
A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

Cabinet
Council

9 January 2018
16 January 2018

Name of Cabinet Member:

Cabinet Member for Jobs and Regeneration – Councillor J O’Boyle
Cabinet Member for Strategic Finance and Resources – Councillor J Mutton

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

All Wards

Title:

Friargate Joint Venture

Is this a key decision?

Yes - the proposal in this report will incur expenditure above the £1m threshold and it will have implications for all Wards in the City.

Executive Summary:

The Friargate masterplan was conceived by CannonCannon Kirk, the founders of Friargate LLP, who assembled the majority of the land required to regenerate the area around Coventry railway station. In 2013, the Council approved starting the Friargate Business District to regenerate the City, transform the Council and deliver savings, through the purchase of the first building on Friargate for occupation by the Council.

As part of the WMCA investment programme, £150m was identified to fund regeneration in Coventry. In January 2017 £98.8m was approved for City Centre South and it is proposed circa £51.2m is allocated to Friargate to build Number two Friargate.

This report therefore seeks approval to enter into a 50/50 joint venture partnership with Friargate LLP across the whole Friargate development to bring forward the speculative second building as quickly as possible. This report also seeks approval subject to approval of the Full Business Case to accept the grant for £51.2m from the West Midlands Combined Authority (WMCA) and use it to provide a loan to the joint venture company to construct number Two Friargate.

Recommendations:

Cabinet is recommended to:-

- 1) Approve (following the approval and the acceptance of the grant funding from the West Midlands Combined Authority) the creation of a joint venture limited liability company (LLP) between the City Council and Friargate LLP to accelerate a programme of building at Friargate,
- 2) Delegate authority to the Deputy Chief Executive (Place) and Director of Finance and Corporate Services, following consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources, to agree the final terms of the necessary agreements, provided that all the necessary due diligence in order to finalise and complete the process of entering into the joint venture contract with Friargate LLP have been carried out successfully.
- 3) Note that the LLP arrangement requires the establishment of an LLP Members Shareholders Panel with equal City Council and Friargate LLP representation, supported by a Board of Directors for officers.

Cabinet is requested to recommend that Council:

- 1) Approve that the City Council accept a grant funding of £51.2 million from the West Midlands Combined Authority and delegate to the Deputy Chief Executive (Place) and Director of Finance and Corporate Services in consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources, the authority to enter into the necessary grant funding agreement to secure the grant.
- 2) Approve (following completion of recommendation 1 above) the capital investment, in the sum as highlighted in the private version of this report, funded from corporate capital resources, to purchase a 50% equity stake in all of the land within the Friargate Masterplan and to delegate authority to the Deputy Chief Executive (Place) and Director of Finance and Corporate Services, following consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources to enter into the Shareholder agreement, on the basis that the Council will see a commercial return on this investment over the medium term.
- 3) Approve a loan, in the sum as highlighted in the private version of this report to Friargate LLP on commercial market terms to enable them to complete the necessary actions required to effect the release of charges over the land within the Friargate Masterplan.
- 4) Approve the creation of a budget for £0.5m per annum for the first three years (total commitment of £1.5 million), funded from capital receipts, to match Friargate's contribution to fund the LLP, promote the scheme to investors and secure development.
- 5) Approve that £51.2million is added to the Council's capital programme, all funded from the West Midlands Combined Authority grant.
- 6) Approve the Council representation on these boards be agreed by the Deputy Chief Executive (Place) and Director of Finance and Corporate Services, following consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources, once the format of these boards is established as part of the final terms of the agreement; and that the Council representation on the LLP Members Shareholders Panel will be from members of the Cabinet;

Council is recommended to:

