

Report of Director of City Development

Report to Executive Board

Date: 10 February 2016

Subject: Bridgewater Place Wind Amelioration Scheme – Development Agreement

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): City and Hunslet	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The construction of the Bridgewater Place Building (“the Building”) was completed in April 2007. Members of Executive Board will be aware of the significant impact that Bridgewater Place has had on wind speeds in the environs of the building. By way of a brief summary, as part of the original planning consent for the building, the applicant was required to comply with the following condition: “Prior to construction of the development a detailed assessment of the micro climate including wind tunnel tests shall be carried out and submitted to the Local Planning Authority. The recommendation of the assessment/test shall be incorporated into the design of the development prior to construction”. This assessment/test was duly undertaken by BRE Ltd and their report concluded that “the wind conditions are generally acceptable for the activities likely to take place around the development (objective business walking, workers around buildings and pedestrian walking). Notwithstanding the outcome of this report, it became apparent shortly afterwards that the Building was having the effect of accelerating wind speeds within its vicinity. At times, the wind speeds have been accelerated to levels at which Highway users have been put at risk and in some cases actually harmed. In March 2011, Dr Slaney was tragically killed as a result of a lorry being blown over on to him by a greatly accelerated gust of wind at the junction of Victoria Road and Water Lane.
2. Officers have been working with the Building Owners and their Agents since 2008 to ensure that the optimum solution to ameliorate the unacceptably high wind speeds in the vicinity of the Building was identified.
3. Officers were consistently advised that a holistic solution which resolved both the wind speeds within the Highway and around the Building forecourt was not possible. Officers

refused to accept that position and the Council engaged its own specialist consultant to assist further. As a result of that work, the proposed Amelioration Scheme has been worked up, tested and ultimately agreed by all parties. This has taken a considerable time to achieve but if Officers had accepted the proposals that had been available to them at an earlier stage, the unacceptable risks to highway users presented by the wind speeds would have remained to a significant extent.

4. The developers of the Bridgewater Place building (“the Building”) on Water Lane were granted planning consent in November 2014 for a scheme of wind amelioration works to address identified issues arising from the Building on the surrounding highway.
5. The wind amelioration scheme comprises various elements which work in conjunction with each other. The principal elements of the scheme comprise 3 perforated metal wind baffles (see attached visuals) which traverse Water Lane and which are supported by metal columns which are to be placed within the Highway. The scheme also includes a canopy which will be affixed to the Building itself and which projects over parts of the Highway. In order to facilitate the works and protect the Council’s position and the public interest both during the works and post construction, it is necessary for the Council to enter into a Development Agreement with the Developer, its associated companies and its lenders.
6. The principal elements of the agreement are:
 - a) to facilitate the highway works required within the vicinity of the Building;
 - b) to grant a Licence for the Installation of the structures within the Highway,
 - c) to grant a Licence to permit the baffles to over-sail and the canopy to project over the Highway.
 - d) to require the Building owner to maintain, monitor and if necessary post construction carry out further works at street level to achieve an acceptable microclimate for highway users accessing the public highway in the zone of influence of the Building.
7. Extensive and highly specialised advice has been obtained and relied upon by Officers throughout in relation to all aspects of the amelioration scheme. Based upon the advice that has been received this report seeks a decision to conclude and enter into the Development Agreement with the Building Owners. Subject to the Council entering into the Development Agreement, the construction of the wind amelioration scheme will be able to commence, with a construction programme estimated to be around 50 weeks.

Recommendations

8. Executive Board is requested to:
 - i) Note that based on specialist advice received, officers have been advised that the proposed installation “has been found to be effective in mitigating the local ground-

level wind speeds as far as practically possible within the confines and restrictions of the site”;

- ii) Note that post construction, there will be a need for further street level works to be carried out to ameliorate the effects of potential “hotspot” areas where wind speeds may (at times of high winds) still exceed safe levels. Note that the precise extent, nature and location of these works will be identified and agreed based on expert advice following post installation testing by wind experts.
- iii) Note that the works to install the Amelioration Scheme are being carried out by Contractors appointed and engaged by the Building Owners; that the anticipated start date of the works is March 2016 and that the works on site are likely to take up to 50 weeks to complete;
- iv) Note that due to the extensive nature of the works within and over the Highway the extended road closure of Water Lane at intervals throughout the duration of the works will be unavoidable; and
- v) Authorise the Council entering into the Development Agreement to enable the wind mitigation scheme to be installed and delegated the completion of the Agreement and any non-material amendment(s) to the City Solicitor.

