



Report of: Head of Forward Planning and Implementation

To: Chief Planning Officer

Date of meeting:

SUBJECT: Request for the Chief Planning Officer to agree to the commissioning of GVA Grimley and DTZ consultants to undertake a retail impact appraisal and viability work in relation to the Tulip/City South retail proposals and other associated work related to the Public Inquiry.

This Report is for;

Discussion Only <input type="checkbox"/>	Information Only <input checked="" type="checkbox"/>	Advice/consideration prior to taking a Key or Major decision or reporting to a Committee <input type="checkbox"/>
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Decision to be taken by:

Full Council <input type="checkbox"/>	Corporate Governance and Audit Committee <input type="checkbox"/>
Executive Board <input type="checkbox"/>	Standards Committee <input type="checkbox"/>
An Area Committee <input type="checkbox"/>	Member Management Committee <input type="checkbox"/>
A Regulatory Committee <input type="checkbox"/>	A Director using delegated authority <input checked="" type="checkbox"/>

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to formally record the reasons for commissioning an external consultants to undertake an appraisal of the Tulip/City South retail proposals for Unit 4, 9 and Units 2 -11 without going through competitive tendering process on the basis that this represents best value for the Council to do so.

2.0 Background Information

- 2.1 The Council is currently preparing for a Public Inquiry which is scheduled for the 9th August 2011 and is programmed for three days. The Inquiry is based on conjoined appeals which relate to three separate retail proposals for City South Retail Park (formerly the Tulip Retail Park).
- 2.2 The City South Retail Park is an existing retail park. It is established as an out of centre retail development restricted to selling bulky goods in order to protect the vitality and viability of the city centre and town centres. Planning conditions manage the sale of retail goods.
- 2.3 All three appeal cases seek to relax the wording of the condition in order to increase the range of retail goods to be sold. The conjoined appeals refer to Unit 9, Unit 4 which includes a mezzanine floor and Units 2-11.
- 2.4 In addition to the conjoined appeals, the appellant has submitted a new application for Units 2 -11 which again seeks to increase the range of goods to include the sale of golfing products. For more details on the appeal cases please refer to **Appendix 1** for the full summary which also includes the new application details.
- 2.5 All appeal proposals and the new application raise complicated issues relating to shopping patterns, retail capacity, market demand and consumer expenditure which include whether the proposals would have a significant adverse impact on the city centre and town centres in the local area.
- 2.6 The proposal for **Unit 9** (gross floorspace 598sqm) is to include golfing products including golf shoes and golf clothes to the list of items which may be sold.
- 2.7 The **Unit 4** proposal (gross floorspace 3,194sqm) includes the provision of a “discount retailer”. Under the PPS4 guidance there is no commonly agreed definition of a “discount retailer” therefore the closest definition would refer to “warehouse clubs”. Warehouse clubs are defined as large businesses specialising in volume sales of reduced produced goods. The inclusion of “discount retailer” within the condition effectively opens up the unit to all retailers for a broad range of goods which would normally be sold in town centres. This could directly affect the vitality and viability of centres, particularly as the range of goods allowed to be sold would extend to convenience goods. This raises an important issue in terms of the cumulative impact of the proposal on shops in centres selling convenience goods alongside the two Middleton superstore proposals and the Tesco, Beeston scheme which all have overlapping catchments. The future opportunities to provide a convenience store in the Holbeck and the Aire Valley area may also be further compromised.
- 2.8 The proposed amendments of the condition relating to **Units 2 – 11** (gross floor space 9,660sqm) poses a more difficult challenge as the applicant is seeking to

extend the range of goods to include the sale of some High Street goods which would effectively be moving towards an open (A1) consent. All of the additional goods proposed to be sold would normally be sold within town centres. Some products such as furniture and carpets could reasonably be described as bulky goods for which an out of centre location is more likely to be acceptable. Other goods for example, hardware, housewares, pet supplies, art and craft products appear to compete directly with town centre locations therefore extending the range of products could be harmful to town centres.

- 2.9 City South Retail Park is clearly experiencing difficulty attracting retailers with five units currently vacant or not making the best use of the land and resources. Elsewhere however, an outline application which is currently being considered at Gelderd Road for bulky goods, clearly shows that there is still demand for this type of facility. This suggests that we should retain those sites which are eminently suitable for bulky goods.

3.0 Main Issues

- 3.1 Following discussions with the Council's Counsel, we have been advised that essential, additional technical work is needed to strengthen the Council's appeal case. The scope of this additional work and procuring of GVA Grimley and DTZ to carry out the technical work has been agreed with the Heads of Service (Planning Services and Forward Planning and Implementation).
- 3.2 The technical work involves undertaking a retail impact assessment, sequential assessment and establishing a view on viability matters. Due to the specialist knowledge and experience required to undertake a retail assessment and establish a view on viability matters it is considered necessary to use consultants. However in terms of undertaking the sequential assessment it is considered that in-house expertise would be appropriate.
- 3.3 GVA Grimley was selected to undertake the impact work on the basis that they came second on the appointment list following the Council's recent appointment of Colliers International to undertake the Leeds City Centre, Town and Local Centres Retail Study 2011. The Retail Study appointment followed the Council's formal competitive tender procedures. Although the preferred consultants would have been Colliers International, there is a conflict of interest, as Colliers also act as the letting agent for the retail park. In addition, the Council's officers are satisfied that GVA Grimley have the necessary specialist retail expertise required for the work and they appear to have no conflict of interest with any existing retail planning applications/proposals which the Council is currently dealing with.
- 3.4 Ideally the preferred approach would have been to appoint one consultant to undertake both tasks (impact and viability) however this was a matter of timing. It was only after the appointment of GVA Grimley that the need arose to carry out the viability work. Unfortunately GVA Grimley (Valuation Team) has previously represented the retail park and as consequence the Valuation Team has a conflict of interest.
- 3.5 DTZ has now been selected to undertake the viability work. DTZ was selected on the basis they do not have a conflict of interest and they have recently completed the Economic Viability Assessment Report on Affordable Housing for the Council. This piece of work was considered to be of the highest quality and standard.