- 1) Approve that the City Council accept a grant funding of £51.2 million from the West Midlands Combined Authority and delegate to the Executive Director (Place) and Director of Finance and Corporate Services in consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources, the authority to enter into the necessary grant funding agreement to secure the grant.
- 2) Approve (following completion of recommendation 1 above) the capital investment to purchase a 50% equity stake in all of the land within the Friargate Masterplan and to delegate authority to the Deputy Chief Executive (Place) and Director of Finance and Corporate Services, following consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources to enter into the Shareholder agreement, on the basis that the Council will see a commercial return on this investment over the medium term
- 3) Approve a loan to Friargate LLP on commercial market terms to enable them to complete the necessary actions to effect the release of charges over the land within the Friargate Masterplan.
- 4) Approve the creation of a budget for £0.5m per annum to fund development costs for the first three years (total commitment of £1.5 million), funded from capital receipts, to match Friargate's contribution to fund the LLP, promote the scheme to investors and secure development
- 5) Approve that £51.2million is added to the Council's capital programme, all funded from the West Midlands Combined Authority grant.
- 6) Approve the Council representation on these boards be agreed by the Deputy Chief Executive (Place) and Director of Finance and Corporate Services, following consultation with the Cabinet Member for Jobs and Regeneration and Cabinet Member for Strategic Finance and Resources, once the format of these boards is established as part of the final terms of the agreement; and that the Council representation on the LLP Members Shareholders Panel will be from members of the Cabinet;

List of Appendices included:

Appendix 1 - Friargate Masterplan
Appendix 2 - Friargate Phase One Plan

Background papers:

None

Other useful documents

Report to Cabinet 18 June 2013 and Council 25 June 2013 – Starting the Friargate Business District to Regenerate the City, Transform the Council and Deliver Savings
<http://internaldemocraticservices.coventry.gov.uk/documents/s11466/Starting%20the%20Friargate%20Business%20District%20to%20Regenerate%20the%20City%20Transform%20the%20Council%20and%20Deliver%20S.pdf>

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

In accordance with the West Midlands Combined Authority governance process, a Full Business Case was completed and considered by the following panels prior to the award of funding:

- 1 November 2017 – Technical Appraisal Panel
- 4 December 2017 – Investment Advisory Group
- 19 December 2017 – Leadership Board
- 29 January 2018 – Investment Board
- 9 February 2018 – WMCA Board

Will this report go to Council?

Yes – 16th January 2018

Report title: Friargate Joint Venture

1. Context (or background)

- 1.1 The Friargate masterplan was conceived by CannonCannon Kirk, the founders of Friargate LLP, who assembled the majority of the land required to regenerate the area around Coventry railway station.
- 1.2 The ability of Friargate to find funding has diminished as the banking crisis has seen other major lenders restrict lending to speculative development schemes. This factor means that speculative development will not come forward unless it can be funded by an alternative method. Traditional funding will only be given if substantial pre-lets are found for each building before it is commenced.
- 1.3 As part of the WMCA investment programme, £150m was identified to fund regeneration in Coventry. In January 2017 £98.8m was approved for City Centre South and it is proposed circa £51.2m is allocated to Friargate.
- 1.4 For the investment to have the maximum impact, it should not just be limited to building the next building of the scheme, but should endeavour to ensure that the investment would lead to the building of the next five buildings in the Friargate scheme (Phase one).
- 1.5 To maximise the positive impact of the grant it is intended to use the income from the new building (Two Friargate) to secure a loan to build the third building and then to repeat this with up to three further buildings phase one (see Appendix 2).
- 1.6 This report therefore sets out the reasoning for entering into a joint venture partnership with the developer to bring forward the speculative second building as quickly as possible, subject to approval of the Full Business Case by the West Midlands Combined Authority (WMCA) and use the income to construct further buildings on phase one of the development.
- 1.7 The joint venture proposed would cover the entire Friargate scheme and would give the Council a 50% share in the LLP company that would own and develop the scheme.

2. Options considered and recommended proposal

2.1 Option 1 – Do Nothing

- 2.1.1 If the Council do not enter into a joint venture, it is unlikely that the grant funding necessary to kick start the development of the second building could be secured by the developer alone as it relies on the devolution deal monies promised to Coventry as well as a reciprocal assurance that there will be a programme of construction to deliver phase one.
- 2.1.2 Under this option the benefits of Friargate Masterplan including business rates growth, employment opportunities and private investment are delayed indefinitely.
- 2.1.3 Further details are contained in the private element of this report.

2.2 Option 2 – Attract Private Investment

- 2.2.1 Private investment to bring forward further buildings is dependent on securing lettings to new tenants in advance of the funder committing to invest. Further, these tenants will need to provide extremely good covenant strength, giving the lender assurance of financial stability.
- 2.2.2 Without a guaranteed tenant, the private market is extremely unlikely to invest in new buildings unless the Council offers some sort of financial guarantee.

