

# OVERVIEW AND SCRUTINY BOARD



Report subject	<b>Carters Quay Phases 4,5 and 6</b>
Meeting date	9 October 2023
Status	Public Report
Executive summary	<p>This report sets out the background to the Carters Quay scheme phases 4 5 and 6 and the Council's involvement as well as the challenges currently faced.</p> <p>The report notes that officers have and continue to review the options for taking forward the development and that recommendation/s will be presented to Cabinet and Council when a clear picture emerges of which option represents the best set of probable outcomes for the council and residents of BCP.</p>
<b>Recommendations</b>	<p><b>It is RECOMMENDED that:</b></p> <p><b>Overview and Scrutiny consider and comment on the update provided.</b></p>
Reason for recommendations	This report comes at the request of the Chair of Corporate and Community Overview and Scrutiny Committee. It provides the background to the site and the Council's involvement and provides a position statement for consideration by the Committee.
Portfolio Holder(s):	Vikki Slade, Leader and Cabinet Member for Dynamic Places
Corporate Director	Jess Gibbons, Chief Operations Officer
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Wards	Hamworthy
Classification	For information

## **Background – 2021 & 2022**

1. On 1 September 2021 Cabinet considered a paper (published 17 August 2021) entitled Carters Quay Housing and Regeneration Scheme Poole, which contained a series of recommendations regarding a Build to Rent (BTR) opportunity for 161 new homes and ancillary ground floor residential amenity and commercial space. A link to this paper is in Background Papers at the end of this report.
2. Prior to this - in late August 2021, the Overview and Scrutiny Committee considered the paper and a link to the comments and clarifications recorded from this are included in Background Papers also.
3. Inland Homes had developed 3 previous phases for outright sale in this location. Phase 4, 5 & 6 of the scheme were considered at the time as strategically important to the Council to enable it to meet its Housing Targets and to support the wider regeneration of Poole, being adjacent to the Council owned Holes Bay/Power Station site.
4. These phases of the scheme are designed across four blocks of accommodation consisting of a mix of 1,2 and 3 bed homes (apartments).
5. The range of accommodation was aimed at young professionals but can accommodate differing needs. It was and currently is still proposed that all the homes in the scheme will be offered for rent at full market rates.
6. To secure the opportunity, the Council were required to enter into an Agreement for Sale (Sale Agreement) form of contract, as land was to be purchased with completed buildings on it. The agreement details the contractual obligations which included a deferred payment schedule for how the funds are to be drawn down during the build period. This is a forward funding type arrangement where the council will acquire the land and the buildings constructed on them at completion, as Inland Partnerships Limited were the landowner and effectively “selling off plan”.
7. At its 1 September 2021 meeting, Cabinet approved the entering into an agreement for the acquisition of the land and buildings, which included the consented Build to Rent scheme known as Phases 4,5 and 6. It also resolved to include the scheme in the Capital Investment Programme.
8. BCP Council executed the ‘Sale Agreement’ dated 4 November 2021 with Inland Partnerships limited (IPL), for the Phases 4, 5 and 6 scheme which is located on the waterfront at Hamworthy, Poole, with the benefit of a planning permission from 2018.
9. On 4 Nov 21 IPL also entered into a Legal Mortgage with BCP over the Property.
10. On 4 Nov 21 BCP also entered into a Parent Company Guarantee with Inland Homes PLC.
11. An independent RICS market valuation report from Gerald Eve was secured in 2021 – based on the schemes November 2018 planning permission - prior to entering into the Sale Agreement.
12. Future Places officers were involved in reviewing the consented (planning) scheme prior to entering into the Sale Agreement - considering design enhancements that could be made to ensure it complements the wider regeneration aspirations for Holes Bay, and subsequently on the external finishes and landscaping designs and materials whilst the scheme was under construction.

