

CABINET – 13 JULY 2015

THE OVERVIEW AND SCRUTINY COMMITTEE - 13 JULY 2015

153 HIGH STREET, WINCHESTER

REPORT OF HEAD OF ESTATES

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RECENT REFERENCES:

CAB 2603 - Silver Hill Regeneration - 7 July 2014

CAB 2665 – Silver Hill – Judicial Review Decision – 3 March 2015

EXECUTIVE SUMMARY:

153 High Street is a retail property let to Oxfam. Oxfam are holding over under the terms of a lease which expired in March 2010. Negotiations with regard to the terms of the new lease have been ongoing with Oxfam's solicitors since 2010. However these stalled, while the future of the Silver Hill development was being considered. In 2014 it was proposed that the property was included in the scheme and this was authorised in CAB 2603, such decision being later overturned by the subsequent court judgement (CAB 2705 refers).

In the event that the 2009 Silver Hill scheme is approved and implemented it has the potential to significantly increase the value of the retail property in the lower section of the High Street. Under the proposed scheme the area in front of the shop would become a pedestrianised area, the buses would be redirected away from the street and footfall patterns would be changed to reflect the new retail offer the scheme would provide.

The report suggests that the Council should look to maximise the opportunity offered by the Silver Hill scheme by redeveloping the property in a form similar, but in an improved form, to that proposed for the 2014 scheme. This would have the potential

to both enhance the value of the Council's immediate estate (No.s 151, 151a and 152 High Street) as well as to provide a more modern unit at 153.

The report recommends appointing architects to design a replacement shop unit in keeping with the style prevailing in the High Street.

The report also reports upon an offer made by Councillor Gottlieb to purchase the freehold of the property.

### RECOMMENDATIONS:

#### To Cabinet:

- 1 That the principle of redeveloping 153 High Street in a similar way, but in an improved form, to that which was approved by Planning Committee in December 2014 be approved.
- 2 That the Head of Estates be authorised to seek competitive quotes from architects to develop a design for a replacement shop unit to include a potential flat or office above.
- 3 That the Head of Estates be authorised to submit planning and other applications for works requiring statutory consent.
- 4 That the Head of Estates be authorised to appoint cost and other consultants necessary to prepare a full business case for the development of a new property on the site.
- 5 That a budget of £35,000 be approved for the works necessary to develop the business case from the Asset Management Plan budget.
- 6 That the offer from Cllr Gottlieb to purchase the freehold of the property in the sum of £750,000 be rejected.

#### To Council:

- 7 That the proposals for the development of a new property on the site, and a supplementary capital estimate of £400,000 (the anticipated capital costs of the scheme) be approved, subject to a detailed business case being reported to Cabinet subsequently and approved in accordance with Financial Procedure Rule 6.4.

To The Overview and Scrutiny Committee:

- 8 To consider whether to call-in the proposed supplementary capital estimate of £400,000, and whether to raise any points with the Leader, Cabinet or Council.

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DETAIL:

1 Introduction

- 1.1 153 High Street is a retail property owned by the Council and let to Oxfam. Oxfam are holding over on a lease which expired in March 2010. Negotiations were commenced for the grant of a new lease but stalled when the need for a landlord's break clause was introduced. The lease has not been renewed because of the failure to reach agreement with Oxfam over the terms. Subsequently, the developer of Silver Hill sought to vary the scheme and the revised proposals which were consented to in December 2014 incorporated the property to provide better visibility for the department store which was a centre piece of that scheme.
- 1.2 Following the court case which found that the 2014 scheme proposals contravened EU procurement legislation, the 2014 scheme, including proposed incorporation of the property, could not continue (CAB 2665 refers).
- 1.3 Oxfam had protected their tenancy in January 2010 by serving a notice under s26 of the Landlord and Tenant Act 1954 Part II on the Council requesting a new tenancy. Since this time, numerous extensions of time in which to apply to the court for the grant of a new lease have been requested by Oxfam's solicitors, in order to protect their client's position with regard to security of tenure, and these have been agreed by the Council whilst it considered its position (although it was open to either party to apply to the court at any time).
- 1.4 The Council endeavoured to recommence negotiations in the summer of 2014, and terms were proposed for a new ten year lease at a revised market rent. The difference between the parties is that the Council were seeking a Landlord's rolling break clause to allow for the redevelopment of the property at the appropriate time. The purpose of the break clause is that the Council would be able to end the lease at a time it wished to carry out the redevelopment of the property, rather than to wait to the end of the lease. No response was received so the offer was withdrawn and the Council then offered a term of five years with a landlord's redevelopment break clause on the first anniversary of the lease and on six months' notice thereafter.
- 1.5 In view of the lack of progress in negotiations with regard to the rent, the term and the proposed break clause, the Council instructed its external solicitors in

October 2014 to institute legal proceedings with a view to finalising the lease terms.

