


Commissioners Decision Making Meeting Report 17 th January 2017	 TOWER HAMLETS
Report of: Aman Dalvi Corporate Director, Development and Renewal	Classification: Unrestricted
Stepney City Farm Water Efficiency and Café Upgrade Proposals	

Originating Officer(s)	Jonathan Taylor
Wards affected	Stepney
Key Decision?	No
Community Plan Theme	A Great Place to Live

Executive Summary

This report relates to the release of up to £32,500 of section 106 resources to Stepney City Farm to deliver water efficiency projects and visitor experience improvements. The proposed water efficiency works will see the installation of a rainwater harvesting irrigation system that will reduce potable water use at the farm. The proposed visitor experience works will meet an identified need to upgrade the benches and signage to ensure inclusivity for all areas of the farm.

Project funding for the works has been secured through a s106 contribution associated with the nearby Ocean Estate Redevelopment. The proposals comply with the terms of Paragraph 1, Schedule Eighteen of the s106 agreement relating to the Ocean Estate redevelopment (planning ref PA/09/02584 and PA/09/02585 and PA/11/01294) as varied on 6th February 2014 (ref PA/13/00730).

The terms of the s106 agreement required the projects to be identified and agreed with the Developer, with the scope of the 'improvement works to Ben Johnson Road or other improvement works in the vicinity of the Ocean Estate'. Approval for the projects, including up to £121,000 for improvement works at Stepney City Farm, was agreed in September 2014 and the s106 contribution received by the Council October 2014.

The £32,500 proposed funding is split over two parts:

- i: Water Efficiency Project - £22,500; and
- ii: Visitor Experience Improvements - £10,000.

The Infrastructure Delivery Sub Group approved the funding of the Water Efficiency Project (£25,000 (£22,500 grant + £2,500 project management)) in October 2016 and Visitor Experience Improvements (£11,500 (£10,000 grant + £1,500 project management)) in November 2016.

Recommendations:

The Commissioners are recommended to:

1. Approve the grant funding of £32,500 to Stepney City Farm to improve the water efficiency and visitor experience around the farm and ensure the community facility is accessible to all.

1. REASONS FOR THE DECISIONS

- 1.1 Stepney City Farm is a working farm and community meeting place and provides opportunities for children and adults to meet farm animals, learn how to grow food and to try out arts and crafts. The farm also hosts school groups four days a week during term time as well as activities during the school holidays. Local residents formed the Stepney City Farm charity in 2009 and lease the land from the Council. The farm is on land owned by the Council as trustee for the King George's Fields, Mile End charity.
- 1.2 The proposal is for Stepney City Farm to provide improvements to the irrigation system at the farm and other water efficiency measures. The proposed system would be based on a rainwater harvesting facility to reduce the environmental impact of farm practices as well as reducing operational costs for the farm (saving approximately £1,825 per annum).
- 1.3 The proposed improvements consist of seating and tables to be utilised within the Café area and benches for 'rest' stops around the Farm. The signage will be used to improve the visitors' knowledge of the animals and also to help keep animals and visitors safe. In line with the Farm's mission of improving access and making it welcoming to all, it is proposed to install wheelchair accessible tables on the decking (the rest of the eating area is currently wood chip) to make it easier and safer for everyone to move around and to be fully inclusive to the whole community.
- 1.4 It will ensure that the finances are spent in accordance with the s106 obligation and will deliver projects identified and agreed with the contributors in compliance with the s106 agreement.
- 1.5 The Infrastructure Delivery Sub Group approved the funding of the Water Efficiency Project (£25,000 (£22,500 grant + £2,500 project management)) in October 2016 and Visitor Experience Improvements (£11,500 (£10,000 grant + £1,500 project management)) in November 2016.

2. ALTERNATIVE OPTIONS

- 2.1 Project funding for the works has been secured through a s106 contribution associated with the nearby Ocean Estate Redevelopment. The proposals comply with the terms of Paragraph 1, Schedule Eighteen of the s106 agreement relating to the Ocean Estate redevelopment (planning ref PA/09/02584 and PA/09/02585 and PA/11/01294) as varied on 6th February 2014 (ref PA/13/00730).

- 2.2 The terms of the s106 agreement required the projects to be identified and agreed with the Developer, with the scope of the 'improvement works to Ben Johnson Road or other improvement works in the vicinity of the Ocean Estate'.
- 2.3 The water efficiency project and visitor experience improvements are part of the agreed programme with the developer and no alternative options exist in the developers' agreement.

