

Report to Director of City Development

Date: 28 November 2016

Subject: BRIDGEWATER PLACE, WATER LANE – AGREEMENTS FOR WIND AMELIORATION SCHEME AND SETTLEMENT OF COSTS

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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix number: 1 and 2	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. Planning consent for the construction of the Bridgewater Place Building (“the Building”) was granted in November 2001. A condition of the Planning Consent was that prior to any construction taking place, a detailed assessment of the micro climate should be carried out. That assessment was completed by BRE Ltd who advised 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)”.
2. Shortly after the building was completed, it became apparent that this advice was flawed. Further investigation demonstrated that the design of the building in confluence with its setting and location had the effect of substantially increasing the wind speeds experienced in this location. This resulted in excessive localised wind conditions which placed highway users in the vicinity of the building at risk of harm during high wind events. The Council received complaints from members of the public who had suffered loss and harm, and in March 2011 a pedestrian was killed and another seriously injured as a direct result of excessively windy conditions caused by the Building.
3. To protect the safety of the general public using the public highway, the Council has had to implement a number of measures to mitigate the risks presented by the Building pending a permanent wind mitigation scheme for the Building being identified and implemented.
4. The sole responsibility and liability for these issues lies with the Building owners. To minimise delay and on-going risks to the general public the Council carried out work to identify the necessary measures, and funded their installation and

implementation on an interim basis. The costs incurred in so doing are now being recovered from the Building Owner and are subject to a settlement agreement.

5. Further, pending the construction of the permanent amelioration measures on and around the Building by its Owner, it will be necessary for the Council to continue to implement its current high winds protocol to close Water Lane/Victoria Street. A cost is incurred on each occasion that this is necessary. The Building Owner is responsible for indemnifying the Council in this regard and agrees to do so within the Settlement Agreement.
6. This report seeks authority to conclude and enter into the Settlement Agreement to settle the Council's claim to recover its outlay, and bind the Building Owner to indemnify the Council in relation to all future road closure costs pending the completion of the permanent amelioration measures and the implementation of an updated high winds protocol.

Recommendations

7. The Director of City Development is requested to:
 - i) agree to the proposed settlement of the Council's claim for costs and expenses against the Owner of Bridgewater Place building in respect of all sums due to it in relation to its expenditure incurred in legal proceedings; in engaging and working with experts to identify an acceptable solution to the microclimate issues; and in relation to the installation and implementation of highway works and measures associated with the temporary amelioration of the wind nuisance pending the installation of the permanent amelioration scheme in the sum of £903,000 on terms that the payment is made on the earliest of either:
 - (a) the freehold of the building being sold by the current owners or
 - (b) 25th September 2020;.with interest being payable thereon at 2% above Barclays Bank base rate from the date of the Agreement until 24th September 2019; and thereafter at the rate of 4% above Barclays Bank base rate until the Settlement Sum is paid
 - ii) agree to the proposed indemnity from the Building Owner in relation to the Council's future costs associated with the implementation of its current High Winds Protocol;
 - iii) agree to the Council entering into the proposed Intercreditor Deed which ensures security for the sums owed to the Council;
 - iv) note that the City Solicitor will finalise and conclude the legal agreements identified in the report; and
 - v) declare the above decisions to be exempt from Call In on the basis that if they were subject to Call In the interests of the Council and the public would be seriously prejudiced.

1 Purpose of this report

1.1 The purpose of this report is to:

- 1.1.1 Agree the proposed settlement of the Council's costs in the sum and on the terms outlined above and to authorise the necessary Agreement with the Building Owner accordingly.
- 1.1.2 Agree to the indemnity obtained from the Building Owner in relation to the Council's future costs occasioned by its implementation of the current High Winds Protocol.

2 Background information

- Since 2008, council officers have been in dialogue with the Building Owners to identify the mechanism of the wind generated conditions and amelioration measures which could effectively counter them.
- Pending a solution to this issue being identified the Council has undertaken both legal and operational activities to protect the Council's interests and to protect the safety of the public using the highway in the vicinity of the building.
- All costs incurred have been on the basis that recoupment from the Building Owner would be pursued.
- A Settlement Agreement with the Building Owner has now been negotiated in relation to the costs incurred by the Council prior to 15th July 2016; the settlement sum is in the amount of £903,000
- After the installation of the permanent wind amelioration measures and any further works to ameliorate localised "hotspots" have been completed a revised high winds protocol relating to the closure of Victoria Street/Water Lane will be requisitioned. Pending this, it will remain necessary on occasions for the current high winds protocol to be implemented. Costs (averaging £3,000 per road closure) are incurred on each such occasion. The agreement negotiated with the Building Owner provides a contractual indemnity in respect of all such costs on terms that they shall be paid (together with interest) by the Owner either within 28 days of their sale of the freehold of Bridgewater Place, or by 25th September 2020 (whichever is earliest.)

