

CABINET

29 MARCH 2016

SILVER HILL –FORMER JDS PROPERTIES PUT OPTION

REPORT OF HEAD OF ESTATES

Contact Officer: KEVIN WARREN Tel No: 01962 848528

RECENT REFERENCES:

CAB 2526 – Silver Hill Development – Update and Land Acquisition – 4 November 2013.

EXECUTIVE SUMMARY:

The report identifies the possibility available to the Council to exercise the “Put Option” and convey the former JDS property to Silverhill Winchester No. 1 Limited (SW1). The report deals with short to medium term property management issues in connection with the Council’s Silver Hill property portfolio and considers whether the Put Option should be exercised or the properties be retained by the Council and the term which they may be let for pending the development of the area.

The report identifies the need to consider the demolition of the closed Friarsgate Car Park and the negotiation of an outstanding interest.

RECOMMENDATIONS:

- 1 That the Council does not exercise the “Put Option” in respect of the properties detailed in the report.
- 2 That the Council retains the freehold of the property it owns in the Silver Hill development area.

- 3 That the Head of Estates be authorised to let Council-owned property in the Silver Hill development area which is currently either vacant or let on short term tenancies for a maximum term of five years with a rolling break clause from the end of the third year on the service of six months notice, with the security of tenure provisions of the Landlord & Tenant Act 1954 excluded.
- 4 That a further report be submitted to Cabinet regarding options for the demolition of the rear part of the Friarsgate Car Park and the potential to form a surface car park pending the redevelopment of the site.
- 5 That the surrender of the remaining interest in the Friarsgate Car Park be negotiated on terms to be agreed by the Head of Estates in consultation with the Portfolio Holder for Estates.

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DETAIL:

1 Introduction

- 1.1 At its meeting of 10 February 2016, Cabinet resolved to terminate the Development Agreement with the Silver Hill developer Silverhill Winchester 1 (SW1). Three months' notice to terminate the agreement was served on the developer by the Council's solicitors on 10 February 2016.
- 1.2 At its meeting of 4 November 2013 Cabinet resolved to approve the following, subject to the approval of the budget:
 - The purchase of the former JDS estate within Silver Hill for £5 million
 - That the Council enter into a supplemental agreement with Henderson Global Investors to safeguard the Council's own financial position whereby:
 - The developer would be obliged to purchase the JDS assets from the Council if the Silver Hill scheme had not gone unconditional (The Put Option)
 - The developer would reimburse the Council for any difference between the income earned from the assets and the expense of holding the property together with repairing costs and management costs
 - The Council would be obliged to place the assets into the Silver Hill scheme at the appropriate time at which point Henderson would reimburse the Council the £5 million. The Council's rent share would not have been affected
 - The supplemental agreement would be between SW1 and the Council, but guaranteed by Henderson UK Property Fund
- 1.3 The properties comprised in the purchase were:

- The freehold property known as the Old Post Office, Middle Brook St under title HP598577
- The leasehold property known as Units 1-14 Kings Walk Precinct, Silver Hill with good leasehold title HP510081
- The freehold of the Antiques Market, Kings Walk Precinct, Silver Hill under HP 507605
- Such right, title and interest in Tanner St, Silver Hill and Middle Brook St as are transferred to the Council

1.4 The supplemental agreement was entered into on 30 January 2014. The agreement incorporates a “Put Option in favour of the Council, which allows the Council to require SW1 to purchase the properties from the Council at the same price as the Council paid. The Option must be exercised by notice, which must be served no later than 40 working days after the termination of the main Development Agreement. The option can therefore be exercised by the Council up to 6 July 2016.

2 The Current Position

2.1 The Put Option was included to safeguard the Council’s financial position in the event that the development agreement was terminated. Following the Council’s decision to approve the 2009 scheme for implementation in July 2015, the options and break clauses in the leases of the former JDS properties and the Council’s adjoining land holdings in Middle Brook Street were exercised as far as was possible. Tenants were given the opportunity to stay in the premises they occupied, but under tenancies at will, which allow either party to terminate the occupation on short notice.

