

REPORT TITLE: STATION APPROACH - SITE DISPOSAL PROCESS

18 SEPTEMBER 2019

REPORT OF CABINET MEMBER: Cllr Anne Weir, Cabinet Member for Local Economy

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WARD(S): ST PAULS / ST BARTHOLOMEW

PURPOSE

The Council has been leading the development proposals for the Station Approach Carfax site. This is an opportunity for a market-leading, low carbon office building in the heart of the city which will underpin the city centre economy for decades to come, creating a new vibrant employment hub and a catalyst for future regeneration opportunities.

Cabinet considered a report on 28 August and determined to dispose of the Carfax site to a selected purchaser by way of a long leasehold, subject to agreed terms and conditions following a competitive selection process.

The selection process is contingent on the award of an outline planning consent. Subject to that being granted, the aim is to engage market innovation to deliver this high quality, exemplar, commercial development that sets a new regeneration standard for Winchester and the region.

It is proposed that a marketing and selection process is undertaken to find a purchaser, with the values, skills, expertise, and track record to enable them to deliver this development within the constraints of an outline planning consent, with appropriate conditions and reserved matters.

Prospective purchasers will be invited to submit bids in early 2020, and these will be assessed by the in-house team, advised by external experts.

Bids will be assessed in line with the methodology described in this report, with quality and financial considerations being taken into account. A recommendation will then be made to a future Cabinet, currently scheduled for March 2020.

**RECOMMENDATIONS:**

That, contingent on the granting of outline planning consent, Cabinet:

1. Approves the arrangements detailed in this report for the marketing and purchaser selection process for disposal of the Carfax site.
2. Authorises the Strategic Director – Place to finalise and undertake the marketing and purchaser selection process for disposal in consultation with the Cabinet Member for Local Economy, based on the disposal methodology set out in this report.
3. Requires the Strategic Director – Place to bring a report to Cabinet for a decision on the disposal of the site to a purchaser once the marketing and selection process has been completed.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 Successful regeneration of the Carfax site is central to delivering high value, private sector employment opportunities to support several themes in the Council Strategy (2018-20). It will be a landmark exemplar of sustainable office development in the heart of the city and act as a regeneration catalyst for other development and enhancements, as well as being of wider economic benefit to the city and district.

2 FINANCIAL IMPLICATIONS

- 2.1 The financial implications of the project were set out in detail in CAB3172 and are referenced as a Background Paper to this Report. At Cabinet on 28 August 2019 a revenue budget of £220,000 was approved to select a purchaser and undertake the disposal of the Carfax site. The detail of this budget is set out below.

**Table 1: Budget requirements to progress the disposal of the Carfax site through a selection process.**

<b>Work Area</b>	<b>Estimated Budget Requirement</b>
Legal fees	£75,000
Fees including for Strategic Consultant advisor, site marketing and purchaser selection process	£75,000
Design Team and Technical Consultants fees	£50,000
Contingency	£20,000
<b>Total Budget requirement for marketing and disposal</b>	<b>£220,000</b>

- 2.2 As part of the final decision on whether to dispose of the site, the Cabinet will need to consider the value of the capital receipts, or rental streams offered by prospective purchasers, alongside the non-financial benefits of the scheme. Demonstration of achieving best financial consideration will be a critical part of the selection process and decision.
- 2.3 Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land with the caveat that an authority must not do so for a consideration less than the best that can be reasonably obtained i.e. the best achievable price in the open market. If the Council can demonstrate that value is being received in other ways that justify the monies foregone to the public purse it may dispose of land at less than best consideration with the consent of the Secretary of State for Housing, Communities and Local Government. The recommended sale process will create competitive tension

between bidders and therefore an assurance that best consideration is being achieved.

- 2.4 In order to assess best consideration, the bids will be compared based on their Net Present Values (NPVs); i.e. comparing the various offers of initial capital receipt and the future lease rentals receivable over the life of the lease.