2.3 Income Strip

- 2.3.1 The most commonly offered guarantee is the “Income Strip”. This is where the Council would enter into a 40 year finance lease with the funder. The rent would be subject to annual increases linked to inflation. This method of funding would produce a speculative building but would lead to the Council taking all of the risk of letting the building to tenants. It would also leave the Council with the risk that the rent it paid to the funder would almost inevitably become higher than the rent it received from the tenants it let to.
- 2.3.2 The Income Strip method of funding also produces only one building as the value is in the Council’s covenant to pay rent for the 40 year term and the Council cannot therefore exit its obligations.

2.4 Guaranteed Future Value

- 2.4.1 The next most likely method of private funding, in the absence of a tenant, is to set a minimum guaranteed future value. This has been used by other Local Authorities In this method the Council provides a minimum future guaranteed purchase price for the property constructed, which includes an amount for developer manager profit. Once the development is completed, the developer has a set amount of time to let the building or is able to demand the Council buy the building at the set price.
- 2.4.2 The advantage is that the developer can secure private sector funding that was not previously available.
- 2.4.3 The disadvantages are that the Council could be required to purchase a largely vacant building with insufficient rental income to cover its purchase price. This risk of the building remaining vacant in this scenario sits entirely with the Council, reducing the incentive for Friargate to find a tenant. Furthermore, this method delivers one building with no further commitment to develop more.
- 2.4.4 For these reasons private finance has been discounted as an option.

2.5 Option 3 – Public Intervention utilising the grant from the West Midlands Combined Authority and forming a Joint Venture partnership to develop Friargate (Recommended)

- 2.5.1 Following the £98.8 million investment in City Centre South, this option utilises the remaining £51.2 million of the £150 million identified for Coventry in the Devolution Deal with the West Midlands Combined Authority.

- 2.5.2 Under this option, it is proposed that the Council would form a 50/50 joint venture with the developer, Friargate, to bring forward the entire Friargate Masterplan. This option would require a separate investment from the Council to purchase a 50% equity stake in all of the land assets, on the basis it would see a return on that investment in future years. In addition to this, the Council would need to provide a loan to Friargate at market terms to secure the final release of their assets from any charges.
- 2.5.3 The Council and Friargate would create a new independent company with a 50/50 share in the estate that would share the returns and the risks from the overall Friargate development. The joint venture company would oversee the construction, secure tenants, and market the scheme. In short, it would take on the role of developer.
- 2.5.4 The Council would draw down grant from the Combined Authority and use it to provide the Joint Venture Company with the loan finance build the second building at Friargate. Once the building was completed and fully let, the rental income would be used to provide the collateral for the Council to provide further loan finance to the Joint Venture Company for the construction of the third building. It is anticipated that this finance would be provided at a market rate. Any additional loan finance would be secured on the JV's asset the loan had been used to build.
- 2.5.5 This process would be repeated until the five buildings in phase one were complete.
- 2.5.6 Under this approach, a new building would not be commenced until the previous building was fully let. Furthermore, this option allows the Joint Venture Partners the option to sell the completed investments and derive a capital gain. At present this process, if successful, would allow the second building at Friargate to commence in 2018 with further buildings delivered on a rolling programme.
- 2.5.7 The advantages are that this speculative nature of development allows greater flexibility to achieve lettings as it is no longer necessary to attract a major tenant before the construction of the building and smaller tenants that require possibly only a floor or a couple of floors can be accommodated.
- 2.5.8 This option also provides the advantage that it will develop a rolling programme of buildings, which although currently limited to phase one, could be extended in the future. This rolling programme is likely to be attractive to tenants that are concerned that they will not be alone on the site.
- 2.5.9 The disadvantage to this model are that it requires both initial capital investment and development costs. However, this is against providing a rolling programme of development in which the risk is mitigated as each of the construction of each building is only commenced when the previous building is fully rented and provides collateral for a new loan.
- 2.5.10 At present a Full Business Case has been made to the West Midlands Combined Authority for the £51.2 million against this option and having passed the Technical Advisory Panel is due to be presented to the Investment Advisory Group in December and finally to the Board of the West Midlands Combined Authority in February.

