

SUBJECT: HOUSING INVESTMENT FUND -Funding Agreement for £5.21m from the Cardiff Capital Region.

MEETING: CABINET

DATE: 2nd MARCH 2022

DIVISION/WARDS AFFECTED: ALL

1. PURPOSE:

- 1.1 The purpose of this report is to seek endorsement from Cabinet for Monmouthshire County Council to enter into a funding agreement jointly with Vistry Group for £5.21 million Housing Investment Fund from the Cardiff Capital Region.

2. RECOMMENDATIONS:

- 2.1 The key terms of the funding agreement and guarantee as set out within this report are endorsed, and Cabinet provides delegation to the Chief Officer Enterprise and Deputy Chief Executive and Chief Officer Resource in consultation with the relevant Cabinet Members to enter into the agreements with Vistry Group when the final documents are completed.

3. KEY ISSUES:

Background

- 3.1 A key objective of the Council is to build sustainable communities and provide a wide range of homes for existing and future residents, while ensuring that local needs for appropriate, affordable, and accessible housing are met. The delivery of key strategic housing sites is paramount in order to help work towards this objective and deliver much needed housing.
- 3.2 In 2020, the Cardiff Capital Region (CCR) announced the creation of the £45 million Housing Investment Fund that would 'unlock' stalled sites that are unviable for housing delivery. The objective of the fund is to kick start construction, generate jobs and deliver sustainable developments, enhancing the long-term growth prospects of the region.
- 3.3 On the announcement of the fund, officers reviewed housing sites within Monmouthshire's Local Development Plan (LDP) that were not progressing due to viability considerations. Following the review of all LDP allocated sites that did not yet benefit from planning consent, a shortlist of appropriate sites was identified, and council officers worked with developers to jointly apply for the funding. One of the applications within Monmouthshire has been accepted by the CCR board as eligible for this funding. Officers are continuing to work with CCR through the due diligence process with the consideration of reviewing if there are any further opportunities for other potential sites to be supported from this fund.
- 3.4 The development that has been approved for the funding is Land at Vinegar Hill, Undy and it is an allocated strategic site within the Council's adopted LDP (Policy SAH6). It is the only remaining strategic LDP allocation that does not benefit from any planning consent. The development proposal has had significant viability issues principally due to infrastructure costs arising since the adoption of the LDP, in particular the introduction of the sustainable drainage systems (SuDS) legislation. The application had failed to progress to a positive determination since its submission in 2019 as planning officers were reluctant to support a scheme that did not provide policy compliant affordable housing or S.106 planning contributions to ensure a sustainable development. To bring this key site forwards, the local authority worked in collaboration with the developer to apply to CCR under the housing investment fund for £5.21m

worth of funding. The funding would support this site to be progressed with full planning policy compliance in relation to affordable housing and S.106 contributions, enabling officers to recommend approval of the scheme without further deliberations regarding viability.

- 3.5 Following detailed discussions and financial appraisals of the scheme with the CCR and their appointed assessors, the scheme was approved for the housing viability funding on 29th November 2021, subject to the funding conditions. The award of this funding resulted in the application being fully policy compliant and the Council's Planning Committee resolved to approve planning application DM/2019/01937 on 12th January 2022. The approved scheme (with the benefit of the CCR funding) delivers policy compliant (25%) affordable housing provision whilst meeting all the required contributions in relation to community facilities, recreation, education and sustainable transport and is in accordance with the requirements of Policy SAH 6 and the LDP. The proposal ensures a sustainable form of development that accords with the objectives of the LDP to build sustainable communities.
- 3.6 On 12th January 2022, the Council's Planning Committee resolved to approve planning application (DM/2019/01937), however on the 10th February the Council received a direction from the Welsh Government (WG) not to grant planning permission without the prior authorisation of the Welsh Ministers. This is to enable WG further time to consider whether or not the application should be referred to the Welsh Ministers for their determination. The site is an allocated site within the LDP with the exception of a small area that was previously part of the (now removed) legally protected M4 relief road route. Officers therefore consider that it is unlikely that the application would be called-in given that the development is LDP compliant and is not of more than local importance. Notwithstanding the above, this Cabinet report relates to the funding associated with the development rather than the resolution already properly taken by Planning Committee to grant planning permission. The funding proposal before Cabinet is required to ensure that the scheme's visibility is robust and that the development proposals provide the required affordable housing and S106 financial contributions. Cabinet's decision whether or not to agree the funding agreement with Vistry is independent to WG's consideration of whether or not to call-in the planning decision. Should a call-in ultimately result in planning permission being refused by the Minister, there would be no development requiring funding and Cabinet's decision would simply not be implemented.