### 3 LEGAL AND PROCUREMENT

- 3.1 The Council has statutory powers to bring forward regeneration under the general power of competence provided for in Section 1 of the Localism Act 2011, and has powers to dispose of land under Section 123 of the Local Government Act 1972 and Section 233 of the Town and Country Planning Act 1990.
- 3.2 This report endorses the recommendation that the Council follow a competitive process leading to a decision by Cabinet on disposal of the site by way of land sale.
- 3.3 This is a land disposal not a procurement exercise. External legal advice has been obtained (Browne Jacobson LLP, CAB3172 - background document) which confirms the principle of such arrangements to be lawful. The advice is on the basis that the Public Contracts Regulations 2015 (PCR 2015) do not oblige the Council to pursue an OJEU process where the main object of the transaction is land disposal. Only where the purchaser is under an enforceable obligation to carry out specified works (conferring pecuniary benefit on the authority) will that obligation arise.
- 3.4 The proposal is to enter into an agreement where the main object is land disposal. No services are to be provided by the potential purchaser to the Council for payment. The proposed legal agreement transferring the land interests will regulate the transfer of the Council's land interest to the purchaser so that they may carry out the scheme based upon any outline planning permission granted for which they will secure reserved matters planning permission(s).
- 3.5 In pursuing the scheme and the agreement with the purchaser, the Council will observe its statutory duties, including the duty to obtain best consideration on the disposal of land, and duties to consult. By carrying out a competitive process to select a purchaser to acquire the site, the Council will be in a stronger position to demonstrate compliance with the duty to obtain best consideration.
- 3.6 Legal risks include a potential challenge brought under PCR on the basis of ineffectiveness and a risk of a judicial review challenge to the direct award. Recent case law establishes the tests to be applied for bringing successful challenges and the procedural steps below are proposed to mitigate these risks:

- Ensuring there is a fully documented audit trail to justify the transaction being undertaken outside of the PCR.
- Conducting the competitive process to select a purchaser in a manner which clearly demonstrates the intention to enter into a land transaction.
- Ensuring that the legal agreement entered into satisfies the relevant tests for being a land sale and is therefore not a contract for works or services.
- If/when an agreement with the selected purchaser is successfully negotiated, giving due consideration to publishing a “Voluntary Ex Ante Transparency” (VEAT) notice in the Official Journal of European Union (OJEU), describing the nature of the agreement to be entered into and the reasons for not publishing an OJEU Contract Notice.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 Project management will be led by the Council’s Head of Programme and project team, supported by contracted consultants. Significant input from the Council’s legal and financial teams will be required, supplemented, where appropriate, by external advisors.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The report sets out the recommended approach for a competitive selection process for the disposal of the Carfax site in accordance with the decision taken at Cabinet on 28 August 2019 (CAB 3172) for a long leasehold disposal, subject to terms and conditions.
- 5.2 The development of the Carfax site will set a new benchmark for the standard of future development opportunities in the City. The process of engaging with the market has so far been successful and will give investors confidence to consider further investment in the district should the opportunity arise.

#### 6 CONSULTATION AND COMMUNICATION

- 6.1 Scrutiny Committee on 14 August 2019 made comments on the report to Cabinet 28 August (CAB3172) that set out the outline route for disposal of the Station Approach site. The committee explored a range of matters in particular seeking a reserve value for the site disposal and reviewing marketing in light of uncertainty in the commercial property market in late 2019/early 2020 (see Appendix 3).
- 6.2 These matters were considered by Cabinet on 28 August 2019 and are addressed in the risk section and later in this report.

#### 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 The project brief identifies the Council’s objectives to support a low carbon economy. The BREEAM method of assessing the building design and

impacts will be used to measure and test the design as it evolves. The previous report to Cabinet on 28 August 2019 (CAB 3172) gave significant detail on this aspect of the project and that is not repeated here. It is intended that this development will be a regional exemplar of zero carbon development.

