

REPORT TITLE: DEVELOPMENT APPROACH - NEW DOCTORS' SURGERY

24 JUNE 2020

REPORT OF CABINET MEMBER: Cllr Learney - Cabinet Member for Housing and Asset Management

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PURPOSE

In July 2019 Cabinet authorised the progression of work on the new surgery scheme, including detailed work on a lease with the St Clements' GP practice, and subsequent to that further design and development work for the project.

Joint work with the GP practice, Clinical Commissioning Group (CCG), district valuer and professional advisors, and an assessment of the financial implications of changed borrowing rates, led to consideration of alternative delivery approaches.

In order to enable build to happen as efficiently as possible, and to minimise risks and further delays to the Council and GP Practice, this report identifies an alternative delivery method via a sale of the site to a specialist primary healthcare developer. Approval is therefore sought to select a preferred specialist primary healthcare developer and to sell the freehold or long leasehold interest in Upper Brook Street Car Park.

RECOMMENDATIONS:

1. Approve the freehold or long leasehold disposal of the Upper Brook Street car park to a specialist primary healthcare developer to enable delivery of a new doctors surgery, instead of direct development by the Council.
2. Approve the arrangements detailed in this report for the marketing and selection process for disposal of the Upper Brook Street car park site.
3. Authorise the Strategic Director – Place to undertake marketing and the selection process for disposal of the Upper Brook Street car park site, in

consultation with the Cabinet Member for Housing and Asset Management, based on the disposal methodology set out in this report, involving a shortlist of specialist primary healthcare developers.

4. Authorise the Strategic Director – Place in consultation with the Cabinet Member for Housing and Asset Management to select a preferred purchaser and negotiate and agree suitable heads of terms.
5. Authorise the Service Lead Legal to enter into legal agreements to dispose of the site to deliver a new doctors surgery.
6. Agree that final Cabinet approval is to be sought to approve the final heads of terms and the appointment of the preferred purchaser.

IMPLICATIONS:**1 COUNCIL PLAN OUTCOME****1.1 Tackling the Climate Emergency and Creating a Greener District**

The new medical facility will be constructed to meet BREEAM Excellent standards as a minimum (a condition of planning consent). The successful purchaser of the site will be encouraged to exceed this standard where possible to meet the Council's emerging Net Carbon Zero initiative.

The site is located within the city centre; access is possible by foot and the bus and train stations are short walking distances away. Travel to the site by car is therefore unnecessary; there will be minimum parking bay requirements (e.g. disabled bays).

1.2 Vibrant Local Economy & Living Well

Provision of a new building used by doctors and healthcare workers will contribute towards the physical and economic regeneration of Winchester City centre. It will serve as an important new centre of excellence and provide a hub of services to support the health and wellbeing of residents.

2 FINANCIAL IMPLICATIONS

2.1 In July 2019 (CAB3180) Cabinet approved a revised budget of £4,526,000 for the construction of a replacement to St Clement's surgery. To date, just under £200,000 has been spent on pre-construction fees including architects, structural engineers, planning, survey and environmental fees. This sum also includes the retaining boundary wall that was installed as a planning condition.

2.2 In the February 2020 Capital Strategy, the revenue consequences were revised and it was estimated that, following completion, a small surplus of £13,000 per annum would be generated after allowing for borrowing costs and estimated lost net income from the closure of the Upper Brook Street car park.

2.3 Following a review of the feasibility and capability of the council to deliver this specialised building, a soft market testing exercise (by means of expressions of interest) was undertaken to determine whether market interest existed to deliver a new surgery independently of the council. Based on the expressions of interest received, a financial appraisal of the leasehold and freehold options has been undertaken and is provided at exempt appendix 1. This indicates that a freehold disposal is of more value to the council; however, a further appraisal will be required prior to any actual disposal.