3.6 All evidence for the Inquiry should be submitted six weeks prior to the start date (9th August 2011). Opening up the procurement process to competitive tenders would significantly delay the start of the work and may result in a weak case being drawn up due to a lack of essential technical information. Due to a weak case, there is a possibility that the Planning Inspector may rule in favour of the appellant and we could incur costs being awarded against the Council.

4.0 Resource and Legal Implications

4.1 In order to ensure best value, the Council officers will work with the consultants and lead on those areas in which the technical expertise is not needed. This will ensure the consultants are working on those areas in which they are best placed to do so.

4.2 Due the complexities of the proposals, empirical data would form the basis of the Council's case. Although the Leeds City Centre, Town and Local Centres Retail Study work is still ongoing, the survey findings will be used to as the starting point to formulate the Council's case. However given the appeal site is an out of centre location, the Leeds City Centre, Town and Local Centres Retail Study findings would only be able to provide an overview on shopping patterns, retail capacity, trade diversion issues and more detail work would be required. The scope of detail work for which the consultant would be appointed would include the following,

a) **Viability** – All the appeal cases are based on the principle of viability. DTZ would be requested to provide a view on the position of the bulky goods market, the quality of the appellant's marketing strategy and establish whether the purchase price paid by the owner for the retail park was over inflated

GVA Grimley have been requested to provide the following,

b) **Undertake a Retail Impact Assessment** – purpose for this work would be to assess the exact economic impacts on the likely trade diversion and loss of consumer expenditure in existing city/town centres per retail goods.

c) **Prepare the Statement of Common Ground on Retail Issues** – Both parties would need to undertake a full Retail Impact Assessment which will form part of the Inquiry evidence. The purpose of the SoCG is to ensure the same (if not similar) methodology is adopted.

4.3 The Council's Counsel has also advised that the Inquiry is likely to cover 4 days rather than the programmed 3.

4.4 DTZ has undertaken to provide technical work on viability matters by June/July 2011. Taking into consideration that the Council does not know what the viability findings would show at this stage, it is envisaged that the findings will be used to shape the Council's case but may or may not be included in the proof of evidence.

4.5 DTZ has confirmed it should be possible to contain the cost of providing a valuation view and brief market assessment within a 5K (exc VAT) budget subject to agreeing the final brief.

4.6 GVA Grimley has undertaken to provide the technical work by June/July 2011 and to also stand as the Council's retail expert witness at the Inquiry in August 2011.

The fee of **£14,425 plus VAT** would be financed through the Planning Services budget. Based on the scope of the work, the cost for the technical work would be:

- Prepare the Inquiry proofs/summaries - £6,500
- 3 x meetings with Counsel - £1,500@£500 each
- Statement of Common Ground on the Retail Statement - £1,250 + £500 (meeting)
- Undertake Retail Impact Assessment - £1,750
- 3 x Director's fee for Inquiry - (£975 x3) £2,925
- 1 x Director's fee for additional day at Inquiry - £975

Total (excluding additional day at Inquiry as it is yet to be confirmed) = £14,425

Total (including additional day) = £15,400

4.7 In contrast, the Council's officers would be preparing the following work;

- Rule 6 Statement
- Statement of Common Ground on Planning History
- Statement of Common Ground on Highways issues
- Undertake the full Sequential Assessment

4.8 Under Contract Procedure rules (CPR 11.2) it is considered on a case by case basis where the Relevant Chief Officer deems it appropriate for the efficiency of service provision and it represents Best Value for Money for the Council they shall be able to use their discretion to raise the amount referred to in CPR 11.1 and CPR 12.1 to £25k and award a contract to a specific Contractor without the need for competition. The Relevant Chief Officer must ensure that, if using this rule, details of the procurement are entered onto SCMS and a unique reference number obtained which will be applied to all stages and documentation of the procurement. If previously agreed with the PU, the Authorised Officer may use an alternative referencing scheme. This contract falls within this range and represents value for money.

5.0 Recommendations

5.1 The Chief Planning Officer is requested to agree to the commissioning of GVA Grimley and DTZ consultants to undertake a retail impact appraisal, viability work and other associated work related to the Public Inquiry relating to the Tulip/City South retail proposals.

5.2 The Chief Planning Officer is also requested to delegate authority to the Head of Planning Services to negotiate (if appropriate) any additional costs on the basis the final sum would not exceed £25k.

6.0 Background Papers

None.