- 2.5.11 Independent economic analysis prepared for the bid to the WMCA, indicates that there is an estimated £19.13 of economic benefit generated for every pound invested on the preferred option. These benefits include the wider economic impact of the project, and demonstrate the value for money to the public purse. The development of the additional office space will generate more temporary and permanent jobs in the area boosting GVA and will also result in higher footfall in the area boosting economic activity. The additional office blocks will also generate additional business rates and rental income.
- 2.5.12 It is proposed that the LLP will be governed by an LLP Member's Shareholder Panel made up of equal representation from Council members and Friargate LLP members. In parallel to this will be a Board of Directors made up of three Council officers and three Friargate LLP directors. The Council officers appointed to the Board of Directors would have close links to the Council's Management Team as well as the Council's cabinet.
- 2.5.13 This is the recommended option.

3. Results of consultation undertaken

- 3.1 Public consultation has been undertaken on the Friargate Masterplan and building two as part of the planning process. Outline approval for the Friargate masterplan was granted in 27 July 2011. The second building in Friargate (C10) was granted detailed permission in 22 June 2016. Both the masterplan and the subsequent detailed applications have facilitated public consultation and all future buildings will follow this lead.
- 3.2 The grant monies allocated to both the City Centre South and the Friargate development were part of the devolution deal, which was subject to public consultation.
- 3.3 No consultation has been undertaken on setting up the Joint Venture Company because it is not appropriate to consult on a commercial deal due to reasons of confidentiality.

4. Timetable for implementing this decision

- 4.1 The key milestones in the timetable for implementing this decision are as follows:-

WMCA Grant agreement timeline

- 1 November 2017 – Technical Appraisal Panel
- 4 December 2017 – Investment Advisory Group
- 19 December 2017 – Leadership Board
- 29 January 2018 – Investment Board
- 9 February 2018 – WMCA Board

Indicative development delivery timeline

- March 2018 – Establishment of the Joint Venture Company
- April – December 2018 – procurement and commence building of Two Friargate
- 2020 – completion of Two Friargate

5. Governance Arrangements

- 5.1 The company must legally appoint directors. The directors of the company must ensure that the company does everything it is obliged to do by law and that any decisions they make are in the best interests of the company. It is proposed that the Directors set out in recommendation 3 be appointed.

- 5.2 A requirement of the appointment of Directors appointed by the Council will be that they are required to step down from the company upon them leaving the Council's service for any reason, unless their continued appointment is specifically agreed by the Council.
- 5.3 Model Articles of Association that set out the regulations governing the running of the company's affairs will be utilised.
- 5.4 It is noted that further consideration will need to be given to decision making procedures, financial and operational performance requirements and reporting and parameters within which the company operates. These key factors will be included within the articles of association.
- 5.5 As further details of the project are finalised, including greater clarity over the financial and legal structures which underpin the project, officers will seek further formal approvals when they are necessary in accordance with normal constitutional requirements.

6. Comments from Director of Finance and Corporate Services

6.1 Financial implications

The report seeks approval to agree terms with the West Midlands Combined Authority (WMCA) to accept £51.2m grant funding for the purpose of investing in a joint venture (JV) with Friargate LLP to establish a vehicle which will bring forward a programme of building at Friargate.

6.1.1 The second building - Two Friargate

The next building in phase one is number Two Friargate and is planned to be funded from the remaining WMCA grant of £51.2m. It is proposed that this would be made available from the Council to the Joint Venture in order to facilitate the construction of Two Friargate.

6.1.2 Business rate benefit

Should phase one complete as anticipated, this will generate a significant uplift in business rates of c£5.8m per annum. All business rates generated from phase one are new rates and the uplift would be shared equally between CCC and WMCA as agreed in the Devolution deal.

- 6.1.3 Further financial implication details in relation to the capital investments by the Council, any loan arrangement with Friargate LLP and the project development costs are set out in the private element of this report.