1. Purpose of this report

- 1.1 To request approval from the Executive Board to conclude and enter into the Development Agreement with the Developers of Bridgewater Place.

2. Background information

- 2.1 The background to the problem of high winds around Bridgewater Place has been the subject of previous Executive Board reports and has also been reported widely in the media since 2008. However, in summary, the construction of the Bridgewater Place Building (“the Building”) was completed in April 2007. As part of the original planning consent for the building, the applicant was required to comply with the following condition:
- “Prior to construction of the development a detailed assessment of the micro climate including wind tunnel tests shall be carried out and submitted to the Local Planning Authority. The recommendation of the assessment/test shall be incorporated into the design of the development prior to construction”.**
- 2.2 This assessment/test was duly undertaken by BRE Ltd and their report concluded that “the wind conditions are generally acceptable for the activities likely to take place around the development (objective business walking, workers around buildings and pedestrian walking). Notwithstanding the outcome of this report, it became apparent shortly afterwards that the Building was having the effect of accelerating wind speeds within its vicinity. At times, the wind speeds have been accelerated to levels at which Highway users have been put at risk and in some cases actually harmed. In March 2011, Dr Slaney was tragically killed as a result of a lorry being blown over on to him by a greatly accelerated gust of wind at the junction of Victoria Street and Water Lane.
- 2.3 It is widely recognised that the wind speed issues caused by Bridgewater Place has had a significant impact on traffic and pedestrian movement in a key part of the city, which is a major safety issue and inconvenience to many workers, residents and visitors to Leeds. Accordingly, notwithstanding the unique legal and technical challenges this problem creates, it is imperative that a long-term solution is implemented as soon as possible.
- 2.4 Officers have been working with the Building Owners and their Agents ever since 2008 to ensure that the optimum solution to ameliorate the unacceptably high wind speeds in the vicinity of the Building was identified.
- 2.5 As a consequence of the work done to identify a solution to the issue, a scheme was brought forward by the owner of the building and planning permission for a wind mitigation scheme at Bridgewater Place, Leeds, was duly granted in November 2014 (reference 14/04554/FU).
- 2.6 The Developers wind amelioration scheme comprises:
- Provision of three wind mitigation baffles spanning across Water Lane;
 - Provision of a canopy to the north elevation of the building;
 - Perforated metal screens to the western elevation of the building;
 - A perforated metal screen to the south of the building; and
 - Highway layout amendments to incorporate landing areas and foundations for the baffle columns, incorporating all associated civils works, traffic tie-ins, resurfacing, lighting, signing, hand railings, drainage and lining works;

associated statutory undertakers works resulting from the works; and all associated Traffic Regulation orders required to protect the works.

- Further street level works to ameliorate the effects of potential “hotspot” areas where wind speeds may (at times of high winds) still exceed safe levels notwithstanding the installation of the structures referred to above. The precise extent, nature and location of these works will be identified and agreed based on expert advice following post installation testing by wind experts.

2.7 To meet the requirements of the planning permission, the applicant has requested that Leeds City Council, as Highway Authority, enters into a Section 278 (Highways Act 1980) Agreement to enable the highway works associated with the wind mitigation measures to be carried out.

2.8 In addition to the Section 278 Agreement there are requirements for:

- An Installation Licence under Section 50, Schedule 3 of the New Roads and Street Works Act 1991 consenting to the construction of the work within the highway.
- An Oversail Licence under Section 177 of the Highways Act 1980 consenting to the Developers’ construction and retention of a projection over-sailing the highway (the building canopy).
- Clarity concerning the Developers’ on going obligations with respect to post construction monitoring, maintenance, modification and improvement.

