

CABINET

10 February 2016

SILVER HILL REGENERATION – DECISION ON TERMINATION

REPORT OF SILVER HILL PROJECT MANAGEMENT TEAM

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RECENT REFERENCES:

CAB2665 – Silver Hill – Judicial Review Decision, 3 March 2015 (part exempt).

CL110 – Silver Hill – Development Agreement with Silverhill Winchester No.1 Limited, 18 June 2015.

CAB2700 - Silver Hill - Submissions By Silverhill Winchester No 1 Ltd and Council's Response, 13 July 2015 (part exempt).

CAB2752 – Silver Hill Winchester – Situation Report and Assessment, 2 December 2015.

CAB2755 – Silver Hill Regeneration – Status Report, 13 January 2016 (part exempt).

CL121 - Silver Hill Regeneration – Further Update, 28 January 2016 (part exempt).

CL122 – Extract of Minutes of Cabinet held 13 January 2016, 28 January 2016 (part exempt).

CL123 - Extract of Minutes of The Overview and Scrutiny Committee held 18 January 2016, 28 January 2016 (part exempt).

EXECUTIVE SUMMARY:

At its meeting of 13 January 2016, Cabinet considered a report on the current position in respect of the Silver Hill scheme (Report CAB2755 refers). It indicated that it was minded to terminate the Development Agreement with Silverhill Winchester No. 1 Limited ("SW1"), unless the outstanding conditions had been

satisfied by 9 February 2015 and subject to the views of The Overview and Scrutiny Committee on 18 January 2016, and full Council on 28 January.

At its 28 January meeting, Full Council resolved as follows:-

- “1. That Council recommends to Cabinet that it serve notice to terminate the Silver Hill Development Agreement with immediate effect.
2. That Council recommends that Cabinet takes no action to implement the Compulsory Purchase Order in the event of the Development Agreement being terminated.”

This Report brings together the various reports and other information which Cabinet will need to consider, in the light of full Council’s resolution, before reaching a final decision on terminating the Development Agreement. It also deals with the Silver Hill Compulsory Purchase Order, and outlines how consequential matters will be dealt with.

As at the date of writing this report, no further progress has been made by the developer, Silverhill Winchester No. 1 Limited, towards satisfying the outstanding conditions. An oral update on the position will be given at the meeting.

#### RECOMMENDATIONS:

- 1 That the Head of Legal and Democratic Services be instructed to serve notice of termination of the Silver Hill Development Agreement dated 22 December 2004, on the grounds that 1) the Unconditional Date and 2) the Works Commencement Date (both as defined in the Development Agreement) had not occurred by 1 June 2015.
- 2 That no further action be taken to implement the CPO in the event that the Development Agreement is terminated.
- 3 That a decision on whether or not to retain the freehold and leasehold interests within the Silver Hill area which were acquired by the Council in January 2014, together with the budget and estate management implications, be considered at a special Cabinet meeting to be held on 18 February 2016.
- 4 That a report be brought to the special Cabinet meeting on 29 March 2016 setting out in outline how development might be brought forward on the Silver Hill site in the light of termination of the Development Agreement.
- 5 That an update report on the possible acquisition of the St. Clements Surgery and construction of a replacement surgery on Upper Brook Street Car Park be considered at the special Cabinet meeting on 29 March 2016.

## CABINET

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### SILVER HILL REGENERATION – DECISION ON TERMINATION

#### REPORT OF SILVER HILL PROJECT MANAGEMENT TEAM

##### DETAIL:

#### 1 Introduction

- 1.1 This report brings together the various reports which were considered by full Council at its meeting of 28 January 2016, in respect of the Silver Hill Development.
- 1.2 On 13 January 2016, Cabinet considered a report on the current position of the Silver Hill scheme, with particular reference to the satisfaction of the conditions in the Development Agreement (the Development Agreement) dated 22 December 2004 (CAB2755 refers). Cabinet indicated that subject to the views of The Overview and Scrutiny Committee and full Council, it was minded to serve notice to terminate the Development Agreement unless the outstanding conditions had been satisfied by 9 February 2015. As at the date of writing this report, no further progress has been made by the developer, Silverhill Winchester No. 1 Limited, towards satisfying the outstanding conditions. An oral update on the position will be given at the meeting.
- 1.3 The report was considered by The Overview and Scrutiny Committee on 18 January, and subsequently by full Council on 28 January. The Overview and Scrutiny Committee had report OS137 before it, which included correspondence subsequent to the Cabinet decision.
- 1.4 Full Council had before it report CL121. This report summarised the resource implications of the options available to the Council, and updated Members on the CPO and planning permission. Various appendices were attached to the report, including further letters from SW1 to the Council, and also from Berwin Leighton Paisner (BLP) (the Council's legal advisers) to the Head of Legal and Democratic Services. Exempt Appendices were also attached, covering the detailed financial information (which had been summarised in the open part of the Report) and further legal advice and correspondence.

