



## **CABINET – 25TH NOVEMBER 2015**

**SUBJECT: RISCA – TESCO SECTION 106 OPTIONS REPORT**

**REPORT BY: CORPORATE DIRECTOR - COMMUNITIES**

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### **1. PURPOSE OF REPORT**

- 1.1 To consider the options available to the Council in utilising Section 106 (S106) monies set aside to develop a footbridge from the large Tesco store to Risca town centre.

### **2. SUMMARY**

- 2.1 In 2010 planning permission was granted for the erection of a new Tesco superstore in Risca. The planning permission was granted subject to a S106 legal agreement that required six obligations summarised below: -

1. Town Centre Contribution (to build a footbridge linking the Tesco store with the town centre and east sides of the river) - £425,000 - received and currently held in an account.
2. Public Art Contribution - £45,000 - received and spent.
3. Council Administration Costs - £15,000 - received and currently held in an account.
4. Stopping up Contribution (to close a former right of way) - £2,500 - received and spent.
5. Legal Costs to Council - £5,750 - received and spent.
6. To occupy the "Express Store" within the town (Palace Cinema) - Leased and occupied.

- 2.2 This report concentrates on obligation 1 above; the requirement by Tesco's to build a pedestrian footbridge. Due to numerous obstacles this bridge is still to be developed and the Council now need to decide on the feasibility/viability of the scheme in the timeframe that remains for providing it.

### **3. LINKS TO STRATEGY**

- 3.1 Risca town centre is identified in the Local Development Plan as a Principal Town.
- 3.2 Development of the river bridge is a proposal within the Risca Town Centre Action Plan identified under proposal RP7.
- 3.3 Regenerating the county borough's town centres, including Risca, is one of the main priorities in the Council's economic development framework.
- 3.4 Risca is ideally placed to benefit from the Welsh Government's emerging strategies on Valleys Metro and the Capital Region due to its close proximity to the M4 corridor and Ebbw Vale Railway link.

## 4. THE REPORT

### Background

- 4.1 At the time of the planning application, the provision of a footbridge landing within the Lidl owned site was seen as a key priority as it would link the town's existing retail area with the new supermarket - providing a physical connection that would tie both sides of the river together.
- 4.2 The subsequent S106 Agreement identifies a sum of £425,000 to be held by the Council until such time as Tesco's build a pedestrian footbridge to the specification identified within the original planning application.
- 4.3 The wording of the S106 agreement is as follows:
- |                            |  |
|----------------------------|--|
| "Town Centre Contribution" | Means the sum of £425,000 Index Linked (four hundred and twenty five thousand pounds) to be paid to the Council for the purpose of improvements within the Risca/Pontymister Town Centre which may include any or all of the Environmental, Transport or Security proposals (particularly including improvements to pedestrian linkages between the Existing Bridge and the town centre) as illustrated on Plan 5. |
|----------------------------|--|
- 4.4 The S106 agreement and the fund reserved is predicated on Tesco constructing the bridge. Unfortunately, due to a number of factors, this action has not progressed.
- 4.5 The primary reason for this is the fact that protracted legal discussions have been ongoing with both Tesco's and Lidl's lawyers over the exact siting of the bridge and also the proposed construction methodology. The main issues are summarised below:
- Initial reluctance on Lidl's part to allow the bridge to land on their land – The use of CPO powers were considered but eventually (after approx 18 months) Lidl did change their position and agreed to the landing site.
  - As part of the negotiation it has also been necessary for the Council to agree terms of a licence with Tesco. This has led to delays as Tesco have insisted that their contractor requires a compound and access through the Lidl site. Furthermore they require that the Council deal with any knotweed before the scheme commences. This approach was not initially palatable to Lidl, but negotiations have led to their acceptance subject to additional measures.
  - The initial 3 year for the assembly of the land allowed in the S106 has passed. In a meeting Tesco have verbally indicated that they would allow a 2 year extension of time but this was never formalised and the extension period has also now expired.
- 4.6 The Council's Legal Section advise that it is now unlikely that legal agreement will be reached with both Lidl and Tesco in a timeframe which allows Tesco's to provide a footbridge in line with the wording of Section 106.