2.4 It is assumed that the capital receipt on disposal will be used to fund the expenditure to date with the balance remaining to reduce the cost of borrowing associated with other capital projects. After allowing for estimated

lost car park income, a disposal is estimated to result in a small annual deficit of between circa £10,000 and £30,000 per annum rising with inflation.

- 2.5 However, the financial impact needs to be considered in the context of the risks to the council of constructing the surgery itself. In addition to the non-financial risks, disposal transfers the risk of any increase in the cost of construction. For example, a 10% rise in the cost of construction would add an estimated £20,000 per annum to the cost of borrowing turning an estimated small surplus to a deficit. Disposal would also avoid the cost of borrowing in 2021/22 (estimated at £100,000) during construction and before any income is generated.

Further detail is provided in exempt appendix 1.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 This report recommends a land disposal by the Council and Council has authority to dispose of land under the general power of competence provided for in section 1 of the Localism Act 2011, and section 123 of the Local Government Act 1972.
- 3.2 The Public Contracts Regulations 2015 (PCR 2015) oblige the Council to pursue an OJEU process where works above a value of £4.733m are being procured. The PCR 2015 will also not apply where the main object of the transaction is land disposal. In cases where the value of the works is above the threshold value, the PCR 2015 will require an OJEU process only if the purchaser is under an enforceable obligation to carry out specified works (conferring a pecuniary benefit on the authority). Here, the works involved fall below this threshold and the Council will only require the purchaser to carry out development in accordance with the planning consent (and related requirements), with the main object of the transaction being a land disposal. Notwithstanding that the new facility involves construction costs below the threshold (above), the Council will not specify the design or impose any requirement to carrying out the works.
- 3.3 In pursuing an agreement with the purchaser the Council will observe its statutory duties, including the duty to obtain best consideration on the land disposal, and duties to consult. By carrying out an appropriate competitive process to select a purchaser to acquire the site, the Council will be in a stronger position to demonstrate compliance with the statutory duty to obtain best consideration.
- 3.4 Legal risks include a potential challenge brought under PCR2015 on the basis of ineffectiveness and a risk of judicial review challenge to the process being outside the PCR 2015. Recent case law establishes the tests to be applied for bringing successful challenges. In order to mitigate the risk of any challenge, the Council should follow the procedural steps below:
- a) Ensure a fully documented audit trail to justify the transaction being undertaken outside the PCR2015 is maintained;

- b) Conduct a competitive process to select a purchaser which clearly demonstrates the intention to enter into a land transaction subject to the PCR 2015;
- c) Ensure that the legal agreement entered into satisfies the relevant tests for being a land sale and is not a contract for works or services; and
- d) Critically, advice will be taken from the legal and procurement team at each relevant stage of the process.

4 WORKFORCE IMPLICATIONS

- 4.1 The recommended approach to disposal of the site will be managed within existing resources, supplemented with expert advice as required.
- 4.2 If the council were to directly develop the site, additional fixed term resource would be needed to supplement the establishment to manage the detailed design process and secure agreement with the GP's, CCG, Valuation Office and NHS England, which will be a time consuming and complex process.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 Delivering a new surgery via a sale of the site to a suitable developer would require a freehold or long leasehold disposal. In both cases a capital receipt would be secured albeit with a discounted sum for a long leasehold sale.
- 5.2 A freehold sale would generate the highest current value and remove all the development risk associated with a direct development by WCC.

CONSULTATION AND COMMUNICATION

- 5.3 A strong collaborative relationship has been cultivated with the GP practice who are keen to secure new premises.

The planning process to secure planning permission included consultation with key stakeholders.

6 ENVIRONMENTAL CONSIDERATIONS

- 6.1 The existing surgery building in Tanner Street was built in the 1970's when the environmental performance of buildings was given very limited consideration. The NHS requires new buildings to deliver a high environmental performance.
- 6.2 The location of the health facility in the city centre will mean that it remains accessible to a wide section of the local community. During the design process careful consideration was given to the impact of the design on the neighbouring environment.
- 6.3 The decommissioning of the existing surgery will bring the opportunity of building a state-of the art BREEAM accredited surgery, with the ambition of

being a net-zero emission building. The building will be designed to minimise heating and cooling demand; enabling the demand to be matched by the on-site generating technologies, including heating fed by renewable sources and electricity generated by solar panels.