6.2 Legal implications

- 6.2.1 The Council has various powers to set up a company in order to trade for a profit. The Localism Act 2011 provides powers for local authorities to do anything that individuals may generally do. Where the Council uses the General Power of Competence to do something for a commercial purpose, section 4 of the Localism Act 2011 requires that the Council must do so through a company (which has a wider definition than for the purposes of section 95 Local Government Act 2003). This power also allows the Council to set up and enter into a Joint Venture Company for a commercial purpose

- 6.2.2 The Council's rights and obligations under the proposed joint venture shall be contained in a Joint Venture Shareholders' Agreement. This agreement will cover, amongst other things:
- 6.2.2.1 The establishment of the joint venture vehicle and how each party will contribute resources to it;
 - 6.2.2.2 The rights of each party to appoint directors to the board;
 - 6.2.2.3 Any restrictions placed on the parties (i.e. not separately competing for business that should be run through the JV);
 - 6.2.2.4 The content and process for agreeing annual business plans;
 - 6.2.2.5 The dividend policy, setting out how and in what circumstances profits should be distributed to each JV partner;
 - 6.2.2.6 The process for dealing with a deadlock situation where neither party can agree a course of action;
 - 6.2.2.7 Terminating and unwinding the arrangement.
 - 6.2.2.8 The board of directors will have responsibility to run the business of the JV on a day-to-day basis. Certain decisions (being those of greater importance) will be reserved to the shareholders (the so-called 'reserved matters'). Reserved matters would include agreeing the business plan for each year, altering the rights attached the shares in the company, changing the company name and entering into contracts or employing anyone over a pre-agreed financial limit. Other reserve matters can be added to this list to ensure the Council retains control over certain, key issues.
- 6.2.3 The appointed directors to the newly-incorporated LLP Company will be under statutory duties imposed by the Companies Act 2006.
- 6.2.4 Conflicts of interest can frequently occur in the context of a joint venture when directors have to balance the interests of the shareholder organisation that appointed them with the need to exercise independent judgment and promote the success of the company. The JV articles will include detailed provisions on how the shareholders will be able to permit the directors from still acting notwithstanding any actual or potential conflict they may face.
- 6.2.5 Any loans granted to the company by the Council should be provided on commercial rates so as to avoid any potential State Aid challenges.

7. Other implications

7.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

The scheme presents a significant opportunity to act as an interface between the existing city centre projects and also to act as a catalyst for other private sector investment creating jobs and boosting investment.

The scheme will also contribute to achievement of the Coventry Plan by delivering new jobs, and providing a positive impact on the local economy.

7.2 How is risk being managed?

7.2.1 The key risks associated with the project have been assessed with mitigating actions put in place where required. These risks include:

- Securing occupiers at right rental levels – there is a risk that rental levels will not be attractive to the range of high quality occupiers not presently in Coventry that are most suitable for the area.
- The joint venture partner becomes insolvent and ceases trading - if Friargate LLP were to cease trading, the Council would be solely responsible for the redevelopment. This could affect the timescales involved as well as the future viability of the site.
- Negative impact on other schemes - given its location, between the railway station and rest of the city centre, there is a risk that if the Friargate scheme is not developed it will have a negative impact on the success of other city centre schemes.
- Section 5 of the report describes the proposed governance structure for robust decision making within the new company.

7.3 What is the impact on the organisation?

None

7.4 Equalities / EIA

This project is not expected to have any negative equalities impacts. When the joint venture LLP company is established, CCC will place requirements upon the new company to ensure that appropriate equalities impact assessment work takes place as it begins to undertake its stated objectives.

7.5 Implications for (or impact on) the environment

The development of Friargate will deliver office accommodation, reflecting modern day standards and building regulations. The use of new materials will eliminate energy loss from the fabric of the buildings and promote energy efficiency, resulting in a reduction in carbon emissions and utility costs for occupiers.

All buildings constructed as part of the Friargate scheme will have the benefit of connecting to the Heatline network allowing all future tenants to connect to the renewable energy source.

7.6 Implications for partner organisations?

As a new partner organisation, the WMCA has played a key role in the funding arrangements for the scheme and, as part funder, will remain a key stakeholder.

Friargate LLP, as a current landholder and a future Joint Venture partner will be a major stakeholder in the scheme. The Joint Venture will enable Friargate to ensure that there is no remaining charge over the land within the scheme, enabling development of the site.

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Councillor J Mutton	Cabinet Member for Strategic Finance and Resources	-	08/12/17	09/12/17

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Appendix 1 – Friargate Masterplan Area

Friargate Masterplan



Appendix 2 – Friargate Phase One Plan

Friargate Phase One Plan