### Current Position

- 4.7 The S106 agreement was dated 15th March 2010 and CCBC Legal services have advised that the Council has a period of **8 years** to spend the money or deliver the bridge. This leaves the Council with a less than three years to make progress before it will need to repay the contribution to Tesco. Extract from Section 106 below:

"1.3 if the Footbridge and the Accessway have not been constructed in accordance with paragraph 2 of Schedule 1 to this Deed and where the Council has not used or committed for

use the Town Centre Contribution within 8 years after the date of receipt such unspent or uncommitted amounts will be repaid to the Party who made the original payment within 14 working days of a written demand.”

4.8 Officers believe that there are potentially two options available to the Council:

#### **Option1 – Council deliver the bridge**

4.9 One of the main issues is that Tesco’s chosen contractors methods for construction and requirements have caused particular difficulties for Lidl. To overcome this problem the option of the Council directly engaging a contractor to build the bridge could be investigated. Agreement would need to be sought from Tesco to allow access onto their land for construction purposes and thus overcome the concerns that Lidl currently have.

4.10 Initial discussions with the Council’s Engineering Structures Section leads officers to believe that a bridge can be delivered within a budget of £425,000. However it must be realised that:

- this bridge would not be the same design specification as in the original planning application. The budget would allow for a simple structure to be built. Any new design would need to be agreed by Natural Resources Wales.
- There would still be legal issues to be resolved with both Lidl and Tesco to bring the project to fruition. This could lead to further protracted delays.

#### **Option 2 – Utilise Section 106 monies for Improvements to Risca Town Centre**

4.11 That the Council formally notify Tesco that the Council will be retaining the Town Centre Contribution to be spent in accordance with the wording of the S106 agreement, namely:

“.....for the purpose of improvements within the Risca/Pontymister Town Centre which may include any or all of the Environmental, Transport or Security proposals (particularly including improvements to pedestrian linkages between the Existing bridge and the town centre) as illustrated on Plan 5.

4.12 CCBC Legal have advised the following:

**“....., the sum of £425,000 (plus any accrued interest) in this S.106 Agreement must be spent on improvements within the Risca/Pontymister Town Cente, the area of which is defined on Plan 5 with the black edging.**

**You may spend the money on environmental, transport, or security improvements including pedestrian linkages which are shown on the Plan. The term "may" would suggest that you have some discretion to determine what improvements you wish to spend the money on in this area”**

4.13 For clarity the plan outlining the black boundary (attached to the S106 agreement) is outlined in **Appendix B**. It runs from Longbridge Baths to the west to Pontymister roundabout to the east.

4.14 Officers recommend that due to the time constraints and the onerous legal issues surrounding the bridge that Option 2 should be considered for implementation. A number of projects have already been identified which could benefit from the S106 monies.

## **5. POTENTIAL PROJECTS**

5.1 Unfortunately community orientated projects outside of the black line boundary (shown in plan above) cannot be supported with this funding. Numerous worthy projects are currently being developed with local community groups including the Ty-Sign area but will not be eligible for spend from the S106 contribution.

## **A Proposals within the Adopted Town Centre Action Plan**

- 5.2 Within the current adopted TCAP there are a number of proposals within the black line boundary that these monies could be used to implement. Predominantly these consist of smaller scale improvements to the localised environment.
- 5.3 Due to their scale, there would be little risk attached with implementing a suite of these projects within the deadline set by the S106, namely March 2018.

## **B Improving Development Site**

- 5.4 A number of sites hold development potential within Risca Town Centre. All are identified within either the Council's LDP or the adopted Town Centre Action Plan. The Section 106 wording allows for "transport" improvements and it is reasonable to assume that monies could be utilised to improve access arrangements into these development sites from the main communications network. Of particular note are the Council owned sites outlined below:

### **Land At Commercial Street, Risca**

- 5.5 Located at the southern entrance to Risca, it comprises of the visually prominent brownfield site of the former Bird's factory (still owned by Birds Group) and a Council owned former public car park and nursery. The site is bounded to the south by the River Ebbw, and to the east by the Pontymister Link road. The site is allocated for housing in the LDP (HG1.54) and was granted planning permission in 2011 (11/0446/FULL) for a care home, retail A1 & A3 and office use.
- 5.6 Birds Group have been in discussion with the Council over the current development potential of the site. They have advocated a mixed use development comprising of a pub/ restaurant, 2 retail units, some office accommodation along with residential development.
- 5.7 Section 106 monies could be utilised to introduce suitable access arrangements, spine road and town car park into the co-owned site. Any forward sale would bring a capital receipt back to the Council.
- 5.8 This scheme has the added benefit of helping to unlock the Mill Street Site, where a council owned car park forms part of a wider development site that Seren housing association wish to take forward. The provision of an alternative car park at Commercial Street could go a long way to ensuring that this scheme is financially viable.

