

**CABINET
3 NOVEMBER 2009**

WESTGATE

1. INTRODUCTION

The purpose of this report is to advise members on the latest proposals for the Westgate site in Aldershot and to seek authority to enter into joint venture arrangements for the delivery of a mixed-use scheme, which includes a cinema, restaurants, an hotel and food retail, together with associated parking.

2. BACKGROUND

Following the withdrawal of Linden Homes from the Development Agreement, and of course the subsequent collapse in the economy and particularly the housing market, a review of the scheme was carried out in order to determine what options were available to the Council in order to deliver the principal objective of bringing a cinema to the town.

It quickly became clear that the residential market would not provide sufficient value to enable the delivery of the cinema and restaurants, and so alternative uses were considered. The Council's property advisors, CBRE, are of the view that food retail use does create sufficient value in the scheme, and so a redesign became necessary whilst continuing to preserve the end users, that is to say the cinema, restaurants and hotel.

Other options have also been considered, such as only building the cinema and restaurants, but they were simply not viable schemes.

3. KEY CONSIDERATIONS

The Westgate scheme is key to the achievement of the Council's commitment to regenerating Aldershot. This fits well with the use of the Council's economic social and environmental well-being powers. The scheme has the potential to improve the town's image and attract visitors from within the borough and the surrounding areas, to improve evening economy, particularly for families, as well as increasing footfall within the town centre.

The potential impact of the proposed food retail use will need to be tested thoroughly through the planning process and the views of residents and businesses will need to be considered and fully taken into account. No doubt many will want to express their views, including existing businesses.

4. PROPOSAL

The proposal is for a mixed-use scheme including food retail. On this basis, we have worked with our partners Citygrove to agree Heads of Terms which will form the basis of the Joint Venture Agreement to deliver the scheme.

Heads of Terms

It is intended to form a company limited by shares to deliver the Westgate scheme. It is suggested that the name of the company is Westgate (Aldershot) Ltd. The Council has already assembled the land required, except for some very small parts of the highway, and for the Alexandra Surgery with which I will deal further below. The highway land is covered by an option agreement with Hampshire County Council but this may need to be amended once the final design has been agreed.

Part of the land will be transferred to a retail operator and the remainder will transfer into the company to develop the leisure scheme, ie the cinema, hotel, and restaurants, with a view to the ultimate sale of the completed leisure development. Car parking will be underneath.

The Council is under a duty in accordance with section 123 of the Local Government Act 1972 not to dispose of land for a consideration less than the best that can reasonably be obtained. CBRE have advised the Council on the land value issues, and their confidential report is attached at Appendix 1. CBRE are satisfied that the terms represent best consideration for the Council.

This deals with the land value that the Council will receive from the Scheme, and ensures that there are no issues with disposing at an undervalue or State Aid.

In terms of viability of the scheme, all appraisals have been scrutinized by CBRE to ensure the scheme is deliverable and fundable. In addition, commercial terms have been agreed between the parties, which means there may be an enhanced return for the Council after the scheme has been completed.

A confidential document setting out the principal Heads of Terms will be tabled at the meeting.

The Joint Venture Company will then procure planning permission, the building of the development and ensure that adequate finance is in place to do so.

A number of safeguards are also to be included in the Agreement. These are principally in the form of the use of conditions precedent and guarantees. Members will be advised further of these at the meeting. In addition, the Heads of Terms set out the exit strategy, which deals with what happens after completion of the leisure development.

Joint Venture issues

The Council has the legal power to enter into such arrangements by virtue of section 2 of the Local Government Act 2000. This provides a wide power for a local authority to do anything which it considers likely to achieve the promotion or the improvement of the economic, social or environmental well-being of its area. Clearly, the Westgate scheme is a corporate priority.

It is intended that the Cabinet authorise the appointment of two directors, the Director of Resources, Peter Gardner and Karen Limmer the Solicitor to the Council. Our partner will also appoint two directors, and shareholding agreements will be put in place. These two directors need to be indemnified by the Council in accordance with the Local Authorities (Indemnities for Members and Officers) Order 2004. The Cabinet therefore needs to authorise appropriate insurance arrangements as the Council's current insurance does not cover this type of risk. It is important to note that the directors owe a fiduciary interest to the company, and must exercise independent judgment, and with reasonable care skill and diligence.

Procurement Issues

The Council's external solicitors and Counsel have considered these issues, and a summary of Counsel's Advice is set out in Appendix 2. In her opinion, Counsel advises that the proposed arrangements are not caught by the Public Contracts Regulations 2006.

