

REPORT TITLE: UPPER BROOK STREET CAR PARK SITE SALE FOR DEVELOPMENT OF NEW DOCTOR'S SURGERY

16 DECEMBER 2020

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

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WARD(S): [ST MICHAEL]

PURPOSE

This report follows the approved recommendations of Cabinet Report CAB3247 24th June 2020 where the process of shortlisting purchasers to develop the new surgery was approved.

A bidding and selection process has been concluded and Cabinet approval is now sought in accordance with Recommendation 6 of Cab3247, to progress the development of the new doctor's surgery by disposal of the site to the preferred purchaser.

RECOMMENDATIONS:

1. Approve the 150 year long leasehold disposal of the Upper Brook Street car park to the preferred purchaser.
2. Delegate to the Strategic Director - Place in consultation with the Cabinet Member for Housing and Asset Management, final negotiation and sale based on the draft heads of terms in Appendix 3 and for the Service Lead Legal to prepare, agree and enter in to all the relevant and necessary agreements.

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

1.3 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 The council will receive a capital receipt of £930,000 for the disposal of the long leasehold - 10% on exchange of contracts in 2021 and 90% on practical completion in early 2023.

2.2 It is assumed that the capital receipt on disposal will be used to fund the expenditure to date with the balance remaining used to reduce the cost of borrowing associated with other capital projects. In CAB3247, it was estimated that the disposal would result in a small annual deficit between £10,000 and £30,000 depending on the offer received. After allowing for estimated lost car park income, the actual disposal is estimated to result in an annual deficit of circa £25,000 per annum rising with inflation, with the exception of the 2022/23 financial year. Prior to receipt on practical completion but after the car park is closed, the council will incur an estimated £54,000 deficit in 2022/23.

2.3 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 during the construction phase (estimated at circa £100,000) and before any income is generated. In addition to the risks associated with direct development, there would be considerable additional expense incurred in Officer's time if the

Council undertook the development. These additional costs would outweigh any potential marginal surplus previously envisaged.

- 2.4 Further information is provided in the financial appraisal at appendix 1.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The 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. The disposal being recommended would therefore be a lawful exercise of these powers.
- 3.2 On a land disposal the Council has an obligation to obtain the best consideration reasonably obtainable (section 123 Local Government Act 1972). That best consideration can be established by way of a competitive process or by valuation exercise (or both). In this case the Council is able to satisfy the duty by reference to and reliance on the outcome of the competitive process carried out, but will also gain assurance by way of separate valuation advice.
- 3.3 The disposal of the site will be in anticipation of the delivery of the new surgery in accordance with planning consent. The Council will enter into the leasehold sale on terms which make the grant of lease subject to the purchaser also entering into an agreement for lease with the GP Practice. The Council will not be specifying the works to be carried out or otherwise contracting on terms which engaged a requirement on the Council to go through a procurement exercise under the Public Contracts Regulation 2015 (PCR). Moreover, the expected value of construction work to be carried out by the purchaser falls marginally below the threshold for works under the PCR (and therefore would most likely not be subject to those requirements in any event).
- 3.4 Legal risks include a potential challenge by reference to the duty to obtain best consideration, under the PCR, based on other failure in public law (such as the duty to consult or on equality grounds), or because the Council is acting unlawfully with regard to general principles such as fiduciary duty. There may also be a risk that unsuccessful bidders for the acquisition of the site (including those that withdrew) take action on the basis that the process was in some way flawed.
- 3.5 With regard to these risks, the Council has taken and followed legal and procurement advice and has mitigated (and will continue to mitigate) these risks by:
- a) Conducting a robust and fair competitive process to select a purchaser, also taking separate valuation advice to demonstrate of achievement of best consideration and the intention to enter into a land transaction. Ensuring that the legal agreement entered into will satisfy the relevant

tests for being a land sale and is not a contract for works or services governed by the PCR;

- b) Taking all necessary advice in the conduct of the sale process, including the evaluation of tenders for purchase of the land; and
- c) Consulting with relevant parties and stakeholders.

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 St Clements GP Practice (GP's), NHS North Hampshire Clinical Commissioning Group (CCG), Valuation Office and NHS England, which will be a time consuming and complex process.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 As predicted in the June Cabinet report CAB3247, the bids received reflected a significant discount on value for a ground lease subject to an annual rent. However, only a small discount was applied by Bidders for a ground lease subject to a peppercorn payment. The bidder evaluation details are set out in Exempt appendix 2 and highlight the offers made. Following second round clarifications and best and final offers, the preferred purchaser discounted their long leasehold (peppercorn rent) bid by only £5,000 when compared to their freehold offer. The advantage to the Council of retaining a freehold interest is that the land and buildings will revert to WCC at the end of the lease term and permit a further sale of the site in the future.
- 5.2 The preferred bidder is a specialist, market leading, primary healthcare developer with the necessary experience and resources available to acquire the site and meet the Council's aspirations for the provision of a new City Centre medical centre.

