



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET MEMBER DECISION – HIGHWAYS ASSETS AND TRANSPORT

27 September 2022

Report of the Executive Director - Place

**Section 278 and Section 38 Agreement for Land off Portland Road,
Shirebrook and Alterations to Market Close, Shirebrook**

1. Divisions Affected

1.1 Shirebrook and Pleasley.

2. Key Decision

2.1 This is not a Key Decision.

3. Purpose

3.1 To seek the Cabinet Member's approval to waive the requirement of a Guarantee Bond with regard to proposed development works at two locations, one at land off Portland Road and the other at Market Close, Shirebrook to be undertaken by Bolsover District Council and will be subject to Section 38 and Section 278 Agreements of the Highways Act 1980.

4. Information and Analysis

4.1 Bolsover District Council (BDC) has obtained planning permission to develop social housing at two sites within Shirebrook, one at land off Portland Road and the other at Market Close. The Portland Road site is for the construction of 11 dwellings and includes construction of a new carriageway and the Market Close site is for the construction of 13 dwellings and requires realignment of the existing highway and creation

of a new junction. BDC is funding the development at both sites which includes improvements to the existing highway.

- 4.2 The works for both sites seek to construct new access, carriageways and footways to an adoptable standard which are shown on drawing numbers 12213-WMS-02-XX-DR-C-39501-S8-P2 (Market Close) and WMS-02-XX-DR-C-39511-S8-P1 (Portland Road). Agreements under Section 278 and Section 38 of the Highways Act will be entered into with the County Council, as Highways Authority, to undertake the works both within the highway and for adoption of the new highways.
- 4.3 This would normally attract a total bond value of £83,440.70 for Portland Road and £33,232 for Market Close (NB: A Bond is normally secured to ensure the works can be completed by the Highway Authority should the developer not be able to do so).
- 4.4 BDC is aware that it needs the County Council's full permission as Highway Authority to fund or carry out works in the public highway by entering into agreements under Section 38 and Section 278 of the Highways Act 1980.
- 4.5 BDC has confirmed that it is willing to underwrite the works and complete them to an adoptable standard as detailed by the County Council.
- 4.6 A formal request has been received from BDC to seek approval from the County Council to waive the requirement for a Guarantee Bond.

5. Consultation

- 5.1 There are no requirements to undertake wider public consultation for this request to seek Cabinet Member approval for both sites.

6. Alternative Options Considered

- 6.1 The alternative option is to not waive both bonds and request a Guarantee Bond or cash deposit of £116,672.70 from BDC. However, given that BDC has offered to underwrite the works and complete them to an adoptable standard this is not considered necessary. Also, as a local authority, BDC has a clear vested interest in ensuring good quality development at this site and the risk of noncompletion of the work is very low.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

- 8.1 Letter from Bolsover District Council dated 1 August 2022 Drawing Number 12213-WMS-02-XX-DR-C-39501-S8-P2 (Market Close) and WMS-02-XX-DR-C-39511-S8-P1 (Portland Road).

9. Appendices

- 9.1 Appendix 1 – Implications.
- 9.2 Appendix 2 – Appendix 2 Layout Drawings for Market Close and Portland Street.

10. Recommendation

That the Cabinet Member:

- a) Approves to waive the requirement of a Guarantee Bond totalling £116,672 regarding the proposed development at two locations, one at land off Portland Road and the other at Market Close, Shirebrook which are to be undertaken by Bolsover District Council under Section 38 and Section 278 Agreements of the Highways Act 1980.

11. Reason for Recommendation

- 11.1 As the developer is a local authority, the County Council considers the risks of default or financial insolvency are negligible and are therefore able to waive the requirement for a Guarantee.

12. Is it necessary to waive the call in period?

- 12.1 No.

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Implications

Financial

- 1.1 It is normal policy and practice for the Council to require commercial developers to provide financial security prior to commencing work in order to indemnify the Council against the cost of having to complete the work in the event that the developer defaults or ceases to trade. In this instance, as the developer is a local authority, the Council considers the risks of default or financial insolvency are negligible and are therefore able to waive the requirement for a Guarantee.

Legal

- 2.1 Section 278 of the Highways Act 1980 empowers the Council to allow third parties to fund or carry out highway improvement works. In this case, Bolsover District Council will be obliged to enter into a Section 278 Agreement for works in the highway and to pay Derbyshire County Council's legal and inspection fees.
- 2.2 Prior to the commencement of construction of new streets, developers are requested to submit full construction drawings for approval and enter into a Section 38 Agreement of the Highways Act 1980 with a bond to cover the full road construction costs. The ongoing design and construction works are inspected by the Council's officers and fees are recovered from the developer to offset this activity.

Human Resources

- 3.1 None.

Information Technology

- 4.1 None.

Equalities Impact

- 5.1 None.

Corporate objectives and priorities for change

- 6.1 This proposal supports the Council's objective to create a 'prosperous Derbyshire'.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None.