## 8 EQUALITY IMPACT ASSESSMENT

- 8.1 An Equalities Impact Assessment (EqIA) scoping process has been undertaken for the project in its entirety. The EqIA scoping identified potential impacts for people with physical impairments or health problems. Through liaison with accessibility and disability groups, the work on the public realm design within the Carfax scheme has addressed these impacts related to accessibility needs.

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 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.

## 10 RISK MANAGEMENT

- 10.1 This project has a full risk register which is managed by the Head of Programme.
- 10.2 The key risk headings are listed below, and the full risk register is included as Appendix 2. Risks discussed by the Scrutiny Committee relate to potential changes in the commercial market and in construction costs, including post-Brexit. A no-deal Brexit and the possibility of a general election has recently increased the risks in terms of increased costs and availability of financing for the project. It is not possible to mitigate all these risks as there is currently a high degree of uncertainty in the United Kingdom political and macro-economic environment. These risks could have significant consequences on: 1) the cost of materials and labour affecting construction prices, 2) the required financial return (viability) (e.g. if sufficient office pre-lets are not secured and at the target rental values), 3) changes in the investment market, and 4) changes in financial markets /general economic sentiment.
- 10.3 As advised to the Scrutiny Committee and as evident from the soft market testing day, there is market interest in the development despite these uncertainties.
- 10.4 The Councils professional advisors in this regard have confirmed that as this is a long term opportunity, there is no benefit from delaying marketing the site due to current economic and political uncertainties. Specifically they have not recommended that it would be better to delay disposal due to the Brexit deadline of 31 October.
- 10.5 The Scrutiny Committee raised matters in respect of site value. The process leading to the decision to progress with a long leasehold sale of the site has

been subject to appropriate legal advice. In particular, if the disposal process does not lead to a suitable offer, including value, then the Council is not obliged to proceed with site disposal. The final sale decision will be considered by Cabinet at the appropriate meeting currently scheduled for March 2020.

10.6 A further risk identified was that the purchaser's design of the development may fundamentally change. This will be controlled through the planning process, including reserved matters and conditions, and through lease conditions relating to timeframe and planning approvals.

10.7 Key Risks summary

- Change in commercial market and/or financial markets affect finance, costs, pace of letting and/or rents.
- Outline planning application decision delayed or refused, designs are rejected and gateways not approved.
- Public realm design stages are rejected and gateways not approved.
- Delays to agreement to disposal route/appointment of site purchaser.
- Project does not result in development.
- Pressure on delivery timescale to ensure securing tenants for site, LEP Grant and retain public support.
- Change in scope of the scheme.
- Network Rail governance and HCC approval or delivery process: Public realm design and implementation work delayed or agreement for works cannot be reached in a timely manner on land controlled by 3rd parties (Network Rail, HCC), results in not being able to meet required LEP spending programme.
- Risk of challenge to the proposed disposal of the site being via a land transaction not being conducted under a procurement process (e.g. in accordance with PCR 2015 requirements).

11 SUPPORTING INFORMATION:

### **The Proposed Disposal Methodology**

11.1 The methodology to dispose of the Carfax site is based on advice from the Council's Strategic Advisors, JLL, and Legal Advisors, Browne Jacobson LLP (CAB3172 - background document).

11.2 The proposed methodology for disposal is set out in Appendix 1.

In summary:

- The site opportunity will be actively marketed in autumn 2019. Bids will be assessed by the Council in house team, supplemented by external advisors.
- Assessment will be of the bids received based on qualitative and financial criteria.
- Bids of interest will be shortlisted and prospective purchasers will be invited to meet with the City Council.
- A summary of the bids and a recommendation by the Strategic Director - Place will be made in a report to Cabinet.

11.3 The process will be to contract with a purchaser to enter into a long lease to develop a scheme on the Carfax site in accordance with any planning consent granted. Through retaining freehold ownership, the Council has the potential to retain rights over the site through the use of negative covenants contained within the long leasehold.