- 6.4 The site will be built to include a biodiversity net gain of greater than 10%.
- 6.5 Access to the surgery will be encouraged by foot, minimising emissions and air quality issues from car transport to the site. Parking on-site will be limited to minimal requirements to ensure disabled access

7 EQUALITY IMPACT ASSESSEMENT

- 7.1 Location of the proposed health premises in the City Centre will enable health services to be accessed by a wide range of the local community, including those who have to rely on public transport.
- 7.2 In relation to Article 1 of the First Protocol of the European Convention of Human Rights, there is a case in the public interest to continue to facilitate this development and, as demonstrated by the Council the delivery of improved health facilities in the city centre and the procuring of a delivery partner to deliver the health facilities is important to the continued well-being of residents both within the immediate community and those with access to and reliant upon public transport.

8 DATA PROTECTION IMPACT ASSESSMENT

- 8.1 None required at this stage of the process. However data protection is ongoing and will be continuously re-evaluated, in particular throughout the selection process.

9 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property The preferred developer cannot reach agreement with the GP Practice and other parties.</i>	WCC to support where possible and undertake direct development if developer route fails	
<i>Community Support GP Practice do not agree to HOTS</i>	Collaborative working in place	
<i>Timescales Developers may insist on a finite period in which to reach agreement with all</i>	WCC to support where possible.	

<i>parties.</i>		
<i>Project capacity</i>		
<i>Financial / VfM</i> An increase to the capital cost or the cost of borrowing could move the project to an annual net cost.	Selling the site to a specialist developer removes this risk	
<i>Legal</i> <i>Challenge brought under the PCR2015 or a judicial review</i>	Seek legal advice continually through the process	To ensure a sound disposal process and new doctors surgery
<i>Innovation</i>		
<i>Reputation</i> <i>Further unnecessary delay will not reflect well on WCC</i>	WCC to support where possible	This alternative delivery route is intended to avoid further delays by using specialist knowledge and experience
<i>Other</i>		

10 SUPPORTING INFORMATION:

Cabinet Report History:

- 10.1 The Council has long held an aspiration to support provision of improved health care premises in the city centre. Under CAB 2964 of 12 September 2017, Cabinet authorised: the development of the surgery, the grant of leases to the Practice and Lloyds Pharmacy, the appointment of Architecture PLB to design the surgery up to RIBA Stage 4, the appropriation of the land to planning purposes, the closure of the car park, the appointment of consultants and contractors and to accept tenders for the construction works.
- 10.2 Under CAB 3180 of 17th July 2019, Cabinet authorised: the provisionally agreed outline terms for letting the surgery; an increase in the budget of £250,000; an alternative health use to be found for the 'pharmacy' space; design to be developed to facilitate tendering of the works; the appointment of a full consultant team; obtain construction tenders; and appointment of building contractors.

Current Position

- 10.3 Planning consent was implemented by the construction of a boundary retaining wall in 2019.
- 10.4 In February 2020 the revenue consequences of the project were revised as part of the capital strategy and the estimated surplus in the first full year following completion reduced to circa £13,000 per annum from the £43,000 reported in CAB 3180.