- 1.6 Lease negotiations recommenced and the issues between the parties were in consequence narrowed down to fundamental points of difference. The Court proceedings were stayed until 1 July pending a resolution to the Silver Hill development. A further stay in proceedings has been requested by the Council but Oxfam are not prepared to agree to this. However, Oxfam have agreed to a four week extension for the disclosure of the Council's case, this date being 21 August 2015.
- 1.7 It has been reported to the Council in March 2015 by Oxfam that Councillor Gottlieb had invited them to bring the facts of the situation (*the proposed lease renewal*) to his attention and that they thought that he would wish to consider how the matter was dealt with.

## 2 Development Potential

- 2.1 If the Silver Hill scheme is proceeded with, it is likely to improve the footfall in the lower section of the High Street, particularly as the buses will be diverted away from this area. There is the potential for the property in the lower section of the High Street to increase in value, as a result of the increased footfall.
- 2.2 153 High Street is an unusual property, having been formed out of three small lock up shops, two of which faced onto Cross Keys Passage. The ground floor of the property is on two levels requiring steps to get from the lower to the upper level. The front part of the property is on ground first and second floors, while the rear part is on ground floor only. The property was substantially reconstructed and extended in the 1970's to deal with significant structural defects; during this reconstruction and extension the access to the upper floors was removed. A redevelopment would provide the opportunity to maximise the use of the Council's property.
- 2.3 On the assumption that the Silver Hill scheme does proceed, the opportunity will also exist to form an improved entrance to the development at this location. This has the potential to significantly increase the footfall past the building and hence increase its potential rental value. The Council also owns the adjoining property at 151, 151a and 152 High Street, consequently if it is possible to improve the footfall past 153, it will also have the potential to benefit those retail units as well.
- 2.4 As part of the 2014 revised Silver Hill scheme, it was proposed to incorporate 153 into the development. Planning permission for the demolition of the property and its redevelopment with a smaller retail unit of 43 sq m (G.E.A) with a maisonette of 66 sq m above on first and second floors was approved by the Planning Committee in December 2014. The application was separate from the Silver Hill scheme, but was approved subject to a Section 106 agreement to link implementation with the Silver Hill Scheme. This has not progressed, because the Silver Hill applications were sent to the Secretary of State, who has yet to decide whether to call in those applications.

### 3 CROSS KEYS PASSAGE

- 3.1 Cross Keys Passage is formed as a narrow link running from the junction of Silver Hill with Tanner Street in the north, to the High Street in the South. At the High Street end it passes between 153 High Street and Maison Blanc, 154. At the Silver Hill end it forms a slightly wider gap between Lloyds Chemists, and the RAOB Club. An electricity substation compound is situated behind Lloyds, siding on to the Passage.
- 3.2 Cross Keys Passage currently forms a narrow pedestrian link, based on the Saxon grid plan which is typical of the Winchester streetscape, meeting as it does with the main thoroughfare of the High Street. The jettied overhang of Maison Blanc, a Grade II listed C16th century timber framed building with a C18th century exterior, creates a confined pinch point of some character although this would appear to be the only point of any streetscape quality along the entire passage, all other buildings fronting the passage being of poor quality or rear elevations.
- 3.3 It was established that the narrowness of the passage is a relatively recent form, having resulted from the demolition of the original medieval building which stood on the site and its replacement with the Oxfam building in the early part of the 19<sup>th</sup> Century. Prior to that, research shows that the passage was much wider. The William Godson Map of 1750 amongst other documents shows clearly the wider gap between buildings at the High Street end.

### 4 PROPOSAL

- 4.1 It is proposed to demolish 153 High Street and to widen Cross Keys Passage to form an improved link to Silver Hill. Following the demolition of the property it would be the intention to replace the existing property with a new unit with retail on ground and potentially residential or office accommodation on first and second floors. The unit would be wider than that previously proposed and it would be designed to closely reflect the character of the properties in the High Street. The scheme would widen Cross Keys Passage to provide improved pedestrian accessibility to the new Silver Hill development and to take advantage of the increased pedestrian footfall resulting from the development.
- 4.2 It is proposed to appoint an architect to develop the design of a new property through to planning stage, and to appoint cost consultants and structural engineers to produce a cost appraisal in order to facilitate the preparation of a full business case.
- 4.3 It is anticipated that a capital budget not exceeding £400,000 will be required to undertake the demolition and new development and that this cost can be met from the resources available within the Property Reserve. Authority is sought for a supplementary capital estimate to enable the works to proceed as soon as the detailed business case is approved. A further report on the proposed development, including a financial options appraisal, will be

submitted to Cabinet when the feasibility study has been completed by the Consultants.