4. THE FUNDING AGREEMENT

- 4.1 The Council is the applicant for the CCR funding but will be passing the funding directly to Vistry to undertake the works. In order to facilitate this the Council will need to enter into two separate agreements. The first funding agreement is with CCR and will provide certain guarantees in relation to how the funding will be spent and monitored. The second agreement is between the Council and Vistry: the purpose of this second agreement is to ensure that Vistry will guarantee all of the obligations which the Council has signed up to in the funding agreement with CCR.
- 4.2 In addition to the guarantee, the Council is required to obtain adequate security under the funding agreement to allow the funding to be recovered by the Council on behalf of CCR if any of the terms of the Funding Agreement are breached. To this end the Council has requested a legal charge against the land being developed by Vistry.
- 4.3 The agreements are currently in an advanced stage of development and negotiation, but the key terms from the draft agreements are set out below.
- 4.4 The Council has already procured detailed advice from Pinsent Masons to confirm that the loan complies with the new Subsidy Control laws, which have replaced the previous EU State Aid rules.

Funding Agreement Key Terms

- 4.5 The funding will be available for the Funding Period, which will end on 31st March 2024. The funding must therefore be drawn before that date. In order to access the funding the Council must submit a claim supported by evidence that the money is to be used for Qualifying Expenditure. The Qualifying Expenditure is listed within the funding agreement. At present this is in an early stage of drafting and will require further input from Vistry and CCR to produce the

detail required. It should be noted that there is no match funding from the Council within this agreement and the Council would solely be acting as a 'guarantor' for the funding from CCR.

- 4.6 The Council must provide quarterly progress reports on an ongoing basis to CCR. It has been agreed that the burden for producing these reports will be borne by Vistry and this is to be reflected in the guarantee agreement between the Council and Vistry.
- 4.7 The Council must ensure that the funding is only used for the purposes of the Qualifying Expenditure. If this is found not to be the case then the Council will be required to repay some or all of the funding provided. Vistry will be providing a guarantee to provide any such repayment requested to protect the Council in this scenario. In addition, the legal charge over the property should ensure that the Council is able to recover this money through a sale of the land should Vistry be unable to provide the money requested.

- 4.8 The Council may be required by CCR to repay part or all of the money in the following scenarios:

If the Funder (acting reasonably) considers at any time that:-
any part of the Maximum Sum was not expended on Qualifying Expenditure; or
it has made any overpayment to the Council; or
it has paid the Council any sum in excess of the Maximum Sum

The guarantee from Vistry will ensure that in the scenarios listed above they will cover any sums payable from the Council to CCR.

- 4.9 The Council must ensure that the works are completed within the pre-determined set timescales within the funding agreement. The Council must also ensure that the project is delivered by the Works Longstop Date, being 31st October 2025 for the final handover of the last completed home. It is accepted that this is outside of the Council's control and the guarantee looks to address any liabilities the Council may face should Vistry fail to comply with these timescales.
- 4.10 The Council also has obligations within the agreement to ensure that the Developer and any Contractors comply with the terms of the agreement, carry out the works in accordance with any relevant legislation and comply with any relevant procurement policies. Again, it is noted that to a certain extent this is outside of our control and the guarantee looks to address this.
- 4.11 Detailed monitoring and notification obligations are set out within the agreement. This will create an additional administrative burden for the Council's officers to comply with, however the guarantee looks to pass on some of this burden to Vistry. Where responsibility remains with the Council, the existing Monitoring and Enforcement Officer will fulfil this role.
- 4.12 The agreement sets out a list of events of default and subsequent actions available to CCR. Again the guarantee looks to ensure that in the event that any of these are triggered as a result of a breach by Vistry, then any monies recovered as a result would be covered by Vistry.
- 4.13 The documents also set out in full the indemnity which the Council is required to provide CCR. The Council shall:
- be liable for and will indemnify the Funder in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Funder or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Council and/or the performance or non-performance or delay in performance by the Council of its obligations under any of the Key Documents except to the extent that the same is due to any wilful neglect of the Funder; and
 - be liable for and shall indemnify the Funder against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connection with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Council.

As with the previous points the Guarantee looks to ensure that Vistry will indemnify the Council on a similar basis should any action listed above arise as a result of an error on their part.

