

# WHITE OAK LEISURE CENTRE RESIDENTIAL QUARTER, SWANLEY - DEVELOPMENT PROPOSAL

Improvement and Innovation Advisory Committee - 28 February 2023

**Report of:** Strategic Head of Property and Commercial

**Status:** For Decision

**Also considered by:**

- Cabinet - 16 March 2023
- Council - 25 April 2023

**Key Decision:** Yes

**Executive Summary:**

In February 2022, Council approved the development of a residential scheme on phase 3 of the former White Oak Leisure Centre Complex. Approval was granted to undertake further feasibility and detailed design work and the budget was set and appropriate delegations were granted to allow the scheme to progress subject to the scheme remaining viable and planning permission being obtained.

In October 2022 the Council completed its first two phases for the re-development of the former White Oak Leisure Centre Complex and further feasibility work was undertaken for the residential development. During the intervening period since approval was granted, global and market events have had a significant impact on the project. The procurement approach has also been adapted to reflect the needs of modern methods of construction and the receipt of grant funding and following consultation with key stakeholders, improvements have been made to the scheme's design. The scheme remains feasible and a planning application is to be submitted in spring with construction works commencing in September 2023.

**This report supports the Key Aim of:** improvements to public realm and infrastructure and meeting housing targets. The provision of new housing is a key priority and pressure for the District.

**Portfolio Holder:** Cllrs. Peter Fleming, Matthew Dickins and Kevin Maskell

**Contact Officers:** Detlev Munster, Ext. 7099

**Recommendation to Improvement and Innovation Advisory Committee:**

- (a) The Advisory Committee endorse the proposed recommendations to Cabinet and Council.

**Recommendation to Cabinet:**

- (a) Cabinet notes the receipt of £840,000 grant funding from the One Public Estate Brownfield Land Release Fund which has required the need to adopt an accelerated procurement process;
- (b) Cabinet notes that this will be the Council's first modern methods of construction (MMC) scheme that will deliver 61 new high quality, environmentally efficient and sustainable homes and that the Council has procured a preferred contractor in compliance with procurement regulations and the Council's standing orders;
- (c) Cabinet recommends to Council the total project budget be increased to £21,852,476 and that the Capital Programme is accordingly amended;
- (d) Subject to Council's approval of the capital provision of £21,852,476 in the Capital Programme, Cabinet delegates authority to the Strategic Head of Property and Commercial and the Chief Officer Finance and Trading, following consultation with the Cabinet Member for Finance & Investments to undertake further detailed design and feasibility work and to proceed with the scheme subject to final scheme viability; s
- (e) Cabinet approve that the development site as outlined red in Plan A (appendix E) be appropriated for planning purposes in accordance with the section 122 of the Local Government Act 1972 (in reliance on section 227 of the Town and Country Planning Act 1990) consequentially facilitating the Council's powers under sections 203 to 206 of the Housing & Planning Act 2016 to override any outstanding interests;
- (f) Cabinet delegates authority to the Strategic Head of Property and Commercial in consultation with the Chief Officer Finance and Trading and the Head of Legal Services to submit a planning application and to enter into any necessary contracts to facilitate the development and construction of the proposed scheme in accordance with the Council's Contracts Procedure Rules and for the disposal of the residential units to be developed.

**Recommendation to Council:**

Council approves the provision of £21,852,476 in the Capital Programme to deliver this scheme which is to be funded as noted in the Financial Implications of this report.

**Reason for recommendation:** To provide much needed housing in the district particularly in Swanley.

## Introduction and Background

- 1 Swanley is an urban settlement in the Northern part of the Sevenoaks District adjoining Dartford, Bexley and Bromley. Swanley is the most deprived area within the Sevenoaks District, with two of the wards (Swanley St Mary's and Swanley Christchurch) noted as having relative deprivation in the Local Plan. The town itself has excellent transport links with a motorway interchange providing junctions on the M25, M20, and A20 enabling travel both into Kent, Surrey and Central London. Swanley is within London Travel Zone 8 with Oyster travel into London in under 30 minutes.
- 2 The site sits within a residential area on the northern side of Swanley Town Centre. The new White Oak Leisure Centre and surface car park is located to the south and east of the site and the White Oak Indoor Bowls Club adjoins the site to the west. Existing residential units surround the remainder of the sites perimeter.
- 3 The proposed development aims to provide:
  - New homes including both flats and houses with private gardens
  - Communal green space at the centre of the site
  - Car parking
  - Trees
  - Enhancement of the urban fabric surrounding the new leisure centre
  - Energy efficient new homes
- 4 Profit from the construction of the residential phase is required to part contribute to the construction of the new leisure centre, already completed. As a result, all housing will be market sale with no affordable provision.