2.9 The programme of works for the design and construction of both the Developers scheme and associated Section 278 highway works will be carried out in the 2014/2015 and 2015/16 financial years in accordance with the Developers programme.

2.10 The Amelioration Scheme represents the culmination of a number of years of intensive analysis, research and design carried out by highly specialised professionals within the field of wind analysis and wind engineering. In addition to the professionals engaged to work on behalf of the Building Owner, the Council has engaged its own equally specialist advisors to peer review the proposals being advanced and to provide advice to Officers to satisfy them that the optimum solution has been identified, and that the necessary measures and protections that need to be secured to protect the public interests of highway users and the interests of the Council more generally have been secured.

3. **Main issues**

3.1 Testing and review of the proposed wind mitigation measures by highly specialised experts have found them to be effective in mitigating the local ground level wind speeds as far as practically possible within the confines and restrictions of the site.

- 3.2 Experts have advised that the proposed mitigation measures will deliver conditions which are a significant improvement on the existing conditions with the vast majority of test points passing the distress criterion.
- 3.3 Experts have advised that there may be on-going failures of the distress criterion (most of which are anticipated to be marginal failures) in a small number of locations. Experts have advised that the wind effects in these locations can be mitigated by local street level modifications.
- 3.4 Given the unique nature of the baffle scheme, the Council has required that an appropriate testing regime is implemented to ensure that the installation is working as intended. Consequently, the Development Agreement contains obligations on the Developers to test, review and implement such further improvements at these locations (and any others where the need for improvements are identified after the Installation has been constructed) as are advised by appropriately qualified and independent experts.
- 3.5 Members will note that the proposed Development Agreement (excluding annexes) is attached as Appendix 1. In summary this agreement, which has been developed between Leeds City Council, CPPI Ltd and their bank, regulates the basis of the installation of the baffle scheme in the adopted highway specifically the areas covered include:
- Construction and installation;
 - Post completion testing;
 - Additional localised amelioration works;
 - Long term monitoring and maintenance;
 - Future Nuisance (if any); and
 - The provision of a bond and an indemnity in favour of the Council.
- 3.6 The post construction monitoring, maintenance and improvement obligations that the Developers are being made subject to have been reviewed on behalf of the Council by an independent specialist wind analyst. Officers have placed reliance on expert advisors throughout and they have confirmed that the safeguards contained within the Development Agreement are appropriate.
- 3.7 Approval to the preparation and making of the agreement for the necessary Highways Works under Section 278 of Highways Act 1980 has been previously approved by report to the Chief Officer Highways and Transportation dated 17 March 2015, signed 28 April 2015.
- 3.8 Authorisation of the necessary licences for the installation of the wind mitigation scheme and for the canopy over sailing of the highway will be undertaken within the delegated authority of the relevant highway officers.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Ward Members: Councillors for City and Hunslet Ward were consulted by email on the proposed Section 278 agreement in February 2015 prior to the Chief Officer (Highways and Transportation)'s decision and were previously consulted with respect to the Planning Application. No further consultation has been undertaken in relation to the purpose of this report.
- 4.1.2 External Consultation: The proposals detailed in this report have been prepared in consultation and agreement with the Developers. An appropriately qualified and independent Wind Analyst has reviewed the on-going maintenance, monitoring and improvement obligations that the Developers are to be made subject to and has recommended that these measures are appropriate and satisfactory. No further consultation has been undertaken; all relevant highways consultations relevant to the proposed Section 278 works are being undertaken separately in relation to that decision.
- 4.1.3 Internal Consultation: Relevant officers within the Council have been consulted throughout the process of agreeing and approving the proposed works and in the making of the various agreements and Licences.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 With respect to the Developers proposals, due regard to the equality characteristics has been considered as part of the previous planning application process. An EDCI Impact Assessment has subsequently been conducted in relation to the Section 278 process and in relation to the highway works within the scope of the Agreement an equality screening and (or) impact assessment will be undertaken at the design and construction phase of the scheme.
- 4.2.2 In relation to the purpose and decisions requested in this report an EDCI screening has been undertaken. This finds that the Development Agreement proposed for the Bridgewater Place owners Wind Amelioration Scheme provides appropriately for the design and construction of the highway works and the developer's obligations for monitoring, testing and reviewing the scheme in regard to securing the benefits for pedestrians and other users expected from the Scheme including equality characteristics such as age and disability.