3 Main issues

- 3.1 The proposed Settlement terms negotiated with the Building Owner are for the payment by the Owner to the Council of a sum of £903,000. This represents a fair and proportionate negotiated settlement of the Council's outlay. The alternative to reaching this agreement would be to engage in Litigation with the Building Owner which could put in jeopardy their delivery of the permanent wind amelioration measures and which would also incur further considerable legal costs and entail the risks and uncertainties in recovery that are an inevitable part of such proceedings.

- 3.2 The contractual indemnity in relation to all high winds protocol related costs will guarantee reimbursement of the Council's future outlay without dispute.
- 3.3 The draft Settlement Agreement is included in Appendix 1 to this report.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Ward Members: Councillors for City and Hunslet Ward have been consulted 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 for the proposed scheme. No further consultation has been undertaken in relation to the administrative purpose of this report.
- 4.1.2 The Executive Member for Regeneration, Transport and Planning has been consulted and supports the proposals made in this report.
- 4.1.3 Internal Consultation: Relevant officers within the Council have been consulted throughout.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality Impact Assessment has been carried out and is attached. No impacts have been identified.

4.3 Council policies and Best Council Plan

- 4.3.1 The settlement proposed supports the Best Council Plan priorities for 2016/17 by keeping people safe from harm and enhancing road safety.

4.4 Resources and value for money

- 4.4.1 The settlement sum of £903,000 is recommended as being a fair negotiated settlement of the Council's claim for reimbursement of its costs and expenses to date arising from the wind nuisance in the vicinity of Bridgewater Place.
- 4.4.2 The contractual indemnity for future high winds protocol related costs will guarantee full reimbursement without dispute or delay.

Capital Funding and Cash Flow

- 4.4.3 The settlement sum represents a cost efficient reimbursement of past costs incurred, and the indemnity in relation to foreseeable future costs protects budgets and effective cash flow

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The proposed financial settlement to recover the Council's outlay and costs guarantees a satisfactory reimbursement of past outlay with minimal risk.
- 4.5.2 The decision is a key decision pursuant to Article 13.4(a) of Part 2 of the

Constitution.

- 4.5.3 A key decision may be exempt from Call In if the decision taker considers that any delay in making it would seriously prejudice the Council's or the public's interests. A delay in entering into the documents referred to in this report would mean that the carrying out of the wind amelioration measures would be further delayed with the result that members of the public would continue to be exposed to high winds and that further road closures would be required. As the documents referred to in this report have only recently been settled it has not been possible to take the decisions referred to any sooner.
- 4.5.4 The City Solicitor has been consulted on and has approved the decision. In accordance with the authority granted under the Officer Scheme of Delegation (Executive Functions); it is proposed that the City Solicitor will finalise and conclude the Settlement Agreement in order to give effect to this decision of the Executive taken by the Director of City Development in accordance with the Leader's executive arrangements.
- 4.5.5 The information contained in Appendices 1 and 2 is exempt under Access to Information Rule 10.4 (3) as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). It is considered that the public interest in maintaining the content of Appendix 1 as exempt outweighs the public interest in disclosing the information. This report relates to a confidential Settlement Agreement and Intercreditor Agreement and as such release of the information would prejudice the position of the Council and the Building Owner.

4.6 Risk Management

- 4.6.1 The proposed financial settlement to be agreed with the Building Owner will provide full and final settlement for costs incurred by the Council in protecting its interests and those of the general public using the public highway. The sum represents a guaranteed return without the risks associated with litigation. Further, the negotiated settlement is the best option available to the Council in that it removes the risks to delivery of the permanent mitigation scheme by the Building Owner which litigation would inevitably involve.
- 4.6.2 The indemnity in relation to the foreseeable on-going high winds protocol implementation costs guarantees reimbursement for the Council without risk.

5 Conclusions

- 5.1 The proposed Agreements with owners of Bridgwater Place will ensure that provisions are in place to provide for the repayment of the Council's past and future costs.

6 Recommendations

- 6.1 The Director of City Development is requested to:
- i) agree to the proposed settlement of the Council's claim for past costs and expenses against the Owner of the Bridgwater Place building in respect of all sums due to it in relation to its expenditure incurred in legal proceedings;

in engaging and working with experts to identify an acceptable solution to the microclimate issues; and in relation to the installation and implementation of highway works and measures associated with the temporary amelioration of the wind nuisance pending the installation of the permanent amelioration scheme in the sum of £903,000 (plus interest) in full and final settlement of all sums due, the payment being made on the earliest of either:

- (a) the building being sold by the current owners or
 - (b) 25th September 2020;
- (ii) agree to the proposed indemnity from the Building Owner in relation to the Council's future costs associated with the implementation of its current High Winds Protocol;
 - (iii) agree to the Council entering into the proposed Intercreditor Deed which ensures security for the sums owed to the Council; and
 - iv) note that the City Solicitor will finalise and conclude the legal agreements identified in the report; and
 - v) declare the above decisions to be exempt from Call In on the basis that if they were subject to Call In the interests of the Council and the public would be seriously prejudiced.

7 Background documents¹

7.1 None.

8. Appendices

8.1 Appendix 1 - Settlement Agreement (Confidential)

8.2 Appendix 2 – Intercreditor Agreement (Confidential)

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.