

Classification: Public

Key Decision: Yes

Gravesham Borough Council

Report to: Full Council

Date: 23 June 2020

Reporting officer: Stuart Bobby, Chief Executive

Subject: The Charter Regeneration Project

Purpose and summary of report:

To provide Members with an overview of progress with The Charter project and consider the request received from the Rosherville Limited Board to the council, as Shareholder, to make available the necessary funding for the project.

To seek delegated authority to continue the necessary practical, financial and legal actions required to determine viability of the project and take a final decision to proceed.

Recommendations:

Following consideration of the information contained within this report, Full Council are recommended to:

1. Support the proposals for delivering The Charter Project, as set out within this report.
2. Delegate authority to the Chief Executive in consultation with the Leader, the Director (Corporate Services) (in the role of S151 officer) and the Deputy Monitoring Officer to take all necessary practical, financial and legal actions required to determine viability of the project and take a final decision to proceed, including entering into the relevant formal legal agreements required.
3. Delegate authority to the Director (Communities) in consultation with the Director (Corporate Services) (in the role of S151 officer) and the Deputy Monitoring Officer to settle the terms and price of disposal of the associated land assets to Rosherville Limited for the purpose of bringing forward the proposed scheme contained within this report.
4. Approve the updating of the Treasury Management Strategy Statement, principally the extension of the existing Operational Borrowing Limit and Authorised Borrowing Limits to £295.410m and £310.410m respectively to ensure there is sufficient capacity to support this loan.
5. Approve the addition of the sum of £82m to the approved capital programme for 2020/21 for the purpose of providing long term funding up to that defined level to Rosherville Limited as a means of delivering long-term economic benefits to the borough for both regeneration and community benefit.

1. Introduction and background

- 1.1 In June 2018 the council entered into an Exclusivity Agreement with Reef Estates Limited to bring forward residential and commercial development proposals for land formerly known as the Eastern and Western Quarters of Gravesend Town Centre. The agreement was for a period of 24 months which could be extended by either party for a further 12 month period.
- 1.2 The areas covered by this Exclusivity Agreement have now been renamed as:
 - 1.2.1 The Charter (formerly The Eastern Quarter) which covers the Market Square and Horn Yard surface car parks; and
 - 1.2.2 St George's Phase II (formerly the Western Quarter) which includes West Street surface car park, the St George's Centre surface car park and land owned by the Diocese of Rochester
- 1.3 Since June 2018, work has progressed in the background to develop a masterplan for the areas above involving representatives from The Reef Group and officers of the council, supported by a number of experts and professional advisors. A number of public consultation events and Member briefing sessions have also been held to help shape, develop and inform on the proposals coming forward for the two sites.
- 1.4 The purpose of this report is to formally outline to Members the proposals that have been presented by Rosherville Limited (the council's wholly-owned trading company) and The Reef Group for The Charter aspect of the project.
- 1.5 Given the current pandemic situation and the uncertainty this has caused around the immediate and longer term outlook of the national economy, it is not considered commercially sensible to seek a formal decision to proceed with the project at this time, and therefore delegated authority is sought to proceed with the project, and provide the necessary funding to Rosherville Limited (and any of its subsidiaries) should the conditions set out within Paragraph 4.7 of this report be met.
- 1.6 It is therefore proposed that delegated authority be given as set out in the recommendations in this report to continue the necessary practical, financial and legal actions required to determine viability of the project and take a final decision to proceed. In doing this, the council will also need to approve the creation of the loan facility to Rosherville Limited and make the necessary changes to its Treasury Management Strategy Statement and Capital Programme.

2. The Charter Proposals

- 2.1 The Reef Group submitted a planning application for the site on 6th April 2020; this was validated by GBC Development Services on 14th April 2020. The Application (Reference No. 20200343) proposes:

Erection of 242no. residential units for Build to Rent (C3 Use Class), within three blocks ranging from 3 to 10 storeys, together with multi-storey car park as well as access, pedestrian, landscaping, highway and other associated works.
- 2.2 The multi-storey car park is proposed to consist of 185 parking spaces, 110 spaces for public parking and 75 spaces for residential parking.