- 10.5 Following meetings in February 2020 with the St Clements GP practice and the Clinical Commissioning Group (CCG), the Property team undertook a review of lease terms and the build arrangements for the new surgery. As part of that work, procurement options and risks associated with the delivery of a new 17,000 sq ft doctor's surgery on the Upper Brook Street car park have been considered in detail.
- 10.6 It was evident that (i) build costs are rising and this would be a risk for the council, (ii) there is potential for a long void on the pharmacy space without rental income, (iii) the process for agreeing CCG funding and sign off as a pre-cursor to completing an Agreement for Lease with the GP Practice, is complex, protracted and requires specialist experience and knowledge. The council does not have this experience or resources, (iv) there are specialist primary healthcare developers in the market far more capable of delivering a new surgery in accordance with the planning consent obtained.
- 10.7 The conclusion has been that in order to enable build to happen as efficiently as possible, and to minimise risks and further delays to the Council and GP Practice, a third party delivery method is preferred via a sale of the site to a specialist primary healthcare developer.
- 10.8 PLB Architects high level drawings were sufficient for the planning application but a detailed building specification has yet to be prepared and agreed. It will be important that the GP partners are advised professionally on the detailed specification. The GP practice has now appointed a Surveyor to act for them.
- 10.9 The District Valuer (DV) has seen draft HOTs and has given advice to the CCG on likely level of rent to be reimbursed. Because this is below the Current Market Rent (CMR) the CCG have agreed in principle to provide a supplement to bring it to the level approved in the July 2019 Cabinet Report. There is no guarantee this will prove adequate if building costs increase.
- 10.10 Hampshire NHS Hospital Trust has shown positive interest in the surplus accommodation of 127 sq m (previously to be occupied by the pharmacy) but there has been no specific user identified.
- 10.11 A detailed cost plan will not be available until a full specification is prepared and agreed after an internal re-design of the space. A re-design of internal space is required because the existing layout is now five years out of date and the coronavirus pandemic has meant that further revisions are necessary for infection control purposes.
- 10.12 Outline HOTs were provisionally agreed with the GP partner's but have been reviewed by the new Surveyor and require amending.
- 10.13 A draft Building Agreement and Agreement for Lease was issued by WCC lawyers last year and the GP lawyers submitted a draft lease to WCC at the end of December 2019.

11 Review of outstanding actions and risks

11.1 The Council had previously intended to develop the site for the GPs but this presents a number of risks.

Risk	Action required
Ground conditions	Additional surveys required
Freehold held under multiple titles	To be verified
Tenant fit out	Specification and obligations of parties to be agreed
Full detailed design and cost plan to be completed	Specification and costs tba by all parties
Lease Heads of terms with GP Practice	tba
Building Agreement	Tba with all parties
Lease documentation and Agreement for Lease	Tba with all parties
Full design team costs	Team to be appointed. Cost at risk until Agreement for lease is completed
Viability and rising build costs	Further appraisals required when detailed cost plan is available. Viability final sign off required with CCG, Valuation Office and NHS England. .
CCG, Valuation Office and NHS England approvals	Required for detailed specification/cost plan and Agreement for lease, occupational lease and building agreement. Specialist experience required.
Planning application for previous pharmacy space	Change of use application required.

Therefore an alternative proposal of disposal of the land to an experienced primary health care facility developer has been evaluated

11.2 Construction and management of buildings occupied for medical purposes have their own unique challenges where specialist knowledge and experience is required. Public health sector funding presents numerous hurdles and bureaucratic processes to navigate, often involving multiple stakeholders and gatekeepers. The buildings themselves have to be designed to be compliant in different ways such as for infection control, utility services, waste disposal, privacy, security and accessibility. The current pandemic means that many of these specifications are evolving and are being addressed by specialists in the sector.

11.3 In March this year, a soft-market testing exercise was undertaken (by means of interviews and expressions of interest) and four of the UK's largest and most experienced primary healthcare developers were shortlisted and invited to interview by WCC and the GP practice. The developers were asked to

present their approach to developing a new surgery. This was very helpful and revealed how much work there is yet to be done to secure CCG funding, negotiate and complete legal agreements and redesign the interior of the new building.