#### 2 Current Position

- 2.1 Cabinet is now in a position to consider the resolution of Council, and decide whether or not the Development Agreement should be terminated.
- 2.2 In reaching this decision, Cabinet should take into account CAB2755 and its appendices, the subsequent reports and appendices which have been produced in connection with the matter, and the additional appendices attached to this report.

- 2.3 With the agenda for this meeting, Cabinet Members will be provided with copies of the relevant reports and appendices. For completeness, the following table sets out the reports and their reference numbers.

Reference	Date	Title	Comments
CAB2755 (yellow)	13 January 2016	Silver Hill Regeneration – Status Report.	Original main report.
CAB2755 Appendix 1 (yellow)	13 January 2016	Letter 3 December 2015 WCC to SW1.	Letter from Leader seeking details of current position.
CAB2755 Appendix 2 (yellow)	13 January 2016	Letter 22 December 2015 Leader to SW1.	SW1 response letter to Leader setting out proposals.
CAB2755 Appendix 3 (yellow)	13 January 2016	Risk Evaluation.	
CAB2755 Exempt Appendix 4 (pink)	13 January 2016	Legal Advice (including Annex).	
OS137 (green)	18 January 2016	Silver Hill Regeneration – Status Report – Addendum.	Covering report to The Overview and Scrutiny Committee.
OS137 Appendix A (green)	18 January 2016	Minute Extract – Cabinet 13 January 2016.	<b>(See now detailed minute extract CL122 Appendix A).</b>
OS137 Appendix B (green)	18 January 2016	Letter 12 January 2016 – Hogan Lovells to BLP.	Clarification letter expanding on 22 December 2015 letter.
OS137 Appendix C (green)	18 January 2016	Letter 15 January 2016 BLP to Hogan Lovells.	Response letter to above.
OS137 Appendix D (green)	18 January 2016	Letter 15 January 2016 Leader to SW1.	Letter confirming Cabinet's decision.
CL122 (white)	28 January 2016	Covering report – extract of Minutes of Cabinet	
CL122 Appendix A (white)	28 January 2016	Cabinet Extract – 13 January 2016	Extended version of OS137 Appendix A.
CL122 Appendix A Exempt (pink)	28 January 2016	Exempt Minutes – Cabinet 13 January 2016	
CL123 (green)	28 January 2016	Covering report – extract of Minutes of	

Reference	Date	Title	Comments
		The Overview and Scrutiny Committee	
CL123 Appendix A (green)	28 January 2016	The Overview and Scrutiny Committee Minute Extract – 18 January 2016	Minutes of The Overview and Scrutiny Committee.
CL123 Appendix A Exempt (pink)	28 January 2016	Exempt Minutes - The Overview and Scrutiny Committee– 18 January 2016	
CL121 (white)	28 January 2016	Silver Hill Regeneration – Further Update	Update Report to Council.
CL121 Exempt Appendix 1 (pink)	28 January 2016	Estimated Financial Implications	
CL121 Exempt Appendix 2 (pink)	28 January 2016	Legal Advice (Exempt)	Includes Exempt Annexes A and B (pink).
CL121 Appendix 3 (white)	28 January 2016	Legal Advice	Covering Note for Appendix 3 Annexes A and B.
CL121 Appendix 3 Annex A (white)	28 January 2016	Letter from SW1 to Chief Executive dated 26 January 2016	Letter clarifying and further extending indemnity offered by SW1 to Council.
CL121 Appendix 3 Annex B (white)	28 January 2016	Letter from BLP to Head of Legal and Democratic Services dated 27 January 2016	Legal advice on termination provisions.
CL121 Exempt Appendix 4 (pink)	28 January 2016	Further Legal Advice (Exempt)	Includes Exempt Appendix 4 Annexes A and B

- 2.4 Appendix 1 to this report is a copy of a letter to BLP from Hogan Lovells dated 26 January 2016. This was previously included as Exempt Appendix 4 Annex B to CL121, but can now be published as an open document.
- 2.5 Further legal advice from BLP is contained in Exempt Appendix 2 to this report.