## **Contract Terms**

13. Contract Completion dates within the Sale Agreement were set as follows;

- 28 November 2024 = Target Date - If the Practical Completion Date for the Works does not occur by the Target Date, then BCP is entitled to liquidated damages (referred to as 'Compensation' in the Sale Agreement)
  - 28 November 2025 = Longstop Date - If the Practical Completion Date does not occur by 28 November 2025, then BCP may terminate the Sale Agreement with immediate effect by giving notice at any time after the Long Stop Date.
14. The first payment under the Construction Value element of the staged payments was made in January 2022.
  15. Works completed up to February 2023 include;
    - a. Sea wall sheet piling and capping
    - b. Retaining wall to Sydenham's site boundary
    - c. Piled Foundations to all four blocks installed, tested and cropped
    - d. Drainage attenuation tanks and drainage below roadways
    - e. Crane bases installed and tested
  16. There are three agreed stages of payment, The Deposit, The Advance Payment – together representing £8.25million - and the Construction works. The paid to date element at June 2023 was circa £6.75m. In total representing circa £15m at end June 2023.
  17. Confidential appendices to the September 2021 Cabinet report considered the detailed purchase terms and the financial business case for proceeding.

### **Current (2023) Position**

18. IPL (Inland Partnerships Limited) senior operational managers relayed in February 2023 that their business has been 'hit hard' by both cashflow and higher supplier/subcontractor pricing and it was envisaged that this would impact on progress on site that could potentially extend into the summer of 2023.
19. Around this time, local networks indicated some existing supply chain partners (subcontractors and suppliers) were not confident they would get paid by IPL going forward and this additional information source prompted senior officers to seek clarification from Inland executives, who confirmed that the Parent company had a range of financial, accountancy, governance and confidence challenges – most of which were in the public domain at the time.
20. In late April 2023 legal advice on the delayed situation was commissioned from Bevan Brittan who had advised on the Sale Agreement back in 2021, to seek clarification so BCP officers could understand all parties' legal options under the Sale Agreement and associated documents.
21. In July 2023 Inland Homes formally contacted BCP Council on a Private and Confidential basis to indicate that they felt able to progress physical work on the site under certain changes to the existing Sale Agreement to reflect the changing market situation since works commenced and were therefore looking at financial, legal and time related variations.
22. It is understood that Inland Homes are in similar discussions with several Build-To-Rent operators and Registered Providers/Housing Associations.
23. On 17 July 2023 a group of senior BCP officers convened to discuss a proposed 5-point Action Plan for addressing the Carters Quay situation and particularly Inlands requests, the Head of Housing Delivery was deemed the Senior Responsible Officer to take these matters forward and regularly convene and update those same officers on progress - this has taken place on a weekly basis.

24. At an operational site level, BCP officers have attended in person or on-line Site Meetings with the Inland construction team since March 2023, to keep momentum of ancillary non construction issues relating to planning conditions etc.
25. Relatively 'small' payments for utility connections, design activity work etc have accrued over the last few months - after being verified by our advisors as due in accordance with the Sale Agreement, these represent a gross Constructions works valuation in the sum of £7.125m. After retention is deducted, the paid to date sum is £6.887m – to the end of August 2023.
26. External professional advice has been secured on the following over the last few months.
  - a. An updated @August 2023 Market Valuation - again by Gerald Eve.
  - b. A construction marketplace Position Report and Benchmarking Review from Rider Levett Bucknall - in respect of construction inflation across the industry since autumn 2021- to gain assurance of what is a reasonable position in the current and evolving marketplace.
  - c. Various formal advice notes from Bevan Brittan, the original Legal advisors to the structuring of the Sale Agreement, on procurement, contractual obligations of the parties within the Agreement etc.
27. As well as written correspondence, we have also convened 2 recent meetings with representatives of Inland Homes - the first on 23 August and the most recent 12 September to discuss their propositions/understand their current business challenges to enable a thorough due diligence process prior to any future recommendations to Cabinet & Council.
28. Inlands position has relatively recently changed again, in addition to the matters set out in paragraphs 21 & 22 , Inland Board members over the summer period have left the business and a new Chief Executive has been appointed - refer the Northern Focus article in the Background Papers - the implications for Carters Quay of this change of tack are still being discussed and evaluated, but influences options set out in paragraph 30 & 31 below.
29. The notification on 27 September of pending appointment of administrators at Inland Homes PLC and certain subsidiaries adds another critical aspect to the options and effectively introduces a third member to what was two parties to the Sale Agreement.