4.3 Council policies and Best Council Plan

- 4.3.1 The measures proposed by the Developer and associated highway works accord with the Council's transport and other policies in that they will lead to the provision of a safe means of access for all users of the highway, to and around, the development.

4.4 Resources and value for money

- 4.4.1 The total costs for the developer's scheme including the Section 278 highway works and subsequent costs relating to their on-going obligations are to be borne entirely by the Developer.

4.4.2 The developer will fund the total cost of the scheme, including the works costs, statutory undertakers' costs and the cost of staff fees and commuted sums.

4.4.3 The design check and inspection of the works can be carried out within the existing staff resources.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Agreement to the recommendations of this report will put in place the measures needed to ensure the Developer can progress with optimum solution to the permanent wind amelioration scheme. Their future obligations for the monitoring and modification of the scheme are also clearly set out. The decision is a key decision pursuant to Article 13.5(b) of Part 2 of the Constitution and as such is eligible for call in.

4.5.2 The City Solicitor has been consulted on and has approved the decision in so far as such approval is required by the Officer Scheme of Delegation.

4.6 Risk Management

4.6.1 Based upon specialist expert advice from appropriately qualified Wind Analysts officers are advised that the provisions described in the Development Agreement will ensure that effective measures (and their subsequent monitoring and management by and at the Developers cost) are put in place for the future management of public safety and nuisance in relation to the issue of wind mitigation in the environs of the Bridgewater Place building.

5. Conclusions

5.1 The negative impact of high winds that have been caused by the construction of Bridgewater place have had a significant impact on the safety of the environment in the immediate vicinity of the building. This issue has led to the death of Dr Slaney in 2011 and further injuries to pedestrians. As a consequence of the impact that the building has on the local environment, the Council has had to implement a series of emergency road closures in periods of high winds and provide a pedestrian shelter to the South of Victoria Road Bridge. Given the level of disruption caused, a permanent solution to the problem must be brought forward and implemented. Accordingly, the proposed Agreements with Developers of Bridgewater Place will ensure that provisions are in place to allow implementation of the approved wind mitigation measures scheme, thereby allowing the scheme to proceed as soon as possible. Officers have sought the best independent advice available from a suitably qualified expert and have been advised that the Development Agreement secures appropriate measures and safeguards to secure the longer term management of the Developer's installation in terms of its future monitoring, performance and management thereby protecting the Council's legitimate interests and the safety of users of the Highway in the vicinity of this Building.

6. Recommendations

6.1 Executive Board is requested to:

- i) Note that based on specialist advice received, officers have been advised that the proposed installation “has been found to be effective in mitigating the local ground-level wind speeds as far as practically possible within the confines and restrictions of the site”;
- ii) Note that post construction, there will be a need for further street level works to be carried out to ameliorate the effects of potential “hotspot” areas where wind speeds may (at times of high winds) still exceed safe levels. Note that the precise extent, nature and location of these works will be identified and agreed based on expert advice following post installation testing by wind experts.
- iii) Note that the works to install the Amelioration Scheme are being carried out by Contractors appointed and engaged by the Building Owners; that the anticipated start date of the works is March 2016 and that the works on site are likely to take up to 50 weeks to complete;
- iv) Note that due to the extensive nature of the works within and over the Highway the extended road closure of Water Lane at intervals throughout the duration of the works will be unavoidable; and
- v) Authorise the Council to enter into the Development Agreement to enable the wind mitigation scheme to be installed and delegated the completion of the Agreement and any non-material amendment(s) to the City Solicitor.

7. Background documents¹

7.1 Annexes

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.