CONSULTATION AND COMMUNICATION

- 5.3 The tender selection and evaluation process was undertaken in partnership with key stakeholders including the St Clements GP practice and the Clinical Commissioning Group. The conclusion reached and recommendation of preferred purchaser has been unanimous.

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 The 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. The public sector equality duty will be taken into consideration in the design of the proposed health facilities which provide an important service to the vulnerable sectors of our community.
- 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.

9 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property</i> <i>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	The preferred purchaser is very experienced in these negotiations with GP's and other stakeholders.
<i>Community Support</i> <i>GP Practice do not agree to HOTS</i>	Collaborative working in place	
<i>Timescales</i> <i>Developers may insist on a finite period in which to reach agreement with all parties.</i>	WCC to support where possible.	
<i>Project capacity</i>	N/a	
<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 the provision of a new health facility
<i>Innovation</i>	A specialist healthcare developer has been selected.	
<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.
- 10.3 Under CAB 3247, Cabinet approved:
- The marketing and site disposal through freehold or long leasehold of the Upper Brook Street car park to a specialist primary healthcare developer to enable delivery of a new doctor's surgery, instead of direct development by the Council. That final Cabinet approval would be sought to approve the final heads of terms and appointment of the preferred purchaser.

Progress to date and other relevant information:

- 10.4 Planning consent was implemented by the construction of a boundary retaining wall in 2019 which means that the consent is secure.
- 10.5 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.
- 10.6 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, disposal options and risks associated with the direct delivery of a new doctor's surgery on the Upper Brook Street car park were considered in detail.
- 10.7 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.

- 10.8 The conclusion was that in order to facilitate construction to happen as efficiently as possible, and to minimise risks and further delays to the Council and GP Practice, a third party delivery method was preferred via a sale of the site to a specialist primary healthcare developer.
- 10.9 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 their detailed specification (as this will be part of the sub-lease they enter into with the purchaser of the site). The GP practice has now appointed a Surveyor to act for them.
- 10.10 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.
- 10.11 A detailed cost plan will not be available until a full specification is prepared and agreed after an internal re-design of the space by the developer and GP Practice. 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 for the occupational lease were provisionally agreed with the GP partner's but have been reviewed by their new Surveyor and require amending. The preferred bidder would now issue their own lease documentation to the GP Practice.
- 10.13 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.
- 10.14 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.

- 10.15 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 confirmed a positive interest in acquiring the Upper Brook Street site from the Council. 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.
- 10.16 The recommendation approved in June 2020 was 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 put forward as their preferred developer.
- 10.17 This approach saved time in selecting a preferred partner and avoided the unnecessary complication and delay of inviting bids from inexperienced developers.

11 **Summary of Sale Invitation Process and Conclusion:**

- 11.1 A selection panel comprising the Council, St Clements GP Practice, and the CCG was set up to review the terms of offers received.
- 11.2 Sale invitation documents were issued to the three shortlisted purchasers on 10th August 2020 with offers being received on 14th September.
- 11.3 Offer evaluations were undertaken in two rounds of clarification questions and meetings.
- 11.4 Following the first round of clarifications, it was unanimously agreed by the selection panel that the lowest bidder did not have sufficient experience of developing primary healthcare facilities which meant they were disqualified from the process.
- 11.5 The clarification process revealed that the November 2019 CCG letter regarding rent reimbursement to the GP Practice was incorrect and overstated the rent by approximately £20,000 pa. This was relayed to the two remaining bidders because it had a negative impact on the scheme viability. As a result, one bidder declined to respond in time to the second round of clarification questions and effectively disqualified themselves from the process.
- 11.6 The preferred bidder responded positively with only a marginal adjustment to their long leasehold offer (reduced from £950,000 to £930,000).

11.7 A S123 valuation report will be secured from a specialist valuer to demonstrate best consideration prior to entering into an agreement to dispose.

12 **Primary Care 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. Assuming that detailed design and legal documentation for the St Clements GP Practice lease can be completed by the summer of 2021, construction is anticipated to commence in Spring 2022.

13 OTHER OPTIONS CONSIDERED AND REJECTED

- 13.1 Direct Development by the Council 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:

Appendix 1 – Financial Appraisal

Exempt Appendix 2 – Bids and Evaluation Summary

Exempt Appendix 3* – Draft Heads of Terms (HOTs)

* A summary of the heads of terms is attached as Exempt Appendix 3. These are highly commercially confidential and therefore limited in their circulation. For further information or clarification please contact Catherine Knight – Service Lead: Legal.