### **Longbridge Baths Site**

- 5.9 The existing changing rooms and associated car parking form a small part of the wider leisure site at the northern end of the town centre boundary. Some discussions have been held between Planning and Property over the possible use of part or the whole of this site for residential development.
- 5.10 S106 monies could be used to demolish unsightly changing rooms and improve access arrangements into site. Any forward sale would bring a capital receipt back to the Council.

### **Brookland Road**

- 5.11 A town centre site in the ownership of CCBC close to the shopping centre and located within a residential location. A Youth Centre, Housing Office, Family Centre, Adult Training Centre and Re-ablement team currently occupies the buildings One of the buildings is vacant as a consequence of the relocation of Risca Library to the Palace Cinema. The site, although well-utilised, does offer considerable potential for redevelopment. Opportunities to relocate the current uses to an alternative town centre location could be explored, with a view to releasing this attractive site for residential development or another use appropriate to the location.

- 5.12 S106 monies would be used to create access into site once freed up for development. Due to the complicated nature of the site, guaranteeing spend or commitment of spend by 2018 would be difficult in this instance.

### **C Proposals that Support European ERDF Bids for Risca Canal Corridor**

- 5.13 A joint submission by CCBC and Torfaen is currently being evaluated by Welsh Government as a potential project to utilise ERDF and WG funding to develop projects along the Brecon and Monmouthshire canal corridor. The draft bid identifies the need to improve the links between the canal and the town of Risca, the need to improve the attractiveness of Risca town centre and the opportunity for Risca to benefit from any tourism investment on the canal stretch.
- 5.14 If successful, the Council would have to identify match funding for a range of town centric projects aimed at these three objectives. A number of the projects outlined above would be applicable, particularly those aimed at Improve canal to town route and implement key movement policies (B1-B6) of the Adopted (June 2014) Risca Town Centre Action Plan and improving the attractiveness of the area to inward investment along with increasing residential / commercial opportunities.
- 5.15 Prioritising these projects would allow the Council to use the S106 monies as possible match funding to draw down ERDF funding.

## **6. EQUALITIES IMPLICATIONS**

- 6.1 An Equalities Impact Assessment (EqIA) screening has been completed in accordance with the Council's Equalities Consultation and Monitoring Guidance and no potential for unlawful discrimination and / or low level or minor negative impact have been identified, therefore a full EqIA has not been carried out.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 If Option 1 is pursued there are a number of financial risks, namely:
- Delays in the programme would see the £425,000 draw down put at risk.
  - Unforeseen cost overruns and contractor compensation events could lead to financial exposure.
- 7.2 If Option 2 is pursued then there will need to be a period of development, consultation and detailed design for any projects being taken forward. Project management will need to be very tight to ensure commitment of monies by deadline date of March 2018. Officers must develop a prioritised list of projects that are realistically achievable by this deadline. Appendix A outlines in a Red/Amber/Green RAG format the viability and impact of a number of projects.

## **8. PERSONNEL IMPLICATIONS**

- 8.1 Either option would require the input of suitably experienced professional officers from within the Council.

## **9. CONSULTATIONS**

- 9.1 The report has been amended to accommodate all comments made during consultations.

## **10. RECOMMENDATIONS**

- 10.1 Officers recommend that Cabinet approve Option 2 being pursued in order to best utilise the S106 monies.

## **11. REASONS FOR THE RECOMMENDATIONS**

- 11.1 To ensure that the Council fully benefits from the Tesco's Section 106 agreement.

## **12. STATUTORY POWER**

- 12.1 Local Government Act 1972 and 2000. This is a Cabinet function.

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