



**PUBLIC HEALTH, HOUSING,
LAND AND PROPERTY
PORTFOLIO
19 APRIL 2007**

**URGENT
REPORT TO
Leader of the Council
Councillor T Fox**

	Key Decision	YES
	Forward Plan Ref No	
Corporate Priority Top priority of Aim Two 'Encouraging Economic Growth and Job Creation	Cabinet Portfolio Holder	Councillor Mrs J E Mortimer

JOINT REPORT OF:

**Head of Legal and Democratic Services - HLDS/07/29 and
Head of Regeneration Services – HRgn/07/09**

WARDS AFFECTED:

Directly – Eastfield, Cayton, Seamer and Crossgates
Indirectly – All Wards

SUBJECT: Scarborough Business Park

RECOMMENDATION (S):

To approve:

- (i) that Scarborough Borough Council (the "Council") enters into an agreement with Caddick (Scarborough) Ltd ("Caddick"), Caddick (Properties) Limited (the "Guarantor") and Plaxton Park Industrial Estate Ltd ("PPIE") supplemental to the Development Agreement dated 11 December 2006 made between (1) the Council (2) Caddick and (3) the Guarantor (the "Development Agreement") relating to the construction of infrastructure works (the "Link Road") on the Business Park Site (the "First Agreement").
- (ii) that the Council enter into an agreement with PPIE for the construction of infrastructure works (the "PPIE Road") on the land to the east of the Business

- Park currently in the leasehold ownership of PPIE Ltd (the "Second Agreement").
- (iii) that the Council vary the terms of the Yorkshire Forward Funding Agreement and ERDF funding agreement relating to the Business Park and enter into any documentation required by the parties to those agreements to document such variations.
 - (iv) that the Council enter into agreements with the relevant statutory undertakers to comply with the terms of the Development Agreement.
 - (v) That the Council enter into a Step In Deed with Caddick and N M Rothschild & Sons Limited (the "Funder")
 - (v) All such agreements and documentations on terms to be approved by the Council's Head of Legal and Democratic Services.

REASON FOR RECOMMENDATION (S):

To facilitate the implementation of the Business Park development approved by Cabinet on 20 June 2006 and to further expand upon the infrastructure of the Business Park.

HIGHLIGHTED RISKS:

If the agreements are not completed the Business Park project will be jeopardised. A delay or failure to agree terms between the two adjoining landowners (Caddick and PPIE) in relation to the provision of the Link Road and the PPIE Road may lead to a refusal by Government Office to issue the funding required to carry out the Project. A delay would jeopardise the delivery of the outputs within the timescales set by Yorkshire Forward and Government Office meaning the Project will be effectively terminated.

1. INTRODUCTION

- 1.1 The Scarborough Business Park is one of the key projects being developed under the Urban Renaissance Programme and is fundamental to diversifying the economy and providing a new platform for the Borough's economy to prosper.
- 1.2 On 21 February 2006 Cabinet agreed that the Council enter into the Development Agreement to secure the carrying out of infrastructure works ("the Works") to assist in the wider development of the Business Park.
- 1.3 On 20 June 2006 Cabinet agreed that the Council should accept the Development Agreement as drafted at that stage and gave authority to the Leader to agree outstanding points and that the Council should accept external funding to progress the Works.
- 1.4 Outline planning application for the 83 acres under the control of Caddick was approved by the Council's Development and Regulation Committee on 19 January 2006 and confirmation of the Secretary of State's approval was received on the 13 February 2006.
- 1.5 The Council entered into the Development Agreement on 11 December 2006.

2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN

- 2.1 The Business Park will help to achieve Corporate Objective 4 (To sustain and develop the local economy) and the top priority (Encouraging Economic Growth and Job Creation) of Aim Two (Building Prosperous Communities) of the Corporate Plan.

3. BACKGROUND AND ISSUES

- 3.1 The project to develop Scarborough Business Park has been one of the Council's key objectives for many years and much time and effort has been invested in bringing forward proposals which are realistic and deliverable. The work has included the establishment of a partnership with a private development company, Caddick (Scarborough) Ltd, and securing Yorkshire Forward and European Regional Development Fund funding towards the cost of infrastructure needed to open up the land for development.
- 3.2 Improvements to existing highways as well as the provision of a new road layout are important elements of the infrastructure requirements. These improvements include the provision of traffic lights at the junction of Dunslow Road with a new road leading to the development. The road to the Seamer Carr waste disposal site will be moved onto the main development site and will be adopted and accessed from a new roundabout.
- 3.3 The Development Agreement was signed on 11 December 2006 and the Council has almost concluded a tendering process to select a contractor for the construction of the infrastructure works.
- 3.4 Within the Development Agreement an option was provided to construct a road to land lying to the east of the site (the "Link Road"). In addition the construction contract was let with provision for the future construction of a Link Road. The Link Road was not included as part of the immediate infrastructure works as the timescales for grant funding precluded negotiation of an agreement of satisfactory terms with both PPIE and Caddick.
- 3.5 In January PPIE raised concerns with the Council that no road was immediately to be provided linking to its land lying to the east of the site (the "Link Road"). PPIE requested that the Council and Caddick constructed the Link Road as part of the immediate infrastructure works. Officers therefore met with both Caddick and PPIE separately and have managed to reach an agreement between the parties which will allow delivery of the Project, together with the enhancement of the infrastructure including highway on PPIE's Land. In order to document the agreement reached, officers propose that the Council enters into two agreements both supplemental to the Development Agreement.

The First Agreement

The First Agreement will be a four part agreement between the Council, Caddick, the Guarantor and PPIE. The First Agreement will provide for the construction of the Link Road on the Business Park Site.