### OTHER CONSIDERATIONS:

#### 3 DISTRICT COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 3.1 The regeneration of the Silver Hill area is a much needed revitalisation of a part of Winchester's town centre which is neither aesthetically pleasing nor economically functional. The requirement to provide employment, housing retail premises and improved public realm in a highly sustainable location is set out in the Council's Local Plan and is consistent with the National Planning Policy Framework.

#### 4 RESOURCE IMPLICATIONS:

- 4.1 These are set out in Report CL121 and Exempt Appendix 1 to CL121. The financial consequences of Cabinet's decision will be reflected in the budget proposals to be considered at the special Cabinet meeting on 18 February.

#### 5 RISK MANAGEMENT ISSUES

- 5.1 The Risk Evaluation Table previously published as CAB2755 Appendix 3 sets out the relevant risk management implications.

### BACKGROUND DOCUMENTS:

None

### APPENDICES:

Appendix 1 – Letter from Hogan Lovells to BLP 26 January 2016.

Exempt Appendix 2 – Further legal advice from BLP.

26 January 2016

Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London  
EC4R 9HA  
For the attention of Lesley-Anne Avis

Oliver Chamberlain  
Partner  
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Our ref                    C2/OLC/5354029  
Matter ref                149631/000016

Dear Sirs

**SILVERHILL, WINCHESTER - DEVELOPMENT AGREEMENT DATED 22 DECEMBER 2004 MADE BETWEEN WINCHESTER CITY COUNCIL (1) THORNFIELD PROPERTIES (WINCHESTER) LIMITED (2) AND THORNFIELD PROPERTIES PLC (3) (AS AMENDED) (THE "DEVELOPMENT AGREEMENT")**

We refer to your letter of 15 January sent in response to our letter of 12 January.

Our client has instructed us to defer sending a full and substantive response to all of the points raised in your letter until after any decisions have been made at the full council meeting on 28 January.

However, we would like to make clear that our letter of 12 January was sent with the intention of clarifying a number of matters which our client felt had been misunderstood. The overriding purpose of our letter was to ensure that Cabinet had the correct information before it to make its decisions on 13 January.

We received a copy of the report on the afternoon of 12 January and sent our letter the same day.

Our client is keen to work constructively with the Council to reach a position where the development of Silver Hill can be progressed, which they still believe is possible, notwithstanding the circumstances. They have therefore written to the Council directly today in order to provide clarification on a number of matters.

On 17 September 2015 we pointed out to you that the conformed copy of the Development Agreement that you enclosed with instructions to Counsel contained errors.

At the Cabinet meeting on 13 January, the leader, Cllr Godfrey, specifically stated that if the Development Agreement is terminated by the Council, the Developer will have 20 working days to satisfy the conditions to the Development Agreement. He also stated that the Developer should be given as much time as the Council can give to try and satisfy the outstanding conditions under the Development Agreement so that the 2009 scheme can proceed. Cabinet resolved that the

Developer should be notified that Cabinet was minded to serve a notice to terminate the Development Agreement unless the Unconditional Date occurs by 9 February 2016.

It appears that this date was therefore chosen on the basis that the Developer would effectively have until 8 March 2016 to satisfy the conditions. This interpretation of Cabinet's decision is supported by the Council's summary of the latest developments on its website (<http://www.winchester.gov.uk/planning/major-sites/silver-hill/> a hard copy of which is enclosed with this letter). This refers to the Council giving the Developer the maximum time available to meet the conditions.

Based on our analysis of the Development Agreement, we believe that the reference to the Developer having 20 working days to satisfy the conditions following service of a notice to terminate comes from Schedule 2 paragraph 15.2 (which is paragraph 16.2 of the conformed copy of the Development Agreement provided to us by BLP in September 2015). This paragraph was deleted by clause 6.1.6 of the deed of variation dated 10 December 2010. We can see no other 20 working day grace period referred to elsewhere in the Development Agreement.

We must draw this to your attention again to ensure that any advice given to the Council ahead of the meetings on 28 January and 10 February is correct.

Yours faithfully

A handwritten signature in black ink, appearing to read "J. Hogan Lovells International LLP". The signature is written in a cursive, flowing style.

Hogan Lovells International LLP



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The area known as Silver Hill covers an area of approximately 2.3 hectares of central Winchester. It includes the bus station, Friarsgate medical centre, Kings Walk and the Friarsgate car park amongst other elements. Since the end of the 1990s the Council has been seeking the comprehensive redevelopment of this area to improve the quality of retail, residential and public space in the Silver Hill area.

