underwritten the pre-development costs and have the full benefit of this work.

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6.0 Background

6.1 Cabinet approval was given in May 2021 to enter into negotiations with Muse to confirm the decision made by Cabinet in March 2021, the Council's intention to negotiate a JV partnership to deliver the Prestwich regeneration project. These negotiations have now brought forward a substantive set of Heads of Terms for the JV partnership.

6.2 Structure of the Joint Venture

6.3 Addleshaw Goddard have set out the advantages and disadvantages of the three relevant types of JV see appendix 2. The recommendation is to use a deadlocked 50/50 Limited Liability Partnership (LLP).

6.4 The two key activities of the JV will be:

1. The appointment of Muse as a development manager; and
2. The tendering and appointment of building contractors.

6.5 Summary of the Joint Venture Heads of Terms

6.6 A summary of the Heads of Terms is contained in the Part B paper.

7.0 Longfield Shopping Centre - Vacant Possession Strategy

7.1 The acquisition of the Longfield Shopping Centre provided the Council with 26 of the 27 units let until such a time vacant possession is sought.

7.2 The Council are conscious of the disruption and uncertainty the regeneration scheme presents to current occupiers. The Council has written to the tenants to advise that we will work with them and provide assistance where possible. A tenancy schedule and a vacant possession strategy is being produced. The Council will engage with all tenants.

7.3 The Council have appointed Cushman and Wakefield who are experienced property centre managers via a mini tender procurement exercise. A property centre manager is considered to be the most economic approach and the management role will provide a full remit of property centre management functions.

8.0 Financial implications

8.1 The financial details are contained in the Part B paper.

9.0 Governance

9.1 A governance structure will be put in place, residents and businesses will see the regeneration programme as a Council-sponsored programme. They will expect the programme to deliver the best results for Prestwich. In respect of the matters on which the Council has to make formal

decisions and give its approval or consent (i.e. those matters which cannot be decided by the Board of the JV and are “reserved” to the Council as shareholder by way of referral to Cabinet unless capable of decision under an existing delegation or powers pursuant to the Council’s Constitution.

9.2 Example of Governance Structure

- 50:50 JV Board:
 - Board made up of equal representation from both Bury Council and Muse. This group would meet bi-monthly and provide strategic direction and leadership.
- Project Steering Group:
 - This group would provide day to day direction to the project team.
 - It would normally include key decision makers from both organisations, along with finance.
 - The key members of the professional team would also be represented on this group – normally the architect, property advisers and cost manager.
 - This group would feed key decisions into the JV Board for approval from their respective Boards/Cabinets.
- Workstreams:
 - These groups would focus on specific elements of the project and provide regular updates into the Project Steering Group
 - These teams would be responsible for creating the outputs, upon which decisions and direction are made/given.
 - They would meet as often as necessary depending on the tasks, programme, project stage.

10.0 Conclusion

10.1 By entering into a JV with Muse the Council is able to harness the commercial expertise of an experienced partner who can deliver at pace. The mixed-use regeneration scheme will pave the way for a new Prestwich centre which should lead to delivery of new homes, a Library and Community Hub, small business workspace, outdoor space/public realm and Market Hall as part of our ambitious vision for a thriving local economy.

Links with the Corporate Priorities:

The regeneration of Prestwich supports delivery of the Let’s do it strategy and the five themes that underpin the plan. The five themes all have a correlation to how we design our Towns.

Healthy Communities: The proposed Prestwich Community Hub building, to re-provide a modern-day library, adult learning, civic facilities and other health related services will be a true connection to the community. The implementation of active travel, walking and cycling routes connecting people with local amenities and increasing the availability of public open space will enable the community in Prestwich to thrive.

Carbon neutral: We need to use every opportunity to ensure that development in Prestwich on our land is carbon neutral and prioritises active travel.

Inclusion: making sure that everyone's voice is heard, this will absolutely be a focus through the Consultation of the regeneration work.

Digital first: the full fibre roll out has enabled access to faster speeds and future-proofed infrastructure. This presents an excellent opportunity for the businesses and community with Prestwich being the ideal location for digital growth, and tech space.

Inclusive Growth: the regeneration scheme in Prestwich will include investment in physical infrastructure (roads, cycle ways and public transport); creating more flexible and innovative/digital workspaces to encourage more businesses to open and remain in Prestwich; to ensure residents have the best chance to access good jobs.

Equality Impact and Considerations:

1. A full resident and wider community engagement strategy will be included post establishment of the Joint Venture, this will include a EIA.

Environmental Impact and Considerations:

2. The Council has a pledge to be Zero Carbon by 2038. This means that the current estate needs to be rationalised and modernised with the likely outcome that all Council services will need to be provided in a new building, whilst sharing services and facilities with the wider public sector. Sustainability will feature heavily throughout the development, with proposals set to include a focus on walking and cycling, sustainable technology for heat and power, urban drainage systems, along with public spaces that encourage natural biodiversity improvements.