PPIE will contribute 50% of the construction costs of the Link Road and consequential infrastructure (subject to a maximum of £408,117) which sum includes a 10% contingency fee for half of the cost overruns.

The remainder of the costs will be taken from grant funding with the Council bearing 50 per cent of cost overruns, as has been agreed in the Development Agreement with Caddick. The terms of this Agreement, most notably with regard to finance and adoption of the Link Road, reflect the terms of the Development Agreement.

The Second Agreement

The Second Agreement is an agreement between the Council and PPIE and Plaxton Limited. This sets out the terms and conditions relating to the construction of the PPIE Road across PPIE's Land to the same specification as on the Business Park Site. In addition PPIE agree to maintain the PPIE Road and allow general rights of access across it until it is adopted as public highway.

The Utility Agreements

In order to carry out its obligations under the Development Agreement the Council needs to enter into agreements with service providers such as Yorkshire Water and Northern Electric plc. A further agreement with the Highways Agency to allow works to the existing trunk road is also required. These agreements are largely in the standard form adopted by the relevant providers.

The Step In Deed

The Funder has requested that the Council enter into a Step In Deed clarifying the relationship between the parties to this transaction and the Funder's rights in the event of Caddicks default under the terms of the funding agreement. If Caddick default under the terms of its funding agreement, the Funder will either be able to step in and comply with Caddicks' obligations under the Development Agreement (and supplemental documentation) or assign the agreement to another developer.

4. CONSULTATION

4.1 None.

5. ASSESSMENT

5.1 The importance of the Business Park to the local economy, renaissance of the town, and to help meet one of the Council's top priorities has been clearly established. Any risk to delivery of the project needs therefore to be avoided if its objectives are to be achieved.

6. IMPLICATIONS

6.1 Policy

The recommendations in this report are to assist delivery of a project that has received full approval.

6.2 Legal

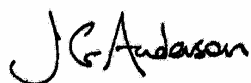
Appropriate documentation in the form of the First Agreement and Second Agreement will be required.

The Council will also take steps to ensure that the variations to the YF Funding Agreement and the ERDF Funding Agreement are formalised.

6.3 Financial

The financial implications are described in the report.

6.4 All other implications are described in the report.



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Background Papers:

Previous reports

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Delays on the reserved matters planning application	The project would be delayed and the time scale for the provision of grant funding would be reduced to the extent that the works may not be able to be completed in the time scale to allow for the grant outputs to be achieved.	Low	High	Work with planners, consultants and external agencies e.g. Environment Agency, Yorkshire Water, to make sure all information is provided to the planners.	Low	Low
The developer and the borough Council fail to agree the development agreement	The project would not proceed, and the committed monies £circa £300,000 would be lost	Low	Very high	Extensive discussions and negotiations have taken place between the parties and their solicitors.	Medium	Medium
Land Acquisition for road improvements, from the Wetlands trust, Scarborough Building Society, for the A64 Roundabout alterations and the private road to the Yorwaste landfill site for the infrastructure works.	The alterations to the roundabout will not take place, the infrastructure works will not be implemented to the part of the site intended for further expansion to the business park	Low	High	Extensive discussions and negotiations have taken place between the parties the land occupied by the Yorkshire Wetland Trust is owned by SBC and agreement on the lease amendment is taking place. We have conditional approval from the building Society to	Low	Low

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
				acquire a section of land to allow the round about to be constructed, and a final land acquisition drawing is being implemented. Negotiations with NRYCC on the landfill road are nearing completion.		
Highway agency Does not approve the roundabout design.	A new design will be required which will lead to delays on the final part of the works.	Low	Medium	Informal discussions have taken place with HA and they have provisionally agreed the outline design, a full survey of the roads is being carried out and a detail design will be submitted shortly.	Low	Low
Delays on the implementation of Utility service e.g. Electric, Gas, Telephone, Water, Sewage.	Works to the new services will not fit in with the programme for the proposed development. And delays will arise, Mains Power to the site is very limited and will reduce the amount of building that can be occupied.	Medium	Very high	We have entered into an agreement for new sewage pumping main with Yorkshire water. Water and Gas supplies are close to the site and do not pose any real problems, the position and size of the gas governor is still to be resolved. The electricity suppliers require a large site for a primary substation and land is still being sourced for this application.	Low	Low

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Archaeological survey. Delays on ongoing search areas on the line of the new roads.	Delays to contractors starting on site and reducing the time for output and grant condition achievement	Very Low	Low	Detailed areas of works have been agreed with the NYCC Archaeological unit and works are on line to be completed before works commence on site .	Low	Low
European Regional Development Funding Results and outputs not achieved. The Provision of 6139 m ² of business space provided, and 104 jobs created. Before march 2008	Percentages of ERDF grant funding will be repayable.	Medium	High	The Developer within the Development Agreement will be liable for the Business Space required and the council will be responsible for the jobs created section.	Low	Low
Project costs exceed the grant funding available.	The council will be liable for half of any increased costs over and above the funding already in place.	Medium	High	The Developer, Consultants and Borough Council are implementing a tender review once the tender is returned. The on site costs will be closely monitored by the project team and no increase in cost will be implemented without agreement from all parties involved.	medium	medium

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
State Aid issues relation to the grant funding	Any breach of the state aid rules as laid out by the European Parliament	Low	High	Advice has been obtained from European state aid lawyers which does not envisage any breach of State Aid rules	Low	Low
Newt clearance of the site	If newts are found to be in abundance on the site then there will be delays to the site start date	Low	Medium	Newt fencing has been erected and surveys of newt occupation is being carried out to date no	V Low	V Low
Failure to agree the supplementary agreements with adjoining land owners	The road system would not be built as per the Planning and funding approvals	Medium	Medium	Agreements have been negotiated with adjoining landowners.	Low	Low.