- 2.3 Appendix two provides CGIs of the proposed site to assist Members in visualising the project.
- 2.4 In order for the development to progress as set out it is proposed that the following actions are completed:
- 2.4.1 Gravesham Borough Council (GBC) will transfer the freehold or a long leasehold interest in its landholdings as indicated on plan 1 to Rosherville Limited (the exact nature of the transaction to be determined by appropriate legal and taxation advice at the time of the transaction).
 - 2.4.2 Rosherville Limited, through its subsidiary Rosherville Property Development Limited, will appoint an entity within The Reef Group as its Development Partner under a commercial agreement, which includes a detailed Scope of Services and Specification, to ultimately secure planning permission for and to deliver the proposed development on the site. The agreed maximum development price will be £82m which includes all legal fees as well as the agreement that the apartments will come with soft furnishings, fixtures and equipment (specification to be agreed) together with white goods. Full specification of the final build contract will need to be agreed between both parties.
 - 2.4.3 GBC will provide funding to Rosherville Limited through an £82m loan facility to fund the Proposed Development and other reasonable costs incurred by Rosherville Limited in bringing forward development. Funding will be conditional upon planning consent for the development being obtained and financial viability being confirmed.
 - 2.4.4 Rosherville Limited will pay development costs up to the maximum commitment of £82m to The Reef Group against construction milestones – milestones and profile of payments to be confirmed. Rosherville Limited will appoint a monitoring surveyor/project monitor to approve each drawdown request by The Reef Group prior to payment, less a retention amount. The Reef Group will be responsible for any cost overruns and will provide a guarantee.
 - 2.4.5 At the point of planning permission being granted, Rosherville Limited will reimburse The Reef Group all historical planning and design fees funded to date based on a full invoice breakdown in order that Rosherville Limited is able to verify costs and the basis on which these have been incurred.
- 2.5 Once the development is completed, it is intended that the residential units will be transferred to a property management company (a new subsidiary of Rosherville Limited to be established) to enable the properties to be let through the private sector rental market. Discussions as to the preferred operating model of the 185 space car park, which will include 75 spaces for residential users, are currently underway.
- 2.6 Working on behalf of Rosherville Limited, officers continue to undertake detailed analysis and due diligence in order to ensure that the proposals put forward are not only in the best interests of the borough, but also of the company and the council as a whole. The council is working with a number of experts and professional advisors including Trowers and Hamblins LLP (law firm), Jones Lang LaSalle (property consultancy company), Grant Thornton (External Audit provider) and Link Asset Services (treasury management advisors) who have been engaged to ensure that independent expert evaluations of the proposals put forward by The Reef Group are completed and can be considered as part of the decision-making processes of the council.

3. Legal Considerations

3.1 Council ability to make a loan

- 3.1.1 The council has the power to borrow under Chapter 1, Section 1 of the Local Government Act 2003 for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs.
- 3.1.2 Chapter 1, Section 12 of the Local Government Act 2003 provides the council with the power to invest for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its finances.
- 3.1.3 Statutory Guidance on Local Government Investments issued by MHCLG states that “For the avoidance of doubt, the definition of an investment also covers loans made by a local authority to one of its wholly-owned companies or associates, to a joint venture, or to a third party.”
- 3.1.4 The council is therefore able to borrow and make an investment under Section 12 of the Local Government Act 2003.
- 3.1.5 The council has the general power to borrow and to make loans under the General Power of Competence in Section 1 of the Localism Act 2011, which enables local authorities to do anything an individual can do as long as this is not ultra vires. This provision supplements the powers set out above.

3.2 State Aid

- 3.2.1 In advancing a loan to Rosherville Limited, the council must currently ensure it is compliant with the Market Economy Operator Principle (MEOP). MEOP states that in order to not be in breach of State Aid principles, any loans/investment by the council must be made in a commercial manner to prevent an economic advantage being created for the company by the council (i.e. the company receiving more generous terms/interest rates than it otherwise would if it sought the loan from the private market).
- 3.2.2 To ensure compliance with State Aid considerations, any loan advanced by the council will be on a commercial basis and based on a full financial appraisal which demonstrates the viability of the scheme and the company’s ability to meet the loan repayments.