11.4 In order to have the opportunity to select a purchaser which matches the Council's aspirations and objectives for the site, there will be two aspects to the information requested in the bids from interested parties which the Council will assess – qualitative criteria and financial consideration. These will be articulated and explained further to the market in the documentation inviting bids.

11.5 Qualitative Criteria

Offers will be assessed by reference to the prospective purchasers':

- Track record of schemes of comparable scale, use and quality by way of relevant examples in the last 5 years.
- Development team and relevant expertise.
- Evidence of encouraging sustainable measures of travel to/from the development and consequent impact on parking numbers.
- Evidence of development delivery with high quality design with particular emphasis on integration in a historic city.
- Evidence of taking forward an outline planning application for a broadly comparable scheme.
- Approach to mitigating identified risks in schemes of this type.
- Evidence of comparable regeneration schemes delivered and their proposals for long term ambition for the scheme.
- Appetite for speculative development – particularly confirmation of position in relation to speculative versus pre-let development including the relationship with the scheme's project programme provided.

In addition, the Council will seek to establish the prospective purchasers':

- Funding solution and approach i.e. - detail of how the scheme will be funded.
- Utilisation of LEP grant funding - details of their approach to use of the available LEP grant funding for the site preparation works, including archaeology, decontamination, utility provision, demolition/clearance and other site prep works, required to be undertaken by 31 March 2021.
- Programme delivery and completion targets and milestones – evidence of effective delivery and completion for comparable schemes, and confirmation of approach for this development opportunity.
- Demonstrable commitment to sustainability/carbon-neutral best practice by reference to their proven expertise and knowledge, plus examples of previous approaches used in delivered schemes.
- Commitment and evidence of engagement with key stakeholders.

#### 11.6 Financial Criteria

Interested parties will be required to submit proposals which include five elements:

- i. Financial Appraisal – a full appraisal to enable the Council to understand both the assumptions used and assess the robustness of the potential purchasers submission. Critically this will include the funding of the proposed scheme and a construction cost / sq m, to enable a view to be taken (against benchmarks) on establishing a suitable high quality level of specification and build for the scheme.
- ii. Non–returnable deposit on exchange of contracts to be put forward by bidders under competitive tension.
- iii. Lease Gearing – commitment to a level of gearing to provide an on-going rental income to the Council.
- iv. Capital premium – to be put forward by prospective purchasers under competitive tension, and taking account of the requirement for a level of gearing and a non-returnable deposit.
- v. Overage – to be put forward by prospective purchasers under competitive tension, taking account of the above.

11.7 The relationship between capital receipt (land value) and annual ground rent is, fundamentally, an arithmetic one. The optimum beneficial balance for the Council can best be established at the time of receiving offers, within the above identified context.

11.8 As an additional key protection for the Council, the Council can reserve a right to terminate the disposal process at any stage (i.e. the Council is not obliged

to accept any offer received), and (ii) the lease will include requirements for development to commence and be completed by set dates.

11.9 It will be important to assess bids against the identified criteria, under the framework established in paragraphs 11.5 and 11.6. It will be important that there is the opportunity to identify a purchaser who is capable of becoming a party to deliver a high quality scheme on the site, meeting Council objectives.

11.10 The process for evaluation and recommendation to Cabinet is set out below:

- The site opportunity will be actively marketed as recommended by our Strategic Advisors, JLL, in Autumn 2019 to generate innovative bids from prospective purchasers.
- Bids will be received within the relevant period and assessed by the Council in house team, supplemented by external property, development and legal advisors.
- Assessment of the bids will be based on the qualitative and financial criteria as set out in this report.
- Bids of interest will be shortlisted and prospective purchasers will be invited to meet with the Council in early 2020. These meetings will involve the Strategic Director - Place, Strategic Director - Resources, Section 151 Officer, the Head of Programme for Station Approach and JLL. The opportunity will be provided for potential purchasers to make presentations to elected members, two from each political party, in addition to Council officers and advisors.
- A summary of the bids and a recommendation by the Strategic Director: Place will be made in a report to Cabinet scheduled for March 2020 for decision.