2.2 A schedule of tenants is set out in exempt Appendix A, broken down into WCC and former JDS property. Since the Council took the decision to proceed with the 2009 scheme last summer, the tenants have had to plan their businesses around the possibility of their premises being taken for the Silver Hill scheme. Following the Council’s termination of the Development Agreement, the tenants of the property have a need for clarity on what the Council’s position will be in the future.

2.3 The City Council have through the District Plan promoted the redevelopment of the Silver Hill area over many years. While the developer was unable to proceed with the latest proposals, which resulted in the termination of the Development Agreement, the absence of a scheme does nothing to change the fact that the area requires regeneration. The bus station does not represent an attractive public face to Winchester for visitors, the car park is closed, the offices above Kings Walk are not capable of use, and the former Friarsgate Surgery has been vacated.

2.4 Notwithstanding that the Developer is seeking to challenge the Council’s decision to terminate the development agreement, consideration has to be

given to the practicalities of managing the Council's estate in Silver Hill. The first issue which has to be addressed is whether the Council wishes to exercise the "Put Option". On one level, the choice facing Members is very straightforward. By retaining the former JDS property, the Council will have assembled a large land holding in the City Centre which is potentially capable of redevelopment. If the "Put Option" was exercised, the redevelopment of this site would no longer be in the Council's hands and Members' aspirations of redevelopment might be thwarted.

- 2.5 The termination of the Development Agreement does however create a degree of uncertainty surrounding the future of the Council's land holding from a planning perspective. In the absence of a scheme or a developer, and with the CPO expiring, having regard to the advice previously given by the Council's external legal advisers, BLP (Appendix 6 CAB 2700 refers), it is reasonable to assume that the site will not be comprehensively developed for up to seven years. Uncertainty has a negative impact on valuation; if a valuer is unable to identify when a development might reasonably expect to be completed, values will fall. Consequently, with no certainty as to when the Silver Hill area might be developed, it is possible that the value of the JDS property may have been negatively impacted by the current lack of certainty over the timing of any potential redevelopment.
- 2.6 Deloitte have been engaged to review and update the valuation of the former JDS property so that Members can be informed of the financial impact of a decision to retain those interests. The report is set out in exempt Appendix B. On the basis of the valuation, and on estate management principles, it is recommended that the freehold and leasehold interests comprised in the JDS properties are retained by the Council and that SW1 be informed that the City Council will not be seeking to exercise the "Put Option".

3 Short - Medium Term Estate Management Issues

- 3.1 SW1 have served on the Council a pre-action protocol letter, indicating its intention to seek judicial review of the Council's decision to terminate the Development Agreement. This was considered by Cabinet at its meeting of 10 March 2016. The Council subsequently responded to the protocol letter, and SW1 has indicated that it will not be issuing such proceedings, although it is reserving its position to claim for breach of the Development Agreement.
- 3.2 It is appropriate for Members to consider how the interests of both the Council and its tenants occupying Council-owned properties in the Silver Hill area are best served. If it is decided to retain the former JDS properties, the next decision for Members is whether they wish to retain the freehold of all of the property currently owned by the Council in the Silver Hill area or to seek to dispose of it. The arguments in favour of a disposal are:-
- A capital receipt could be achieved;

- Difficult issues such as the demolition of the Friarsgate car park, former offices at Kings Walk and property maintenance would pass to a third party;
- Let the market decide, a third party may come up with new ideas for the development of the site.

3.3 The arguments against a disposal are as follows:

- Creating new third party ownerships may prevent/hinder the comprehensive development of the Silver Hill area being achieved.
- Experience has demonstrated that third party owners may have different objectives to those of the Council, driven by the need for short term financial gain.
- If the Council did not have any land holding within the Silver Hill area, it would only be able to influence the development of the area through the planning process.
- A disposal while the future of the site is unclear is unlikely to generate a high land value.
- A freehold disposal would not give the Council the opportunity of creating a long term income stream from the site.
- The existing tenants' interests may be put at risk by a disposal.