3. DETAILS OF REPORT

- 3.1 This S106 PID is part of the Tower Hamlets Council S106 Delivery Portfolio and is aligned with the agreed Heads of Terms (HoT) for the Deed creating Planning Obligations and undertakings for the development at the Ocean Estate development (PA/13/00730).
- 3.2 The agreement obliged the Developer to pay the Council a £250,000 "Ben Johnson Road Contribution" for carrying out the Ben Johnson Road Improvement Works: "*improvement works to Ben Johnson Road or other improvement works in the vicinity (within or adjacent to Ocean Estate) to be carried out by the Council in accordance with a scheme to be approved by Bellway and East Thames Homes in accordance with Schedule 18 of this agreement*".
- 3.3 Schedule 18 required the Council to prepare a proposed scheme within 8 months of the date of the agreement and to submit for approval by Bellway and East Thames Homes. The financial contribution was to be paid to the Council in two £125,000 equal shares from each developer on approval of the proposed scheme.
- 3.4 In September 2014 the Council submitted the proposed scheme to Bellway and East Thames Homes. The scheme was approved by both parties in September 2014, with up to £121,000 ring-fenced for improvement works to the farm.
- 3.5 The Council received payment totalling £250,000 in 2x £125,000 payments from both the respective developers on 15/10/2014 and 31/10/2014.
- 3.6 From the £121,000 allocated to the farm, £50,000 has been used to match fund the delivery of the Ecopod classroom and £36,000 has been granted to fund accessibility improvements including new pathways around the site.
- 3.7 This funding is for the final suite of projects identified with the developer and

consists of £22,500 to sustainable drainage and water efficiency improvements and £10,000 to deliver signage and seating improvements.

Water Efficiency project

- 3.8 The proposed rainwater harvesting and irrigation works will improve the environmental operation of the farm through reducing potable water use and supplying water efficiently around the site. The works will also improve drainage across the site to alleviate issues of water logging and flooding.
- 3.9 The areas of the Farm to be covered by the rainwater harvesting and irrigation system would be:
- The planted area around the cafe.
 - The borders around the perimeter fences.
 - The veg garden area, including the planted area around the pond.
 - The raised beds next to the poly tunnel.
 - The poly tunnel itself.
 - The area around the plastic bottle green house.
 - The poly tunnel in the chicken area.
 - The beds around the poly tunnel in the chicken area.
 - The trees in the chicken area.
 - The pipe work would be trenched in to a depth not less than 250mm.

Visitor Experience Works

- 3.10 The proposed visitor experience improvements consist of seating and tables to be utilised within the Café area and benches for 'rest' stops around the Farm. The signage will be used to improve visitors' knowledge of the animals and also help to keep animals and visitors safe.
- 3.11 The improvements will include
- Seating (English oak/bespoke garden Furniture)
 - 12x benches with backs approximately 1.5m long
 - 6x benches with backs approximately 1m long
 - 2x round picnic table style tables approximately 1.3m /1.5m diameter
 - 1x long table approximately 1.8m long
 - Signage (3mm aluminium composite panels face applied with full colour graphics via laminated self-adhesive vinyl.)
 - Animal information signs – 10 1000mm x 700mm signs.
 - Hand washing signs – 10 600mm x 400mm signs.
 - Do not touch the goats signs - 3 400mm x 300mm signs.
 - Danger deep water signs - 6 300mm x 200mm signs.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks the approval of the Commissioners to release funding of £32,500 of specific Section 106 resources to Stepney City Farm as a contribution towards the financing of two projects on the site:
- Water Efficiency Project: £22,500
 - Visitor Experience Improvements Project: £10,000
- 4.2 This proposal will utilise an element of the Section 106 resources that have been secured in relation to a specific development on the Ocean Estate (PA/13/00730). The Section 106 agreement obliged the developer to pay the council £250,000, with the contribution being used to undertake “improvement works to Ben Johnson Road or other improvement works in the vicinity (within or adjacent to Ocean Estate) to be carried out by the council in accordance with a scheme to be approved by Bellway and East Thames Homes in accordance with Schedule 18 of this agreement”. £121,000 of the receipts has subsequently been ring-fenced for works at Stepney City Farm, and use on these proposed projects has been agreed with the developers.
- 4.3 As a Section 106 payment in respect of a capital project, in order that the funds can be released this scheme will need to be included within the capital programme in accordance with the council’s Financial Regulations. As the sum is below the threshold of £250,000 that is delegated to the Corporate Director, if the proposal is approved, the capital estimate can be adopted via a Corporate Director’s Action.

5. LEGAL COMMENTS

- 5.1. Section 106 Planning Obligations are secured pursuant to section 106 of the Town and Country Planning Act 1990. They are a mechanism whereby development proposals which would otherwise not be acceptable can be made acceptable in planning terms and are focused on site-specific mitigation of the impact of development. They can impose financial and non-financial obligations on a person or persons with an interest in the land and become binding on that interest.
- 5.2. As a contract, the Council is required to spend any monies received under a section 106 agreement in accordance with its terms. It is therefore important to assess those provisions when allocating monies to a particular project. The Legal department has carried out this exercise in respect of these projects and their view is set out in the individual PIDs that serve as the background documents for this report. They considered that the proposed use of the monies complies with the agreement.
- 5.3. This report concerns the Commissioners approval of grant funding of £32,500 to Stepney City Farm for the projects set out in the aforesaid PIDs.