3.3 Procurement

- 3.3.1 Rosherville Limited will be a commercial entity operated to deliver a financial return for its shareholders and so will not be a contracting authority for the purposes of the procurement regulations.

3.4 Financial Conduct Authority (FCA) Authorisation

- 3.4.1 The council would not be required to be registered with the FCA to enable the loan facility to be made. The council would be considered compliant under PEGR 2.9 of the FCA Handbook, allowing the forward lending of

funds and the application of a risk premium associated with such lending.
<https://www.handbook.fca.org.uk/handbook/PERG/2/9.html>

3.5 Constitutional Requirements

- 3.5.1 The decision to advance a loan to Rosherville Limited is reserved to Full Council, as are the required changes necessary to the council's approved Capital Programme and Treasury Management Strategy Statement. Therefore this report sets out the recommendations for Full Council.

3.6 Land Disposal

- 3.6.1 To enable the development to take place, the council will need to transfer its interest in the associated land assets (namely Market Square and Horn Yard surface car parks) to Rosherville Limited.

- 3.6.2 Annex 1.4 of the Council's Constitution sets out the responsibilities of the Cabinet. Function 4 – Management of Resources, permits Cabinet to:

Subject to the requirements of the approved Policy Framework and Budget to exercise the Council's powers and duties relating to -

(a) the strategic and operational management of all of the Council's current and future resources of land, buildings, finance, personnel and other assets, including the use of Council-owned land declared surplus to operational requirements;

- 3.6.3 Furthermore, Annex 1.13, B.25 of the Council's Constitution (Functions Delegated to Officers of the Council) provides delegated authority for the Director (Communities):

To settle the terms, including the price, of any acquisition or disposal of any interest in or right to occupy land required for the purpose of any scheme or proposal approved in principle by the Cabinet. The amount or value of the consideration shall not exceed £250,000 in any single transaction. Subject to consultation in all cases with the Assistant Director (Corporate Services).

- 3.6.4 Section 123 of the Local Government Act 1972 provides that, subject to certain exceptions, a local authority may dispose of land held by them in any manner they wish. Except with the consent of the Secretary of State, a local authority shall not dispose of land "for a consideration less than the best that can reasonably be obtained".

- 3.6.5 In practice, best consideration of land asset value will be undertaken as part of the activity to determine viability of the project and before taking the final decision to proceed. To enable the decision to dispose to take place without unnecessary delay in due process, delegated authority is sought to enable disposal of the land to Rosherville Limited by the Council in the event that the value be considered higher than the £250,000 provided in existing delegated authorities within the Constitution.

4. Financial Implications, Risk and Due Diligence

- 4.1 Initial modelling of the scheme has been prepared by Jones Lang LaSalle on behalf of the council. The key points of interest are summarised below:
 - 4.1.1 Delivery of The Charter will be through Public Works Loans Board or Debt borrowing over a period of 50 years.
 - 4.1.2 The modelling completed by Jones Lang LaSalle, indicates that anticipated income from the site is expected to exceed the likely debt and Minimum Revenue Provision (an annual statutory allowance for debt principal repayment) (MRP) payable for a period of at least 43 years (where MRP is accounted for on an annuity basis). After this point the model indicates that likely debt and MRP payable would exceed annual rental income.
 - 4.1.3 It should be noted that the council will wish to undertake its own financial modelling as part of its ongoing due diligence up until the point any decision to proceed is taken.