Guarantee – Key Terms

- 4.14 As noted above, the purpose of the Guarantee is to ensure that should the Council be required to repay part or all of the funding to CCR then this repayment will be covered by Vistry. This should minimise any financial risk exposure to the Council as a result of our obligations under the Funding Agreement. We have set out in full some of the key provisions of the Guarantee below, which identify how this is to be achieved.
- 4.15 The guarantee includes provision that states that if the Council is required to repay any amount of the Funding to the Funder pursuant to the Grant Funding Agreement, the Developer shall pay an equal corresponding amount of the Grant Funding to the Council within ten (10) Business Days of written demand. All such repayments shall be considered to be a debt due on demand and must be paid in cleared funds within twenty (20) Business Days to the Council into such bank account as the Council shall notify to the Developer from time to time.
- 4.16 The provision set out above aims to ensure that any money which the Council is required to pay to CCR under the Funding Agreement will be recoverable from Vistry within 10 days of us serving them with a notice demanding the payment.
- 4.17 The guarantee also includes relevant provisions that states that the Developer shall take all reasonable steps available to it to ensure that the Council complies with the terms of the Grant Funding Agreement at all times.
- 4.18 The purpose of these clauses is to ensure that Vistry provides any necessary assistance to the Council in relation to its monitoring and reporting obligations and any other non-financial obligations under the agreement.

5. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):

- 5.1 A core objective of the adopted Monmouthshire LDP is to build sustainable communities and provide a wide-ranging choice of homes for existing and future residents, while ensuring that local needs for appropriate, affordable, and accessible housing are met. This reflects the Council's core purpose of supporting the creation of sustainable and resilient communities. The delivery of this key strategic site delivers this much needed housing. With the aid of this CCR funding the development would be fully planning policy compliant and result in a sustainable development. Signing the funding agreement would result in the Council actively assisting with the delivery of this key strategic development within the Council's LDP. This proposal is in accordance with the wellbeing goals and the sustainable development principles. An Equality and Future Generations Evaluation (including equalities and sustainability impact assessment) is attached to this report at **Appendix 1**. The proposal is considered to have a positive impact on social justice and wellbeing.

6. OPTIONS APPRAISAL

- 6.1 Option 1 below is the preferred option, namely that Monmouthshire County Council enters into a funding agreement with Vistry Group for £5.21m worth of funding from CCR.

Option	Benefit	Risk	Comment
1. Agree to enter into a funding agreement with Vistry Group to secure £5.21m of HIF funding from CCR	The Council confirms its commitment to delivering a key strategic housing site within the council's LDP (including 25% affordable housing, helping to deliver sustainable resilient communities.	Potential financial risk that Vistry Group do not meet their obligations as part of the funding agreement, however this has been mitigated for with the development of a guarantee to ensure that should the Council	Delivering this key strategic site in the Council's LDP aligns with the Council's core purpose to build sustainable and resilient communities that support the well-being of current and future generations.

Option	Benefit	Risk	Comment
		be required repay part or all of the funding to CCR then this money will be covered by Vistry. This should minimise any financial risk to the Council as a result of our obligations under the Funding Agreement.	This is the preferred option.
2. Do not endorse that Monmouthshire County Council enters into a funding agreement.	There is no exposure to a limited (given guarantee) financial risk for the Council.	Not entering into the funding agreement would result in this key strategic housing site potentially not being able to be delivered or due to viability constraints it would not provide the required affordable housing or infrastructure financial contributions.	If this funding is not in place there are concerns regarding whether the resultant development would be sustainable and align with the objectives of the LDP to build sustainable communities.

7. RESOURCE AND FINANCIAL IMPLICATIONS

7.1 Any costs associated with managing the funding agreement and the associated monitoring of the site will be met within existing service area budgets and resources. Legal advice in finalising these agreements will be met by existing budgets. The £5.21m funding is provided by the Cardiff Capital Region and although clawback mechanisms are in place, the risk exposure to the Council is considered to be low due to the back to back guarantees that will be in place.

8. CONSULTEES

- Enterprise DMT
- SLT
- Cabinet

9. BACKGROUND PAPERS

- Monmouthshire's adopted Local Development Plan 2011-2021
- Planning Committee Report for DM/2019/01937 - 11th January 2022
- The Cardiff Capital Region Investment Framework
- Draft Funding agreement
- Draft Guarantee
- Subsidy Control Advice

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APPENDICES:

APPENDIX 1: Equality and Future Generations Evaluation