## The Proposed Development Scheme

- 5 Several design options were considered for the site and the White Oak Residential scheme was approved by Cabinet on 10<sup>th</sup> February 2022 and Council on 22<sup>nd</sup> February 2022. The approved scheme was to provide up to 81 units, however further design and viability testing in addition to initial feedback from planning and Councillors has demonstrated that 61 units within its context and setting has the ability to create a better quality environment while maintaining viability and securing the required capital receipt. The preferred option (detailed in appendix A) proposes:
  - 13 x 3b5p houses
  - 8 x1b2p flats
  - 40 x 2b4p flats
  - Car parking spaces, private gardens, soft and hard landscaping and trees.
- 6 The proposed layout offers 61 residential units comprising one block of flats at four storeys in height, alongside 13 two storey houses with private

gardens. This layout also provides 68 parking spaces with a green space and soakaway at the centre of the site. The remainder of the site is reserved for green space.

- 7 Initial planning and Councillor feedback has been obtained and suggestions have been incorporated into the preferred option to be taken forward.
- 8 The options appraisal suggests that the preferred option is viable from a planning and financial perspective, but further detailed analysis is required to refine the preferred option.
- 9 The next stage will undergo a further detailed investment appraisal to confirm viability, and the project will only proceed if it meets the scheme's aims and is within the financial parameters set (see Appendix B - confidential).
- 10 The scheme will be delivered through modular construction - a Modern Methods of Construction (MMC) technique. This is the creation of pre-fabricated buildings in a factory offsite, then delivered to the site for installation. The scheme consists of repeated sections called modules that are slotted together when installed on site. The modules can be of different shapes and sizes but are generally repeated to allow for economies of scale when producing the modules in the factory setting.
- 11 The benefits of this approach are that it allows for a speedier construction, greater cost control and faster return on investment, it minimises the time spent on site and therefore disruption to residents, it minimises waste and is more environmentally friendly. Construction in a factory setting also allows for a better quality product than on site where it is more open to user error and construction being affected by being open to the elements.

## **Procurement**

- 12 In order to accommodate a MMC build, the procurement process has been adjusted to ensure early engagement of a MMC contractor. This is to ensure the designs are appropriate for the manufacturing process to be employed.
- 13 As a result the Council has procured a contractor through the Building Better Framework, set up by National Housing Federations Greenhouse Innovation programme in 2018. The framework is specifically for MMC developments and a call-off from the framework provides quicker and more efficient access to approved manufacturers and a readymade marketplace. The Council has subsequently appointed Top Hat as MMC contractor having undertaken additional due diligence checks. The contract has been accordingly staged to minimise risks and the project only proceeds subject to planning permission being obtained and the scheme remaining viable.
- 14 A visit was undertaken to see Top Hat, who are building out a 30,000 sqm site in Chatham (Kitchener Barracks), delivering 280 homes. They are

currently delivering homes on several sites across the country, with this being one of their largest sites. Top Hat has reviewed the designs and have also provided costings to support the viability appraisal. Another added benefit is that the White Oak residential project architects, Bond Bryan Architects, are the project architects on the Kitchener Barracks development in Chatham, and so already have established a good working relationship with Top Hat.

- 15 Top Hat is currently under a Pre-Construction Services Agreement (PCSA), allowing Top Hat to support the appointed architect and provide design input through RIBA Stages 2 and 3, before entering into a formal building contract during Stage 4. This ensures that they will only be fully appointed once planning is granted and the scheme remains viable. The two-stage process requires them to submit a bid for the second stage, allowing the Council the opportunity to review the position and withdraw should they wish to. A JCT Design and Build 2016 standard form of contract will be used and Top Hat will be procured on a fixed fee lump sum basis.
- 16 Further information regarding Top Hat and examples showcasing the quality of their work and projects delivered is attached at Appendix D.

### Public Consultation

- 17 Input from Councillors has been taken into account and it is proposed that the local community and interested parties will be consulted in Spring 2023 to present the emerging scheme. Feedback will be used to refine the scheme where appropriate prior to submitting a planning application.
- 18 Following the pre-planning consultation, further consultation will take place as part of the statutory planning process.