3.4 Urban regeneration schemes are seldom undertaken successfully without the direct involvement of the local authority. However this involvement is viewed, the Council is in a position to seek to represent the wider interests of the local community in a regeneration project, whereas a private developer is going to have to put the interests of its shareholders at the forefront of any development proposal.

3.5 On balance, it is recommended that the Council retains the freehold of its estate within the Silver Hill area. If Members are prepared to proceed on this basis, it will be appropriate to maximise the income from the estate and this will be assisted by recognising that it is likely to take up to seven years to progress a new scheme for the development of the area. By acknowledging that a comprehensive redevelopment is likely to take some years to secure, it is possible to give the existing occupiers a degree of security which will allow them to make investments in their businesses.

3.6 The Council's land holding includes Coitbury House, an office building built in the 1960's. The building was occupied continually by health services and the interior is in need of refurbishment. Business rates will also be payable by the Council if the building is not let. However, it will not be possible to let the building without carrying out some works and a tenant will not be prepared to

take a lease unless it can have a reasonable period in occupation to enable relocation and tenant fit out costs to be depreciated at a reasonable rate.

- 3.7 Having regard to the legal actions being progressed, the need for extensive new public consultation, the requirement for a EU compliant procurement exercise, the preparation of detailed designs, cost assessments, planning, compulsory purchase inquiry, and tendering of the construction, it is likely to be up to seven years before a comprehensive development would be commenced on site. Members may reasonably conclude from the condition of the property that a comprehensive single development of the site can no longer be justified. In this respect the Head of Planning Policy favours modifying the District Plan Policy to take account of the new situation.

4 Head of Planning Policy's Comments

- 4.1 Silver Hill is covered by Winchester District Local Plan Review (2006) saved Policy W.2. This has been updated and is included in emerging Local Plan Part 2 as Policy WIN 4. This policy provides for a comprehensive mixed-use development of the area. The various retail studies commissioned by the Council confirmed the need to retain Silver Hill as a source of new retail floorspace, together with other uses appropriate to the town centre location. Policy WIN 4 includes all of the key elements to allow a scheme to be brought forward on the site in whole or in part, to deliver the range of uses and benefits originally intended. It now has to be recognised that development of parts of the site might be accepted as part of an overall proposal for the comprehensive development of the site. Consideration is being given to how this might be achieved: however, a suitable mechanism will have to be put in place to ensure that comprehensive development can be achieved, before redevelopment of individual parts of the site could progress.
- 4.2 The Local Plan will shortly be submitted for examination and there have been a number of representations regarding Policy WIN 4, so it is likely that the Policy will be debated at the examination. The Planning Inspector will need to be convinced that the policy is deliverable and provides for flexibility, which it is believed it does. It is expected that the plan will formally be adopted by the end of November 2016.
- 4.3 Having regard to the above comments it is recommended that the Council property in Silver Hill be let on leases of up to five years outside of the protection of the 1954 Landlord & Tenant Act. A lease of this length would give the tenants a reasonable period in which to plan their business and for the Council to make investment in the property to keep it maintained to a better standard. Given the possibility that parts of the site could be developed independently within a comprehensive framework, it would be appropriate to offer five year leases with a landlord's break at any time after the end of the third year, upon the service of six months' notice.
- 4.4 If Members are prepared to accept this recommendation, the existing tenants will be contacted and offered the opportunity of new leases and Coitbury House and other vacant property marketed with a view to securing a letting. If

suitable tenants can be secured, appropriate refurbishment works can be undertaken.

5 Friarsgate Car Park

- 5.1 Members will be aware that Friarsgate Car Park was closed as the structure and decking had reached the end of its economic life. The car park has been secured and is regularly inspected to monitor its condition. It is proposed that a detailed study is made of the structure to identify whether the rear part of the car park could be safely demolished. If it is possible to dismantle the structure without endangering public safety, a further report will be brought to Cabinet in due course to include consideration of provision of a temporary surface car park pending the redevelopment of the site.
- 5.2 The Council-owned property within Silver Hill was appropriated to planning purposes pursuant to a Cabinet resolution of 21 May 2015 (CAB 2695 refers). In order to tidy up the Council's title, it is recommended that any outstanding third party interests in the Friarsgate Car Park be dealt with on terms to be agreed with the Head of Estates, in consultation with the Portfolio Holder for Estates.