- 4.4 Proposals to widen the Cross Keys Passage will be carefully considered by the project team with the Historic Conservation officers.

## 5 OFFER TO PURCHASE THE PROPERTY

- 5.1 An offer to purchase the freehold of the property has been submitted to the Council by Councillor Gottlieb, based on a future community trust, in the sum of £750,000. Councillor Gottlieb has not indicated how he would pay for the property and the offer is attached at Appendix A.
- 5.2 The property is not for sale and forms a core part of the Council's estate. The resilience of Winchester as a retail centre is reflected by its historic rental performance. During the recession other retail centres saw a fall in prime retail rents of up to 30% during the recession, while Winchester only experienced a marginal decrease. From a peak of £170 sq ft in 2008, prime rents declined to £160 sq/ft in 2012. This dip in rents has already recovered and prime rents are now exceeding the peak levels encountered before the recession began to bite; this performance has not been seen in many other centres.
- 5.3 IPD data demonstrates that retail rental performance in Winchester continues to exceed both national and regional averages. Winchester was one of a few retail centres in the UK which did not experience falling rental values during the recession. In 2009 rental growth of 0.9% was recorded in Winchester and while this was lower than long term averages, it was a far better performance than both the South East (-3.4%) and the UK(-6.7%) Retail rents fell in the South East for the period from 2009-2012, while underlying rents in Winchester grew by 6.5%. Retail rents in Winchester are forecast to grow at an annual average of approximately 3.4% over the next five years, compared to a figure of 2.7% for the South East.
- 5.4 The offer does not reflect the long term value of the property to the Council and disposal would prevent the redevelopment of the property and limit the impact of the Silver Hill scheme on rental values of other Council-owned properties in this section of the High Street.
- 5.5 A sale of the property to Cllr Gottlieb at £750,000 would not therefore reflect on the long term value of the asset to the Council and would deprive it of an income stream. It is therefore recommended that the offer from Cllr Gottlieb is rejected.

## 6 LEGAL IMPLICATIONS

- 6.1 The Head of Legal and Democratic Services comments that under the 2014 proposal, 153 High Street was to be included within the wider Silver Hill scheme and redevelopment of the property was to be undertaken by that developer. In view of the legal challenge to that scheme and the subsequent

High Court decision, it is not considered prudent to seek to negotiate with the Silver Hill developer to re-develop the 153 High Street site.

- 6.2 However, for the reasons set out above, it would be of advantage to the Council in maximising the value of its estate to redevelop 153 High Street, to coincide with any redevelopment of Silver Hill. The Council has powers to seek regeneration of an area for planning purposes under Part IX of the Town and Country Planning Act 1990. It also has powers under the Local Authorities (Land) Act 1963 to erect buildings on land for the benefit or improvement of its area. The power of general competence under the Localism Act 2011 can also be used for economic regeneration.
- 6.3 The Council would seek to grant leases of the proposed units on a commercial basis at best consideration, or if residential, on a long leasehold sale, again at best consideration under S 123 Local Government Act 1972. In these circumstances, although the development of 153 High Street may also indirectly be of benefit to the wider Silver Hill redevelopment, no issue of state aid would arise.
- 6.4 The approval of Cabinet and Council to the new scheme for 153 High Street would be highly relevant to the current Landlord and Tenant proceedings. It would demonstrate the Council's intention to redevelop and the need for a redevelopment break clause in a new lease.

#### OTHER CONSIDERATIONS:

##### 7 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 7.1 The proposal would assist in the wider regeneration of this area and would also maximise the potential of the Council's asset.

##### 8 RESOURCE IMPLICATIONS:

- 8.1 This asset is included on the Council's Balance Sheet at a value of £1.19m at 31 March 2015, and provides £54,000 annual rental income in the baseline budget. The Property Reserve balance at 31 March 2015 as £1.938m.
- 8.2 Up to £35,000 is proposed to be spent from the Asset Management budget for the development of the business case.
- 8.3 It is not possible to assess the full financial implications of this proposal on the Council's finances until the business case has been prepared, which will be fully assessed when authority to incur capital expenditure is requested, in accordance with Financial Procedure Rule 6.4.
- 8.4 The project would be undertaken by the Estates team with assistance from the Historic Environment team, the Head of Legal and Democratic Services and an external consultants team. The Finance team would be required to undertake the financial appraisal and advise on the financial consequences to the Council and any VAT considerations.