11.11 The process will involve proactive marketing of the opportunity, followed by a competitive selection process, and the timeline is summarised below:

- September - November 2019:
  - Preparation of marketing material.
  - Preparation of full package of property and legal documentation.
  - Arrangement for an information handling system (data room: information sharing, secure information handling, clarification responses).
- October - November 2019:
  - Proactive marketing (launch event in November 2019) with bid preparation commencing.
- January 2020
  - Bids received back by end January 2020.
- February 2020:
  - Evaluation of bids.
  - Selection of preferred purchaser (if any).

- March 2020
  - Cabinet decision.
- April 2020
  - Lease/contract discussions with preferred party.
- April 2020
  - Agreement finalised to transfer land on long leasehold, with terms and conditions.

### **The Development Opportunity – current market conditions**

- 11.12 The current market conditions are important when considering site disposal. This has been set out in previous reports and in the Outline Business Case. The Council's Strategic Advisors, JLL, provided an up to date analysis of the market for office development and an assessment of viability in report CAB 3172, Appendix 4, which indicates interest in this development remains strong.
- 11.13 The soft market testing indicated market confidence in the development opportunity and the level of interest in the south east market for occupation is set out in Appendix 3 to CAB 3172. Particular mention was made by the Scrutiny Committee when they considered report CAB3172 of market uncertainty in respect of Brexit and this was responded to at the meeting. Further consideration was given and reported to Cabinet on 28 August and the Strategic Advisor's advice remains that they do not perceive that this should be considered as significant in relation to the marketing of Station Approach.
- 11.14 The Scrutiny Committee also used the phrase 'red lines' in respect of the desired outcomes for the disposal, including consideration of a minimum financial consideration. Cabinet on 28 August asked for these matters to be considered in this paper. The proposed disposal process aims to create 'competitive tension' to seek a wide range of innovative bids by including, as appropriate, the opportunity for some element of flexibility in submitted bids within the stated evaluation criteria to be set out. Critically this includes the selected bid to demonstrate best financial consideration, and the preconditions to protect the Council's interests.

## **12 OTHER OPTIONS CONSIDERED AND REJECTED**

- 12.1 No other effective means of marketing the site have been identified and considered to be appropriate in the circumstances.
- 12.2 The Councils Strategic Advisors have confirmed there is no good reason to pause the disposal phase, this would not send a positive message to the market which would be an important part of securing market confidence.

BACKGROUND DOCUMENTS:-

Minutes of the 28 August Cabinet CAB3172

PREVIOUS COMMITTEE REPORTS:-

CAB3172	Station Approach Proposals for Delivery and Further Public Realm Development	28 August 2019
SC009	Station Approach - Proposals for Delivery and Further Public Realm Development	14 August 2019
CAB3144(SA)	Station Approach – Outline Business Case and associated matters	25 March 2019
OS225	Station Approach - Outline Business Case and Associated Matters (less exempt appendices)	20 March 2019
CAB3101(SA)	Economic Appraisal and Business Case Preparation	18 December 2018
CAB3083(SA)	Station Approach Update	4 October 2018
CAB3055(SA)	Station Approach – Update Report	12 July 2018
CAB3021(SA)	Station Approach - Public Realm Strategy and Masterplan Framework	27 February 2018
CAB3001(SA)	Station Approach – Update	28 November 2017
CAB2959(SA)	Station Approach – Appointment of Design Team	14 August 2017
CAB2864	Station Approach – RIBA Plan of Works Stages Documentation	20 March 2017
OS157	Station Approach – End Stage review report for the competitive dialogue process	30 November 2016
CAB2852	Station Approach - Procurement Process Update	17 October 2016
CAB2829	Station Approach - The Way Forward	7 September 2016

APPENDICES:

Appendix 1: JLL Report, Station Approach - Proposed Disposal Approach, August 2019

Appendix 2: Full Station Approach Risk Register

Appendix 3: Minute of Scrutiny Meeting 14 August 2019 on report SC009