### Delivery Programme

- 19 The project's indicative delivery programme, assuming planning consent is granted, is outlined in the table below. Note this is subject to change:

<b>Milestones</b>	<b>Date</b>
<b>Milestone</b>	<b>Date</b>
Public consultation	Spring 2023
Planning Submission	May 2023
Planning Determination	August 2023
Start on site	October 2023
Practical completion	Spring 2025

### Project Costs

Supporting information at Appendix B - exempt from publication under paragraph 3 “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”

- 20 The sales values used by the external property consultant have remained as per the previous viability studies and have therefore been kept at 2021 values. Construction costs and interest rates have however increased substantially given global market conditions. At the time of the Council’s decision in February 2022, interest rates from the PWLB were circa 1.5% and have now increased to 4.5%. Construction materials have also experienced significant inflationary pressures of up to 30% since February 2022. These have consequently impacted on the scheme’s financials since last reported to Cabinet in February 2022. Our updated cost plan prepared by our cost consultants in consultation with Top Hat suggest that the scheme remains financially viable and their assessments have been closely scrutinised by the Council’s consultants, Property and Finance teams.
- 21 It is important to note that the cost plan reflects Top Hat’s unit pricing noted in the framework agreement and that these unit prices remain fixed and are adjusted annually (in September) in accordance with inflation. As a result, the cost plan has a very high degree of cost certainty and this price will be locked into. Details of the development appraisal can be found in Appendix B, where it can be noted that the scheme generates a profit that will be used to part-finance the new White Oak Leisure Centre. As the scheme progresses, the appraisal will undergo continuous stress testing to determine its sensitivities to cost pressures, interest rate rises, decline in sales values whilst the design continues to be developed and costs fixed via the pre-construction services agreement with Top Hat.
- 22 SDC was also successful with securing a grant of £840,000 via the Brownfield Land Release Fund for the White Oak Residential Scheme. The Brownfield Land Release Fund (BLRF) is a cross-government initiative between the Department for Levelling Up, Housing and Communities (DLUHC) and One Public Estate (OPE) which is delivered in partnership by the Local Government Association and the Cabinet Office. The funding will go towards infrastructure and remediation works.

### **Appropriation**

- 23 It is recommended that as part of the development process Cabinet legally appropriate the development site for planning purposes. That is, that the Council is to declare that the land is no longer required for its former purposes but is required for facilitating the development and ensuring proper planning in the area. In order to appropriate the land, the Council should be satisfied on the requirements of sections 122 of the Local Government Act 1972 and section 203 of the Housing and Planning Act 2016.
- 24 In particular, although the Council has taken reasonable steps to identify

limitations on the land, appropriation would protect the Council from unexpected and disruptive injunctions.

- 25 Over time the site has become subject to assorted rights and covenants while the Council's former, extensive, holdings have become fragmented including under the transfer to West Kent Housing in 1989 and various Rights to Buy. It is possible that undocumented rights may have arisen, although no harms have been identified from this project.

*Appropriation will facilitate the carrying on of development or redevelopment or achieve the interests of proper planning*

- 26 The previous use of the site was as the former White Oak Leisure Centre. A new centre has been constructed and in operation for more than a year.
- 27 The proposed development has an extant permission granted under planning reference 19/02951/HYB. It is intended that a detailed permission will be sought for the housing phase and it would be dependent upon achieving that.
- 28 The appropriation would allow confirmation that the land was no longer required for its former purpose but was to be utilised for the carrying out of a development which has been given due permission.

*The development is likely to contribute to the economic, social or environmental well-being of the area*

- 29 The proposed development has outline permission as granted under planning reference 19/02951/HYB for development up to 40 residential units. The existing proposals are currently seeking a modest increase to the units.
- 30 In either case the development would provide high quality new housing for the town, which was recognised by the Officer's report for the original planning application as helping to meet a social need set out in policy. Further, the development of the housing also facilitates the development that has already taken place to provide modern leisure facilities for the north of the district.

*Whether the use of Section 203 (to override rights) is proportionate with any interference with the human rights of those involved*

- 31 In all its functions the Council must consider the impact of its decisions, ensuring that any negative or any positive impacts are balanced against each other and that any final decision is proportionate.
- 32 In this case Section 203 necessarily engages the rights to private property (Article 1 of the First Protocol of the ECHR) and Family Life (Article 8). The Council must therefore consider the balance in the decision to appropriate and whether the steps are only those necessary to achieve the legitimate aim. Should an interference arise in practice then it is considered that the

role that the development would provide with much needed housing in the District and in facilitating the new leisure centre outweighs the impacts that the development would have. The steps are necessary but proportionate.

#### *Contact with third parties with interests*

- 33 Parties have not been individually contacted for the reasons set out above, while the certainty needed for the development would not in practical terms allow correspondence with all potential parties within existing timeframes.

#### **Other Options Considered**

- 34 The February 2022 Cabinet and Council report outlined the various alternative development options. Pertinent to this report, is that there are alternative procurement approaches that could have been deployed but were discounted. In particular, the Council could have continued down the route of a traditional design and build route, obtain planning permission and then tendered for a contractor. This route does not support MMC build, as it is imperative that for MMC projects, that a contractor is involved upfront in the design process. This ensures the scheme can be constructed and delivered cost effectively using MMC. Additional benefits of employing MMC are outline above in the report.
- 35 A condition of the grant funding is also a need to be in contract by 31 March 2023, and the procurement approach adopted facilitates this condition.