- Cabinet decided on 13 January that the development agreement for Silver Hill with Silver Hill No.1 Ltd/TH Real Estate should be terminated unless the necessary planning conditions are met by the developer by 9 February
- The City Council wants the best possible scheme to redevelop the run-down Silver Hill area
- The Council is giving the developer the maximum time available to meet the conditions so that the scheme can become 'unconditional' and go ahead
- If the developer does not meet the 9 February deadline, Cabinet meets on 10 February and notice will be served to terminate the agreement
- This will give the developer a further 20 working days before the agreement is terminated
- The compulsory purchase order which enables the Council to buy the necessary land expires if it is not implemented by 20 March 2016
- The developer's appeal against the judicial review decision which prevents any material changes to the scheme from being made is due to be heard in May 2016
- A report on the development commissioned by the City Council from independent solicitor Claer Lloyd-Jones will be presented to the Council as soon as it is completed. The Council does not know when her report will be submitted

Link to the [Silver Hill update to \(http://www.winchester.gov.uk/assets/legacy/getasset?id=fAAyADMANQA5ADQAFAB8AFQAcgB1AGUAfAB8ADAAfAA1\)](http://www.winchester.gov.uk/assets/legacy/getasset?id=fAAyADMANQA5ADQAFAB8AFQAcgB1AGUAfAB8ADAAfAA1) **Cabinet 21 May 2015**  
(<http://www.winchester.gov.uk/assets/legacy/getasset?id=fAAyADMANQA5ADQAFAB8AFQAcgB1AGUAfAB8ADAAfAA1>)

Link to the Council and Cabinet meetings on **18 June 2015** (<http://www.winchester.gov.uk/meetings/details/1470>), **25 June 2015** (<http://www.winchester.gov.uk/meetings/details/1473>), **13 July 2015** (<http://www.winchester.gov.uk/meetings/details/1484/>) and **15 July 2015** (<http://www.winchester.gov.uk/meetings/details/1381/>)

Statement: [Silver Hill judicial review \(http://www.winchester.gov.uk/media/statements/silver-hill-judicial-review/\)](http://www.winchester.gov.uk/media/statements/silver-hill-judicial-review/)

Outcome of the Silver Hill Judicial Review – [Statement by the Leader of Winchester City Council, Cllr Robert Humby \(http://www.winchester.gov.uk/news/2015/feb/silver-hill-judicial-review-statement-leader-winchester-city-council-cllr-robert-humby/\)](http://www.winchester.gov.uk/news/2015/feb/silver-hill-judicial-review-statement-leader-winchester-city-council-cllr-robert-humby/)

### **Silver Hill - current position 12 June 2015**

**(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/silver-hill-current-position/>)**

### **Silver Hill - current position 12 June 2015**

There are currently two schemes which have planning approval: one granted in 2009 and one granted in 2014.  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/silver-hill-current-position/>)

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### **Silver Hill Introduction**

Silver Hill is the area of Winchester immediately adjacent to the bus station and Friarsgate car park. It is an area which needs regeneration and improvement to match the quality of the rest of the town  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/silver-hill/>)

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### **The Winchester Silver Hill Independent Review**

The Winchester Silver Hill Independent Review has now started. The Reviewer is Claer Lloyd-Jones LLB Solicitor. She aims to present the report to Winchester Council before the summer recess.  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/winchester-silver-hill-independent-review/>)

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### **Silver Hill as it is now**

Images illustrating how Silver Hill looks now, before development.  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/as-it-is-now/>)

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### **How the scheme has changed**

A table illustrating the principal changes between the scheme given planning consent in 2009.  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/how-scheme-has-changed/>)

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### **Myth-busting: Silver Hill**

Myths about the proposed Silver Hill development and the facts...  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/myth-busting-silver-hill/>)

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### **Brochures and exhibition material for Silver Hill**

Brochure of The Evolution of Silver Hill to material of the 2014 scheme exhibition  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/silver-hill-exhibition-september-2014/>)

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### **Original consented scheme 2009**

After careful consideration of all the issues and the preparation of a Planning Brief in 2003, the Council entered into a Development Agreement with Thornfield Properties to promote a comprehensive redevelopment  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/original-consented-scheme-2009/>)

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### **Consented scheme approved December 2014**

The Silver Hill regeneration project will transform the run down and ugly area of Winchester town centre between the bus station and Friarsgate, with homes, shops and public spaces  
(<http://www.winchester.gov.uk/planning/major-sites/silver-hill/consented-scheme-approved-december-2014/>)

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