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation
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<p><u>Risk</u></p> <p>Lack of resources internally. Scheme does not get delivered or progress to next stages.</p>	<p>Establishing JV partnership with Muse and the Joint Venture appointing Muse as a Development Manager. This brings private sector commercial expertise and resource to deliver the regeneration scheme at pace whilst the Council still holding a 50% share.</p>
<p><u>Risk</u></p> <p>Cabinet do not approve the heads of terms.</p>	<p>The heads of terms appended to this report have been externally drafted by Addleshaw Goddard who have extensive experience drafting JV between developers and Local Authorities. There has been significant dialogue between the Council and Muse and both parties have agreed the heads to this approval stage. There is no further negotiation on these heads.</p>
<p><u>Risk</u></p> <p>Downturn in the market means there is no occupier interest (Post Covid 19) and this impacts on a business case for development. No end occupiers or for the scheme - commercial or residential.</p>	<p>This is the next stage of the project which is being considered now. Developer Muse have an option agreement to redevelop the shopping centre, subject to scheme viability and are keen to work with the Council. They have indicated that a phased approach will reduce the risk for all parties.</p>
<p><u>Risk</u></p> <p>The legal advice from Addleshaws is that it is arguable that the Option Agreement gives Muse Exclusive Rights enabling the Council to appoint Muse as Joint Venture partner without a competition. This relies on the proposition that the exemption under Regulation 32 (2) (b) of the Public Contracts Regulations applies and a direct award can be made. This is not free from doubt and there is therefore a risk of challenge, albeit a small one, if the appointment is made.</p>	<p>Legal advice from Addleshaw Goddard confirms, if the Option Agreement is transferred to the JV so that the JV can claim it benefits from the same exclusive rights afforded to Muse under the option, it would assist in providing an explanation as to why the public works contract was awarded to the JV. It should be acknowledged that this route, if challenged, be unlikely to withstand scrutiny in Court.</p>

<p><u>Risk</u></p> <p>Cannot agree Heads of Terms</p>	<p>In the unlikely event negotiations fail with Muse and the Council is unable to establish a JV partnership, the Council would be in an advantageous position once the Option Agreement has expired in that the Council would have significant value in the development land in Prestwich, having underwritten the pre-development costs and have the full benefit of this work.</p>
<p><u>Risk</u></p> <p>Disputes and Deadlock</p>	<p>The usual position is that a deadlock scenario should be a last resort and so the disputes procedure should give the parties the opportunity to resolve any issues. Addleshaw Goddard have produced a Share Holder Member, Reserved Matters and Deadlock agreement (Appendix 4) which both parties will be signed up to in the unlikely event of a dispute or deadlock scenario.</p>

Legal Implications:

In entering into this agreement the Council is using our general power of competence contained in *section 1 of the Localism Act 2011* and/or its power to invest under *section 12 of the Local Government Act 2003*.

- General power of competence: following recent case law (High Court case of *Peters v London Borough of Haringey [2018]*), the Council may legitimately use an LLP structure to create a Joint Venture with Muse to promote the redevelopment and regeneration of Prestwich Town Centre; and
- Power to invest: provided that the Council can demonstrate that it is investing for its functions, including economic development and regeneration, rather than purely for the generation of additional income, then it should fall within the bounds of *section 12 of the 2003 Act*.

The Council has taken external advice regarding the joint venture structure please see Appendix 1 for the detailed advice from our external advisors.

Financial Implications:

Prestwich regeneration forms a major part of the Councils capital programme. The Council has already purchased the shopping centre but in entering this joint venture the Council is agreeing to underwrite certain costs until the project

viability condition is satisfied. Once the project moves into development phase costs will no longer be underwritten by the Council. There are further costs associated with external advice and match funding administration costs of the joint venture which could total circa £40k.

Further reports will be brought to Cabinet at each of the stages of development which will update on financial implications including returns on investments, capital receipts and any overages.

Background papers:

Please list any background documents to this report and include a hyperlink where possible.

- October 2019 Cabinet Paper
(<https://councildecisions.bury.gov.uk/ieListDocuments.aspx?CIId=126&MIId=2388&Ver=4>)
- March 2021 Cabinet Paper
(<https://councildecisions.bury.gov.uk/ieListDocuments.aspx?CIId=126&MIId=2671&Ver=4>)
- May 2021 Cabinet Paper
(<https://councildecisions.bury.gov.uk/ieListDocuments.aspx?CIId=126&MIId=2867&Ver=4>)

Appendices:

- Appendix 1: Summary of procurement considerations for Bury MBC when using a deadlock JV (Part B report)
- Appendix 2: Possible JV Models (Part B report)
- Appendix 3: Heads of Terms (Part B report)
- Appendix 4: Reserved Matters and Deadlock (Part B report)

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
JV	Joint Venture
LLP	Limited Liability Partnership
RIBA	Royal Institute of British Architects