Alexandra Surgery

The original scheme had provided for the relocation of the Alexandra Surgery on the Westgate site. However for a number of reasons this is not possible now. The Council does need to ensure vacant possession of the Westgate site to enable the development to be delivered. Officers have considered alternative ways of re-providing the surgery, possibly into other premises owned by the Council but within the town centre location so that it is accessible for patients. This may mean co-location of other tenants and licensees of the Council, and we will seek to achieve a more sustainable occupation of other assets. These consequential changes will be the subject of a further report in due course once terms have been agreed.

However, in order to manage the implementation of this project, and it will be a contractual requirement placed on the Council to provide vacant possession of the entire Westgate site, it is necessary for the Cabinet to resolve in principle to exercise its Compulsory Purchase Powers pursuant to section 226 of the Town and Country Planning Act 1990. The clear intention is to relocate the Alexandra Surgery by agreement, and indeed officers are working with the doctors closely. However, the advantage of a CPO is to ensure that this happens within a certain timescale.

In making this decision, Cabinet has to consider carefully the balance to be struck between the competing interests of individuals and of the community as a whole, especially where there is any interference with the rights set out in the Human Rights Act 1998. Article 8 and Article 1 of the First Protocol may be engaged and the decision to make a CPO must be necessary and proportionate. Cabinet may consider it appropriate to do so in order to secure the economic social and environmental regeneration that the Westgate scheme will bring.

Within the costs of the overall scheme, an allowance has been made for obtaining vacant possession, but the Council will need to incur these costs in advance, and it will be necessary to vary the capital programme to enable this to happen. A further report will be prepared once the Heads of Terms have been agreed with the doctors.

5. RISKS

Risk Management

To mitigate against any risks, expert advice has been sought by the Council on all aspects of this scheme, as it is important to consider any potential legal challenges that there may be, and to plan accordingly.

A project-managed approach is being adopted to ensure that all parties can deliver the obligations set out in the development agreement in a timely manner. Extra resources have been brought in also to manage the relocation of the doctors.

This means that risks are identified and mitigation arrangements put in place.

6. FINANCIAL IMPLICATIONS

The structure of the Head of Terms should ensure the Council recovers the value of the Council-owned land, its land acquisition costs, advisor costs associated with the development of the joint venture agreement and the costs of relocating the Alexandra Surgery. In addition, the profit share structure will enable the council to receive a portion of any profit as set out in the heads of terms.

For every £100,000 received over and above its costs the council would benefit by £5,000 pa on the revenue account (assuming that interest rates return to a level of circa 5% over the medium term).

7. CONCLUSION

With the assistance of the Council's professional advisers, a scheme has been designed to achieve delivery of the required cinema, hotel and restaurants to Aldershot, which is viable and deliverable. This requires vacant possession of the Alexandra Surgery and it is hoped that this can be achieved by private treaty with out the necessity of a CPO.

Further reports will be brought to Cabinet on outstanding matters as they are resolved.

8. RECOMMENDATIONS

It is recommended that:

1. the Cabinet considers and endorses the way forward as set out in the Report;
2. the Cabinet notes the valuation report by CBRE in accordance with s123;
3. the Council enter into a contractual joint venture arrangement with Citygrove on terms to be agreed by the Solicitor to the Council, in consultation with the Leader of the Council;
4. the Cabinet approves the formation of a company limited by shares on the terms outlined above;
5. to appoint the Director of Resources, Peter Gardner and the Solicitor to the Council, Karen Limmer as directors of the company and to approve appropriate insurance arrangements;
6. to authorise the Solicitor to the Council to vary of the option agreement for the acquisition of any highways land;
7. to authorise the Solicitor to the Council to transfer the Council's freehold interests in the land at the Westgate site as set out in the Heads of Terms;
8. to authorise the Solicitor to the Council to acquire the freehold of the Alexandra Surgery on terms to be agreed in consultation with the Leader of the Council and in principle, to resolve to compulsorily

acquire the freehold interest of the Alexandra Surgery, if terms cannot be agreed for the acquisition by private treaty;

9. to note that the Solicitor to the Council will report back to Cabinet on the matters relating to the relocation of the Doctors surgery.

Andrew Lloyd, Chief Executive

Peter Gardner Director of Resources

Karen Limmer Solicitor to the Council

Appendices

Exempt Appendices: Not for Publication

CBRE Report - Confidential

Counsel's Opinion - Confidential

Background papers - none