- 5.4. Although the relevant section 106 agreement limits the types of projects for which the monies can be used, it does not expressly specify any organisations to whom payment must be made. Therefore the Council is not under a legal duty to provide the payments to Stepney City Farm. As such, these payments are discretionary and are considered to be grants that require the Commissioners' approval under the terms of the Ministerial Direction of 17th December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions).
- 5.5. To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure the Council has power to make the grants in question. It appears from the information provided that the grants are capable of being supported under the Council's powers, specifically under section 1 of the Localism Act 2011 whereby the Council has the general power of competence. This means that the Council has the power to do anything that an ordinary human being could do, unless statute specifically restricts the Council from acting in the way it wishes. Therefore, in the absence of specific legislation to the contrary it would appear to be within the Council's power to issue this grant, subject always to the directions of the Secretary Of State For Communities and Local Government.
- 5.6. Similarly, with regard to projects administered by the Council, section 1 of the Localism Act 2011 also applies and as under the terms of the specific Section 106 agreement, the Council has to utilise the funding for the purpose required by the agreements, the Council can therefore allocate the funds to these projects.
- 5.7. The Council has a duty under Section 3 of the Local Government Act 1999 to ensure that all agreements into which it enters satisfies the Council's Best Value duty. Therefore, the grant with the providers must contemplate robust monitoring and performance clauses ensuring that value for money is achieved through the grant. Information relevant to Best Value implications is contained in paragraph 7.1 of this report. In this case, the intention will be for a project manager to be appointed to monitor the works and sign them off when completed. The funds will be released to Stepney City Farm after satisfactory delivery of the measures and upon receipt of the invoices. Any residual balance would be returned to the S106 account for use on alternative projects
- 5.8. In making the grants, the Council must ensure that no part of the funds issued represents a profit element to the recipient. The inclusion of profit or the opportunity of making a profit from a grant or third parties indicates that a grant is really procurement activity and would otherwise be subject to the Council's Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases. Again, the monitoring by the project manager of the projects and payment on their satisfactory completion can safeguard against profit making.

- 5.9 The Treaty on the Functioning of the European Union (TFEU) provides that certain government activities may be prohibited because they give an advantage in a selective way to certain entities (broadly speaking organisations that put goods or services on a market), which might affect competition within between Member States. Those advantages may amount to prohibited state aid, or may be state aid which is either expressly allowed by the Treaty, or which may be allowed, dependent on the circumstances.
- 5.10 Whilst Stepney City Farm is a registered charity whose operations are primarily for the community, it is the activity which needs to be considered in the state aid question, not the entity. Stepney City Farm undertakes a number of economic activities, such as selling its produce and livestock, hosting a weekly farmers' market, running a café and hiring out its café space, which arguably fall within the scope of the Treaty.
- 5.11 However even if that was the case and the grants could be said to amount to state aid, the aggregate amount of the £121,000 already allocated for earlier projects and the subject £32,500, (i.e. £154,750) falls under the *de minimis* threshold of EUR 200,000 over a rolling three year period. Accordingly, under the relevant European legislative framework, they will be exempt from notification and European Commission approval. As such, we do not consider the grants give rise to any state aid issues, but it should be noted that the point may need to be revisited in the event of future grants which could take the total amount over the *de minimis* threshold.
- 5.12 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in section 6 of the report (One Tower Hamlets Considerations).

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The Stepney City Farm cafe accommodates many different groups and customers from the local community throughout the week. However, the current seating makes it difficult for those with mobility problems to move around the eating area, and there are no wheelchair accessible tables outside. In line with the Farms mission of improving access of the farm and making it welcoming to all, the proposals are to install wheelchair accessible tables on the decking (the rest of the eating area is currently wood chip) and make it easier and safer for everyone to move around. A number of the benches will be placed around the farm as rest stops for those who are ambulant disabled, not more than 50m apart.
- 6.2. The proposals would not adversely affect people with protected characteristics and would enhance the current facility for the entire community to enjoy and benefit.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The delivery of this project ensures the Council meets its s106 obligations and spends funds in accordance with the agreement.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The proposed rainwater harvesting and irrigation works will improve the environmental operation of the farm through reducing potable water use and supplying water efficiently around the site. The works will also improve drainage across the site to alleviate issues of water logging and flooding. The proposals would collect over 900,000 litres of rainwater per annum, therefore greatly reducing the amount of potable water used on site.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is a risk that if the project is not approved, the benefits identified in in this report relating water saving, cost reduction and accessibility improvements will not be realised.
- 9.2 In addition if this is not approved then as it is proposing the delivery of works in accordance with S106 requirements then there is a risk of Non-fulfillment of S106 requirements.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no crime or disorder implications.

11. SAFEGUARDING IMPLICATIONS

- 11.1 The Stepney City Farm is an established community asset and a registered charitable organisation.
- 11.2 There are no safeguarding implications

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- Stepney City Farm Water Efficiency PID
- Stepney City Farm Visitor Experience PID

Officer contact details for documents:

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