- 11.4 Expressions of Interest were subsequently sought from all developers attending the interviews plus a non-specialist developer put forward by the GP Practice. The responses have confirmed a positive interest in acquiring the Upper Brook Street site for construction of a doctor's surgery. There are relatively few specialist primary healthcare developers in the UK due to the complex funding nature of this market and the unique building design involved. For this reason, the soft market testing undertaken and Expressions of Interest sought was limited to four of the largest and most experienced developers. Two of these developers eventually declined to submit expressions of interest.
- 11.5 The recommendation is that the marketing shortlist of developers be limited to the three developers who submitted expressions of interest, two of whom are specialist primary healthcare developers. The third is a developer that the GP practice has put forward as their preferred developer.
- 11.6 This approach will save time in selecting a preferred partner and avoid the unnecessary complication and delay of inviting bids from inexperienced developers.
- 11.7 A S123 valuation report would be secured from a specialist valuer to make sure that a preferred offer for sale of the site is for best consideration.

12 **Funding and documentation complexities**

- 12.1 The following section explains the complex process necessary for agreement with public health bodies before construction works can be tendered and construction works started.
- 12.2 Primary Care Premises Funding changed in 2004 when a new GP contract was introduced and this affected the way new surgeries were procured. The rent and rates reimbursement element of GP costs became cash limited at this point which had the effect of giving the NHS total control to curb new expenditure on GP premises.
- 12.3 The process of developing new premises is now governed by the NHS (General Medical Services – Premises Costs) Directions 2013. (This is currently subject to review by NHS England who published a General Practice Premises Policy Review in June 2019. One of the recommendations is to pilot a 'new premises provision' by removing the current bureaucratic reimbursement system. This means that the mechanics of how rent is paid could possibly change in the foreseeable future and may affect lease drafting).

12.4 At the start of any new development an outline business case must be submitted to the CCG. If approved in principle then a full business case has to be prepared for further approval and must include plans, specification, costs and a reasoned argument as to why the project is good value for money. There is considerable onus on the GP partners to address technical and financial detail and this often slows the process down or can lead to inadequate business cases being submitted. The most successful schemes are where GP partners are represented by property professionals.

12.5 Following approval of the full business case, the process then moves on:-

1. An agreed draft lease has to be forwarded to the CCG, who then send this to the District Valuer (DV) with a request for their advice on the terms of the lease. The DV does not always agree the detailed provisions of the lease which makes further negotiations a protracted undertaking. .
2. A full set of plans and a specification is also sent to the CCG for approval. They will take advice from NHSE (NHS England) in this regard before giving approval.
3. If the GP's (and the landlord) agree to the changes in the terms of the lease suggested by the DV, then the CCG will ask to DV to prepare a valuation in relation to the rent to be paid by the partners for the premises. The landlord can make representation in this regard, or even meet with the DV to discuss, but the DV is not obliged to talk to anyone other than the NHS
4. There is no appeal on the DV's estimated initial rent.
5. If the rental assessment is accepted then the CCG will write to the GP's setting out the terms upon which rent and rates will be reimbursed to them, and the level of that rent.
6. At practical completion of the building, the DV will visit and measure to assess the Net Internal Area (NIA) for rental purposes. The NIA is achieved by removing certain areas, different to that of an office – eg. patient WC's are included. It is therefore up to the Developer to ensure that the building is constructed accurately because the estimated initial rent can go down, but not up!

13 OTHER OPTIONS CONSIDERED AND REJECTED

13.1 Direct Development by WCC remains an option but is considered to have an unacceptable high risk due to the potential for increases in construction costs and further delays in agreeing documentation with multiple parties. The risks have been highlighted above and distil to financial risk and the council not having the necessary experience in primary healthcare development.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB 3180 Replacement GP Surgery update – 17 July 2019 (part exempt)

CAB 2964 Replacement Doctors Surgery, Winchester - 12 September 2017 (part exempt)

CAB 2786 St Clements Doctors Surgery, Winchester - 29 March 2016 (part exempt)

CAB 2709 St Clements Surgery, Winchester - 17 September 2015 (Exempt)

CAB 2609 Silver Hill Update - 10 September 2014 (part exempt)

Other Background Documents:-

None.

APPENDICES:

Exempt Appendix 1 – Financial Appraisal