6 27 Eastgate Street, Winchester

- 6.1 This residential property is outside of the Silver Hill development site and had the development of the scheme proceeded it could have been sold as being surplus to requirements. Similar property in the row has sold for in excess of £600,000 recently. In the absence of a scheme, it would not be appropriate to dispose of the property as it adjoins Friarsgate and therefore it should be retained in case different highway arrangements are proposed for the junction of Eastgate St and Friarsgate under future development proposals.
- 6.2 The property is held in the General Fund and pending a redevelopment it is proposed to continue to let the property through Housing.

7 War Memorial Hall Cross Keys Passage, Winchester

- 7.1 This property is located at the rear of 154 High Street and is owned by the Trustees of Royal Antidiluvian Order of Buffaloes Province of Winchester Grand Lodge of England. Solicitors acting for the owners have served a Blight Notice on the City Council requiring the Council to purchase their client's interest.
- 7.2 A blight notice can be served by certain persons, essentially those to whom having blighted property is a special hardship. One of the criteria for determining this is:
- 1 Owner occupiers of any hereditament, of which the net annual value for rating purposes does not exceed the proscribed limit. The proscribed limit is currently £34,800 under the Town & Country Planning (Blight Provisions

Order 2010) This is deemed to include the owners of small businesses or shops. The current Rateable Value of the property is £5,900.

- 7.3 The Head of Legal & Democratic Services is considering the notice and is seeking external advice on the Council's response. A further update will be given at the meeting.

OTHER CONSIDERATIONS:

8 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 8.1 This paper refers to activities which are relevant to the Prosperous Communities and Efficient and Effective Council themes.

9 RESOURCE IMPLICATIONS:

- 9.1 The project will be managed by the Head of Estates and require input from Legal, Finance, Building and Planning Control, Parking Services and external consultants.

- 9.2 The Council has powers under the Local Authorities (Land) Act 1963 to erect and maintain buildings for the benefit or improvement of its area.

- 9.3 The following sums (totalling £1.34m) are included in the 2016/17 budget approved by Council (CAB2763 Revised) for dealing with the issues referred to in the report. The split of these works is £0.80m Capital and £0.54m revenue. The funding for the capital element is from capital receipts, the revenue is from general fund earmarked reserves:

i).The demolition of Friarsgate Car Park- £600,000 (Capital)

ii).Temporary car park works - £200,000 (Capital)

iii).Property Maintenance Coitbury House - £150,000 (Revenue)

iv).Property Works Former JDS Property - £280,000 (Revenue)

v).Property Repairs Former JDS Property - £110,000 (Revenue)

- 9.4 A further report will be brought to Cabinet setting out the detailed proposals and appraising the costs for the demolition of the Friarsgate Car Park and the construction of a temporary surface car park.

- 9.5 Additional one-off costs for minor agreement issues (£5,000) and repairs works to the former JDS property (£45,000) are also anticipated which would make the total cost £1.39m. It is proposed that these additional costs totalling £50,000 are funded from an existing 'asset management plans' general fund revenue budget within Estates.

- 9.6 The properties are budgeted to have an ongoing net income of c£180,000 per annum. This is dependant on continuing to let the properties on the current terms.
- 9.7 The JDS properties are currently held on the Council's balance sheet at £5m. Once the updated valuation of the properties is received from Deloitte the impact of any change in value will known and reported to Members.
- 9.8 Any increase in the above costs will be bought back to Cabinet.

10 RISK MANAGEMENT ISSUES

- 10.1 The risk management issues for this project are set out in Appendix

BACKGROUND DOCUMENTS:

Supplemental Deed dated 30 January 2014

APPENDICES:

Exempt Appendix A Schedule of Tenants (Exempt)

Exempt Appendix B Deloitte Valuation Report (Exempt)