4.2 Treasury Management

- 4.2.1 Prior to any loan facility being agreed, advice will be sought from the council's Treasury Management Advisors, Link Asset Services Ltd. In addition to this, the council will also discuss the loan facility and agree the appropriate accounting treatment with its external auditors, Grant Thornton.
- 4.2.2 The provision of a loan to Rosherville Limited would be considered as capital expenditure rather than a loan for treasury management investment purposes. This is not currently included in the approved capital programme of the council for 2021/22; Full Council approval would be therefore required to make an amendment to the current capital programme to enable any loan to be made.
- 4.2.3 The Capital Strategy outlines the principles followed by Gravesham Borough Council in its approach to capital investment over the long-term implications. The provision of the loan facility to Rosherville Limited fulfils the capital investment priorities of the council through the delivery of long-term economic benefits to the borough for both regeneration and community benefit, as well as generating a limited beneficial financial return to the council that can be directed to support services and maintain its ongoing financial sustainability.
- 4.2.4 Any loan provided to Rosherville Limited will be through long term borrowing undertaken by the council at the prevailing rate applicable on that day. Officers have been tracking the borrowing rates from The Public Works Loan Board (PWLB), noting the 100 basis point (1 per cent) increase on borrowing rates that was applied by the PWLB in October.
- 4.2.5 There are a number of alternative sources of borrowing that the council could consider and these will be fully investigated prior to any funding source decision being made.
- 4.2.6 There will be a need for the council to extend its existing Operational Borrowing Limit and Authorised Borrowing Limit to ensure there is sufficient capacity to support this loan.

4.3 Structure of the loan facility

- 4.3.1 The loan amount will be up to £82m with a repayment term of up to 50 years to enable Rosherville Limited to commence the proposed development with its Development Partner, The Reef Group. Provisions will be included in the loan agreement to ensure that any monies advanced are used solely to deliver the development known as The Charter and there is compliance with this requirement throughout the term of the loan.
- 4.3.2 There is a variety of loan structures that the council could secure, from a single loan for the full borrowing requirement or use of multiple loans with amounts borrowed in line with the proposed construction programme and the financial commitments associated with this. The final loan type and structure will be determined during the final due diligence checks and prior to the agreement for the loan to be made, based on the prevailing market conditions and the Council's own cash flow position.
- 4.3.3 The loan may be subject to an arrangement fee which will be determined by the council.
- 4.3.4 Repayment of the loan will be considered as a capital receipt to the council, with this these being used to support the repayment of debt and/or future capital projects of the council.

4.4 Rate of Interest Charged

- 4.4.1 Calculation of the interest rate payable for the loan will take account of the prevailing interest rate at which the council is able to secure the loan, with an additional premium charged to take account of the assessed risk of default. Any provision of a loan facility to a third party carries a level of risk; in this instance the principal risk to the council is borrower risk, through the borrower defaulting on the loan and causing an unexpected cost to the council and the public purse. Financial appraisals undertaken will factor in a suitably assessed risk premium to alleviate any potential impact on public funds.
- 4.4.2 To maintain compliance with current State Aid rules, it will be necessary for the Council to apply a "State Aid Premium" to the loan in addition to the substantive rate that the Council itself is able to secure on the borrowing; this is to ensure that the onward lending is in line with commercial rates. Based on the fact that the onward lending would be tied to the delivery of 242 residential units generating the required level of income to repay the loan over up to 50 years, and would also be tied to a charge being placed on the scheme by the Council until such time as the loan has been satisfied, the OJEU State Aid guidance recommends a premium of 100 basis points (1% on any loan that is advanced by the Council).

4.5 Risk of Default

- 4.5.1 To mitigate the risk of default, due diligence checks will continue to be conducted on Rosherville Limited as well as there being an assessment of the financial viability of the scheme being proposed.
- 4.5.2 Should the issuance of a loan be approved, it is the intention of the council to hold the full loan amount initially and release funds to Rosherville Limited against an agreed schedule.

4.5.3 The Council intends to secure the loan on the land and property owned by the Company in the form of a Legal Charge.

4.6 **Accounting for the loan**

4.6.1 An amendment to the Capital Programme in 2020/21 will be required to include the loan facility being made available.

4.6.2 The loan taken by the council will be recognised as external borrowing and will be classed as “unfunded” in terms of the council’s Capital Financing Requirement (CFR). This will result in an increase in the council’s CFR.

4.6.3 MRP will be chargeable in line with the policy that is set out in the council’s Treasury Management Strategy Statement.