### **Options for Carters Quay Phases 4, 5 & 6 Going Forward**

30. Council officers have been reviewing the options for taking forward the development and recommendation/s which will be presented to Cabinet and Council when a clear picture emerges of which option represents the best set of probable outcomes for the council and residents of BCP. It is envisaged that this will be heavily influenced by the role of the administrator.
31. As the position is a fast moving one, officers will provide a verbal update to the Committee at the Overview and Scrutiny meeting.

### **Financial Implications**

32. The original Cabinet report dated 1 September 2021 detailed total costs of £45.6m required to purchase the completed Carters Quay scheme from Inland Partnership Limited. A RICS Red book valuation was undertaken by Gerald Eve (independent

valuers) which supported this price- this is the same valuation referred to in para 11.

33. The Carters Quay financial modelling and business case was scrutinised by the Overview and Scrutiny Board on 23 August 2021. The Cabinet report set out both the short-term and long-term financial impact of the proposed development. This included the positive impact on the council's MTFP over both the first 10 years and the 50-year borrowing term. Also included in the report was a reflection of the financial and non-financial risks associated with the arrangement. The financial risks included interest rate exposure and development and investment risk. For example, the modelling was based on both the prevailing PWLB rate and the council's low invest to save rate at the time, these being 2.05% and 3.00% respectively. The scheme was considered affordable as it was forecast to generate a £31m surplus over the 50-year term.
34. A subsequent Officer Decision Record dated 22 October 2021 modified the finances to incorporate £484k of additional design variations, a change in the prevailing PWLB rate to 2.35% plus confirmation of a lower SDLT charge. These amendments reduced the overall cost to £44.3m.
35. Material changes to global macroeconomics, predominately caused by the war in Ukraine have impacted nationally on the viability of the majority of regeneration and development projects. As an example, interest rates have increased to approximately double those assumed in the Carters Quay development. Alongside this the cost of materials has increased significantly since 2021. In this example council mitigated an element of these risks by prudently entering into a fixed price contract to protect itself from inflation pressures.
36. As at the end of September 2023 the council has invested £15.2m in total. £6.9m has been spent on construction works, in addition to the initial £8.3m covering the deposit and advance payment. All construction payments are after deducting a 3.5% retention sum and are supported by independently verified payment certificates.

## **Legal Implications**

37. The structure of the Sale Agreement is that the developer was selling a completed building rather than a development site so the documentation entered into reflected the forward-funding nature of the purchase, with the use of stage payments as the construction proceeds and the transfer of ownership to only take place following completion of the build.
38. The relationship between the Council and IPL is governed by the Sales Agreement, which combines a contract for the sale of land with a development agreement, and ensures the council's increasing financial contribution are secured by a mortgage. This arrangement includes provisions for termination of the agreement in the event that the company fails to complete the construction or becomes insolvent. They also provide for step in rights under a parent company guarantee along with a mortgage over the land which secures the rights of the Council to take possession in the event of a breach.
39. As the target date for construction has not been reached and there are no ongoing breaches there are no current grounds for termination of the sales agreement.

40. While it has been announced that IPL's parent company intend to appoint administrators, it has not been confirmed whether all companies within the group (including IPL) will also be appointing administrators.
41. The appointment of administrators protects a company from enforcement by their creditors without the approval of the Court or the administrators. This will increase the administrative burden of terminating the agreement and/or enforcing the security contained in the mortgage.
42. Similarly any amendments to the terms of the extant agreements will only be possible with the consent of the parties and the administrator.
43. The legal implications of any proposed course of action will be covered in greater depth at the appropriate time.

### **Background papers**

[Carters Quay report to Cabinet 1st Sept 2021](#)

[O&S board August 2021](#)

[August 21 O & S minutes](#)

[Inland Homes Northern Focus](#)

[Inland Homes to appoint administrators as cash dries up | This is Money](#)