## 9 RISK MANAGEMENT ISSUES

- 9.1 There is a risk that the Court would not support the inclusion of a break clause for redevelopment in the lease. This risk can be mitigated by demonstrating the intent of the Council to redevelop the property.
- 9.2 Until the business case is developed the financial viability assessment cannot be undertaken, and there is therefore a currently unquantifiable risk that the costs outweigh the perceived benefits. This will be addressed when the business case and options appraisal is undertaken.
- 9.3 There is a risk that planning permission or other statutory consents are not granted. This risk can be mitigated by employing a suitably qualified Architect to work with the Historic Environment team to design a high quality replacement building.

### BACKGROUND DOCUMENTS:

Appendix A below.

### APPENDICES:

Appendix A – Offer from Councillor Gottlieb, based on a future community trust.

**From:** Kim A Gottlieb [<mailto:> ]  
**Sent:** 24 June 2015 16:27  
**To:** [SMiller@winchester.gov.uk](mailto:SMiller@winchester.gov.uk)  
**Subject:** FW: 153 High Street, Winchester

Dear Steve

I would be very grateful if you would acknowledge receipt of the email below.

Regards Kim

**From:** Kim A Gottlieb  
**Sent:** 22 June 2015 15:58  
**To:** 'SMiller@winchester.gov.uk'  
**Subject:** 153 High Street, Winchester

Dear Steve

The correspondence below relates to an offer I made last year to acquire the Council's freehold interest in 153 High Street, presently occupied by Oxfam.

I now write to renew my offer, but this time with a figure in absolute terms.

My offer is £750,000 (seven hundred and fifty thousand pounds) and is made subject to contract only.

Please note that although it is intended that the property will ultimately be owned by a community trust, the progress of my proposed transaction is not reliant upon the completion of the formation of the trust or its funding arrangements.

Regards Kim

Kim A Gottlieb

**From:** [KWarren@winchester.gov.uk](mailto:KWarren@winchester.gov.uk) [<mailto:KWarren@winchester.gov.uk>]  
**Sent:** 03 November 2014 15:17  
**To:** [kgottlieb@winchester.gov.uk](mailto:kgottlieb@winchester.gov.uk)  
**Subject:** 153 High Street, Winchester

Dear Councillor Gottlieb,

The Leader has copied to me an email you sent to him and all Members on the 10<sup>th</sup> October 2014 containing what appears to be an offer to purchase the freehold of the Council owned property at 153 High Street Winchester for your own purposes and at your own expense.

I note that you have not made any approach through the usual channels that would be expected for an offer to purchase property from the Council.

I have no instructions to dispose of this property except as an integral part of the Silver Hill regeneration scheme and do not expect to receive any.

Regards,

Kevin

**Kevin Warren**

Head of Estates  
Winchester City Council  
Colebrook Street  
WINCHESTER  
SO23 9LJ  
01962 848528

**From:** Kim A Gottlieb [<mailto:> ]  
**Sent:** 10 October 2014 06:14  
**To:** Cllr Robert Humby  
**Cc:** \_Members - All  
**Subject:** Silver Hill and Oxfam - Subject to Contract and Without Prejudice

Dear Rob

While the Court's initial decision is disappointing, there is every good reason to continue with the legal process, but more of that anon.

In the meantime, I would draw your attention to the specific matter of 153 High Street, a property presently owned by WCC but recently included in the proposed Silver Hill development.

It might marginally enlarge one point of access between the new development and the High Street, but it was not part of the previously consented scheme and there is no necessity for its inclusion now.

Its inclusion does, however, unfortunately result in 1) the eviction of Oxfam, 2) the destruction of a medieval townscape feature, and 3) a poor financial return for WCC.

I am prepared to offer WCC a capital payment for its freehold interest of £100,000 more than what it is receiving from Henderson (ie the capitalised rent). If this offer is accepted, I will set up and arrange funding for a Trust that will own the property, retain the medieval archway to Cross Keys passage and grant Oxfam a new lease on normal commercial terms, so that it can carry on trading and doing the excellent work it does.

I have in mind that the Trustees might comprise former Winchester Mayors and that any future surplus income might be given to the Mayor's charities, but on these arrangements I am open to suggestion.

I look forward to hearing from you shortly.

Regards Kim

Kim A Gottlieb  
Winchester City Councillor  
For Itchen Valley