4.6.4 Under Accounting Standard IFRS 9 (Financial Instruments), the loan will be classified as being valued at amortised cost within the council’s balance sheet. On an annual basis, the council will need to calculate an expected credit loss arising from this loan. Any significant increase in the expected credit loss will result in a charge to the council’s surplus/deficit on the Provision of Services in the Comprehensive Income and Expenditure Statement within the Financial Statements.

4.6.5 Monitoring of the loan and repayments against the loan will be undertaken by Financial Services, in liaison with Legal Services and Planning Services as required. The status of the loan will be reported as part of the existing Treasury Management monitoring arrangements to senior management and members, through the Finance & Audit Committee. The loan facility will be considered by Internal Audit in development of their risk-based audit plan and will therefore be subject to Internal Audit review. The council’s External Auditor will also consider the loan facility and the accounting treatment of this in their annual audit of the accounts.

4.7 **Conditions for Loan Advancement**

4.7.1 Consequently, authority is sought for the advancement of the loan facility to Rosherville Limited, subject to the following conditions being met (with delegated authority to the Chief Executive in consultation with the Leader, the Director (Corporate Services) (in the role of S151 officer) and the Deputy Monitoring Officer to ensure that such conditions are met before any advance is made);

- A maximum amount of £82m being advanced, with this being adjusted downwards only should interest rate rises in the cost of borrowing mean that the scheme generates insufficient financial returns in order to repay that level of borrowing.
- That no advance be made by the Council until The Reef Group have secured implementable planning consent for the proposed development, and that this advance purely relates to verified historical planning and design fees funded to date by The Reef Group.
- That no further advances be made by the Council until:
 - appropriate commercial, legal and financial advice have been obtained to support the viability of the project, including suitability of the mix of proposed units.

- an up to date financial appraisal is prepared demonstrating that the scheme continues to be financially viable.
- it has been demonstrated that there is a tendered construction contract for the delivery of the scheme.
- there is a confirmed schedule of construction in place.
- there is reasonable confidence that any Covid 19 workplace restrictions will not impact on the build programme
- That Rosherville Limited allows for the placing of a charge on the land and property assets associated with the development, by the council, as a first charge on those assets, until such time as the loan has been repaid in full.

5. Property Considerations

- 5.1 The legal agreements in respect of the St George's Centre, The Charter and St George's Phase II were entered into with a view to the economic and social benefits they could deliver to Gravesend Town Centre. Key to ensuring a viable / thriving town centre is footfall and it is envisaged that the delivery of 242 good quality homes within the town centre will play an important role in this.
- 5.2 Whilst the development will result in the loss of Market Square and Horn Yard car parks the proposed development provides for a 185 space multi-storey car park within it to support that area of the town. These car parks generate circa £268,000 of net parking income for the council each year albeit it is considered that there is sufficient capacity within other town centre car parks to accommodate those who are temporarily displaced. As such whilst the loss of some car parking income is likely it is hoped that in the main users will locate to other fee paying car parks within the town centre.
- 5.3 Any development is not without risks, which are heightened in times of uncertainty. The current COVID-19 pandemic situation is unprecedented and at the time of writing this report, it is too early to be certain what the likely ramifications are given the country remains in lockdown. Whilst the risk matrix, which forms an appendix to this report sets out the main risk associated with the development the key risks from a property perspective are set out below:

Development Phase

- 5.4 **Costs** – as The Reef Group are guaranteeing the build price cost over-run is unlikely to be an issue for the Council / Rosherville Limited unless The Reef Group are unable to meet their contractual obligations. For example due to the main contractor falling into administration, significant project over-runs or costs for the scheme being underestimated or rising unexpectedly. Whilst the failure of The Reef Group and / or the main contractor is not considered likely, if it were to happen it could have serious financial consequences for Rosherville Limited, at least in the short term, as appointing a new developer and / or contractor would undoubtedly add to the cost outlay as well as resulting in a potential delay in scheme completion. Legal expertise will be sought in this regard to place as many protections as possible into the respective legal agreements to minimise risks to the Council/Rosherville Limited in this regard.