#### **Risk Assessment**

- 36 A table outlining the key risks relating to this project are outlined in Appendix C.

#### **Key Implications**

##### Financial Implications

- 37 The scheme is intended to be funded (ultimately) from capital receipts from the sale of the residential units (see Appendix B for more information).
- 38 The table below shows the expected expenditure over the duration of the project.

	2021/22	2022/23	2023/24	2024/25	2025/26	Total
	£	£	£	£	£	£
<b>Expenditure</b>	250,000	2,050,000	9,500,000	7,450,000	2,602,476	21,852,476

- 39 61 residential units will be disposed of in the open market and according to

the Council's property consultant, they are expected to generate a sales receipt that will cover the scheme's cost and return requirements (see Appendix B).

- 40 Until the receipts from the sales of the residential units are received, short-term external borrowing will be used to fund the scheme. The potential financing costs are outlined in Appendix B.
- 41 Consideration will need to be given to the VAT implications of the project. Dependent on the use of some of the elements of the project it may require specific VAT treatment. Further VAT advice will be sought.

### Legal Implications

- 42 The Council has freehold title of the site.
- 43 The Council leased White Oak to Sencio. This has now expired, allowing SDC to redevelop the site. There are no covenants that the council are aware of that are relevant to the development site. The property register states that the land is subject to easements arising from 1) sales of land to West Kent Housing and 2) sales to the public under right to buy. These are mostly unspecified. A full title report has been commissioned and further investigation will be undertaken.
- 44 The Council will need to apply for planning consent and obtain all other necessary statutory approvals (e.g. building control approval).
- 45 Due diligence assessments have identified that it would be suitable to appropriate the site for planning purposes including to ensure proper planning. The Council is authorised to appropriate land that it owns under Section 122 of the Local Government Act where no longer required for the purpose for which it was previously held. The Council may not appropriate any land which consists of open space land unless it has published its intention in a local newspaper for at least two consecutive weeks and given due consideration to any responses received.
- 46 The Council has procured a contractor using a public framework agreement that is compliant with public procurement regulations and the Council's standing orders. The JCT Form of contract is being used and the contract has been staged to safeguard the Council's position from unnecessary costs.
- 47 The Council will need to comply with the OPE Land Release Fund grant conditions. While the conditions are not overly onerous, a key requirement is for the Council to be in contract by the 31 March 2023. The Council has consequently procured a contractor using the Building Better Framework and has accordingly staged the contract.
- 48 There are no state subsidy implications associated with the proposed scheme.

49 The legal implications of appropriation are as otherwise set out in the report.

### Equality Assessment

50 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. A positive impact on end users is, however, anticipated. In particular, it is worth noting that appropriate “equalities requirements” will be specified in the various contracts to be entered into for the demolition and construction of the scheme. In addition, the scheme is designed to promote an inclusive environment.

### Sustainability

51 A sustainability checklist has been completed and was previously reported. The scheme will aim to be delivered in line with SDC’s Net Zero ambitions.

### Conclusion

52 This dynamic scheme provides good quality new homes on the site of the old White Oak Leisure Centre and car park. In addition, it will provide new open space, trees and enhanced landscaping. Together with the new White Oak Leisure Centre it presents a unique regeneration opportunity for Swanley that will set a new design and sustainability benchmark for future growth.

<p><b>Appendices</b></p>	<ul style="list-style-type: none"> <li>• Appendix A -Design details</li> <li>• Appendix B - Cost plan and development appraisal (Gold Papers - exempt from publication exempt under paragraph 3 “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”</li> <li>• Appendix C - Outline Risk Assessment</li> <li>• Appendix D - Top Hat Information</li> <li>• Appendix E - Site Plan for appropriation purposes</li> </ul>
<p><b>Background Papers</b></p>	<ul style="list-style-type: none"> <li>• Hybrid planning application ref: <a href="#">19/02951/HYB</a></li> <li>• LSI Architects: White Oak Residential Feasibility Study</li> <li>• Geotechnical Investigation report</li> <li>• Cabinet Report dated February 2022</li> </ul> <p>The following background documents are exempt from publication. The applicable reason for this redaction is paragraph 3 of Schedule 12A of the Local Government Act 1972: Information relating to the financial or business affairs of any particular person (including the authority holding that information). This is because it could prejudice the returns of a commercial tender that the</p> <ul style="list-style-type: none"> <li>• Pathfinders Development Consultant (October 2021): White Oak Residential Viability Appraisal</li> <li>• LSH’s Residential Market Assessment - Bevan Place</li> <li>• Playle and Partners (October 2021): White Oak Residential Order of Cost Estimate</li> <li>• Airey Miller (November 2022): White Oak Residential Financial Appraisal</li> </ul>

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