- 5.5 **Brexit** – The transition period is due to end on 31st December 2020 and it is not currently known what arrangements will be in place for trade between the EU and the UK after that date. However if the UK leaves without a deal, for example, this could have implications for the sourcing of materials from abroad and the likely costs. Given that The Reef Group are guaranteeing costs this should not be an issue for Rosherville Limited or the Council unless The Reef Group cease to exist.
- 5.6 **Quality of build / finishes are not as expected** – It is proposed that a consultant is appointed to monitor the works on behalf of the company to ensure they are in line with the agreed specification, as they progress.

Lettings Phase

- 5.7 **Demand** – whilst research indicated that there is a market for the units, until they are marketed this cannot be guaranteed. There is therefore a risk that the demand for the units is not as anticipated and they therefore take longer to let impacting on the company's income. Commercial advice will continue to be sought from JLL and local letting agents regarding the commercial viability of the units, however, all responses to date have indicated pent up demand for such accommodation within the Town. Background Papers
- 5.8 **Rents** – the assumed rents are based on local market evidence and advice taking into account that new units command a premium. There is a risk however that the rents achieved are lower than expected particularly if their release is during a recession.
- 5.9 **Costs** – allowances have been made in respect of voids, day to day maintenance and periodic refurbishments albeit there will be an adverse impact on the company's income if these are higher than expected.

6. Other considerations

- 6.1 **Risk Analysis** - a detailed risk analysis has been undertaken which is attached to the report at appendix three.

7. Additional information for Members

- 7.1 In order to ensure all Members are fully briefed on the project, and as a result of the need for social distancing in light of the COVID-19 virus, a video presentation was produced by The Reef Group and was made available to all Members prior to the papers being discussed and presented to Cabinet.

8. Progression of St George's Phase 2

- 8.1 Additional work is continuing on the detailed proposals for St George's Phase II. A further report on this will be presented to the Cabinet in due course.

9. Background Papers

- 9.1 Background papers pertaining to this report are held by the Director (Corporate Services). Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

IMPLICATIONS	APPENDIX 1
Legal	The legal implications are set out in section three of the report
Finance and Value for Money	The financial implications are set out in section four of the report
Risk Assessment	A detailed risk assessment has been undertaken and is appended to the report at appendix three.
Data Protection Impact Assessment	<p data-bbox="416 510 1469 613"><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p data-bbox="416 651 1485 763">a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data? No</p> <p data-bbox="416 801 1469 913">b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</p> <p data-bbox="416 965 1485 1077">c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk. N/A</p>
Equality Impact Assessment	<p data-bbox="416 1137 1501 1279">a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p> <p data-bbox="416 1339 1437 1480">b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. Yes – the designs for the development include potential access issues and have been developed with the DDA in mind.</p> <p data-bbox="416 1541 1501 1630"><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
Corporate Plan	<p data-bbox="416 1675 1358 1742">The proposals set out within this report contribute to the following council objectives:</p> <p data-bbox="416 1765 1390 1839">#1 People: <i>a proud community; where residents can call a safe, clean and attractive borough their home.</i></p> <ul data-bbox="416 1861 1166 1939" style="list-style-type: none"> - Deliver an ambitious and diverse programme of building - Enforce a high quality of private housing

IMPLICATIONS	APPENDIX 1
Corporate Plan <i>(continued)</i>	<p>#2 Place: <i>a dynamic borough; defined by a vibrant and productive local economy taking advantage of growth in the area, supported by its strong and active community.</i></p> <ul style="list-style-type: none"> - Enhance the vibrancy of the Gravesham economy - Improve resident well-being <p>#3 Progress: <i>an entrepreneurial authority; commercial in outlook and committed to continuous service improvement, underpinned by a skilled workforce and strong governance environment.</i></p> <ul style="list-style-type: none"> - Develop an entrepreneurial culture
Crime and Disorder	<p>The information contained within this report has no specific crime and disorder implications.</p>
Digital and website implications	<p>The information contained within this report has no specific digital and website implications. Rosherville Limited has its own website and as and when required, updates regarding The Charter project will be updated on the website.</p>
Safeguarding children and vulnerable adults	<p>The information contained within this report has no specific safeguarding children and vulnerable adult implications.</p>