

<b>COUNCIL</b> <b>12 February 2015</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>  <b>6</b>
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**TITLE OF REPORT: CHURCHGATE AREA, HITCHIN: NEXT STEPS**

REPORT OF THE PROJECT EXECUTIVE FOR THE CHURCHGATE PROJECT BOARD

**1. SUMMARY**

1.1 The purpose of the report is to:

- (i) Report on the next stages in the project and to seek appropriate funding.
- (ii) Give consideration to offering a lease term for redevelopment of the site for a minimum term of 150 years.

**2. RECOMMENDATIONS**

- 2.1 That the Council commit an initial budget of up to £40,000 at this stage to undertake an independent valuation of the site, any commercial and legal advice as may be required.
- 2.2 That the Council accepts the principle of a lease to a developer of the site for a minimum term of 150 years subject to contract, and granted only upon completion of the whole of any agreed redevelopment.
- 2.3 That Council continues to require all interested developers on the Churchgate site to seek a solution for the market, at the developers' expense, in consultation with appropriate officers.
- 2.4 That officers continue to investigate the Council's preferred approach for a smaller scheme in the short term and report back to Full Council setting out options and points for consideration to progress the project.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To allow the Council to continue with its investigations for a smaller scheme in the short term and provide clarity on its preferred options going forward.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 See Section 8 of the report.

## **5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 The members of the Churchgate Project Board have discussed and noted the next steps to progress the project forming the content of this report.
- 5.2 Members are reminded that in accordance with the Terms of Reference of the Churchgate Project Board  
*“1.1 To act on behalf of the Council in respect of all functions required under the Development Agreement and the delivery of the Churchgate project generally.”*  
Any submission would be presented and discussed with the Members of the Churchgate Project Board, prior to any report being presented to Full Council.
- 5.3 Information notes have been provided to Hitchin Area Committee at appropriate stages through the project to keep local members updated on progress.

## **6. FORWARD PLAN**

- 6.1 The report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 January 2013.

## **7. BACKGROUND**

- 7.1 A report was submitted to Full Council on 27 November 2014, which provided legal advice sought from Eversheds regarding the Council’s ability to enter into an exclusivity agreement with any developer on Churchgate and the Surrounding Area. The report provided an overview of the approach followed by Council over the last 14 years which had been met with difficulties and external changes beyond its control. Based on these factors as summarised in the report it concluded that it was reasonable for the Council to reconsider its approach.
- 7.2 The report stated that in order to progress the project the Council needed to be clear about what it now wanted for the site and why. Once it had confirmed its aspirations, further work would need to be done to explore that option. This would need to take into consideration the Council’s financial duties and ensure that it achieved best consideration and compliance with State Aid rules. Consideration would also need to be given to the Hitchin Market, the operation and management of the car parks, the extent the Council wanted to specify its requirements, how to dispose of the land and the impact on further aspirations for the wider site in the long term (if a smaller scheme were taken forward in the short to medium term).
- 7.3 The Report clearly stated that it was important to note that any approach taken would not be without risk and potential further cost to the Council in the event of legal challenge. In addition, further funding would need to be sought for investigatory work required to assess any proposal.
- 7.4 The following resolution was agreed:

### **RESOLVED:**

- (1) *That the legal advice set out at Appendix A to the report be noted;*

- (2) *That, having considered its aspirations for the future of the Churchgate site and its surrounding area, the Council discontinues the current approach based on the Churchgate Planning Brief and considers alternative approaches for a smaller scheme in the short term; and*
- (3) *That Officers be instructed to investigate the Council's preferred approach, as agreed in (2) above, and report back to Council setting out the options and points for consideration to progress the project.*

**REASON FOR DECISION:** *To allow the Council to clearly state its current aspirations for the Churchgate area of Hitchin in the light of the history of the project to date and provide clarity on its preferred approach going forward.*

7.5 Churchgate is included in the Priorities for the District 14/15 as a project to promote Sustainable Growth.

## **8. THE NEXT STEPS**

8.1 Following the above Full Council meeting, officers have met twice with the Churchgate Project Board to discuss and agree the next steps in the project. These included:

- Seeking quotations for an independent valuation for the site
- Setting up further discussions with Hammersmatch to seek clarification on various matters
- Investigating revenue implications to the Council in taking forward a smaller scheme
- Finding a solution for the Hitchin Market
- Identifying any necessary funding that may be required to assist the Council in its investigations

8.2 *Seeking quotations for an independent valuation of the site.*

8.2.1 Officers are in the process of seeking quotations for an independent valuation for the site as recommended in the Eversheds' legal advice appended to the Full Council report of 27 November 2014. The valuation being sought is of the Council's assets individually and in parcels e.g. - individual valuations and combinations of sites 1, 2, 3, 4 and 5 of the Churchgate Planning brief and including the Churchgate centre, the market and the car parks. (See site plan attached at Appendix A for reference). Valuation will be sought on the existing use and potential future uses including the proposed Hammersmatch Development and any implications it may have on the value of the whole site. This will assist the Council in its considerations on how it may wish to proceed with any land transaction in the future. The anticipated cost for this work is up to £15,000.

8.3 *Further discussions with Hammersmatch and other interested parties.*

8.3.1 Officers at the behest of the Churchgate Project Board have met with a Hammersmatch representative to seek clarification on various aspects of their proposal. This discussion was at a high level and sought to establish a number of principles making it clear that these were on a non exclusive basis and would assist the Officers in their investigations in making future recommendations to the Churchgate Project Board on options to progress the project. Points of discussion were in regard to the Hitchin Market, car parking arrangements, understanding their financial proposal and their anticipated timescales for delivery of their scheme. It has been noted that these initial discussions

are to remain confidential given that these are subject to various financial considerations and possible future negotiations should the Council wish to continue its dialogue with Hammersmatch, or indeed any other interested party.

#### 8.4 *Investigating revenue implications for the Council*

- 8.4.1 Obtaining an independent valuation for the site will assist the Council in its considerations in terms of any future land transaction it may choose to enter into on the site. The Project Board have made it clear that they do not wish to see the current number of parking spaces reduced on the site and that overall revenue/income streams need to be at least retained, both in terms of income generated from the car parks and in terms of rental income associated with any lease agreement going forward. Any consideration involving the Council's financial duties must ensure that it achieves best consideration and compliance with State Aid rules.
- 8.4.2 Hammersmatch have raised the issue of the Council giving consideration to a new lease for a minimum term of 150 years. This point was first raised in the report to Full Council on 24<sup>th</sup> July 2014, where they were suggesting that the guaranteed baseline rent for the larger area of the proposed redevelopment would be the same as their current rent for the smaller area. They indicated that they believed the rent paid, however, would exceed the guaranteed minimum as it would be based upon 10% of net operating rental, and calculated annually. While a 150 year lease appears to be acceptable in the development industry and is what Simons were prepared to negotiate further on as part of their request for an extension of time to the Development Agreement back in January 2013, it was not clear from the Hammersmatch proposal at the time as to who will have control of the rents payable and thus the base position to which the 10% share would apply. This is still a point for further discussion and negotiation as the Council would need to be assured that the guaranteed base rental figure for a larger area of land demonstrated an increased income over the current rental figure for the smaller site. Hammersmatch have agreed, however, that they would expect such grant of any lease to be subject to contract and on final completion of the scheme.
- 8.4.3 As stated above given that a minimum of a 150 year lease appears to be normal in the development industry, it is suggested that consideration be given to granting a minimum lease term of 150 years on completion of any future redevelopment of the Churchgate area subject to contract, gaining planning permission and completion of a redevelopment scheme on site.

#### 8.5 *Finding a solution for the Hitchin Market*

- 8.5.1 The Project Board are clear that a solution needs to be found for the Hitchin Market, as this has future revenue implications for the site in terms of its location, improvement costs and on going management arrangements. The Project Board is clear that Hitchin is a market town and must retain a market and an acceptable solution to the market remains fundamental to any redevelopment of the area. Hammersmatch have advised that they are prepared to work with the Council in seeking such a solution. Specialist advice and alternative resources would be required in seeking a solution for the market. Specialist advice could incur additional cost and officers are in discussion with other neighbouring councils to inform the potential cost. The cost for staff resourcing would need further consideration once the specialist advice had been sought on a suggested way forward.

## 8.6 *Additional Funding Requirements*

- 8.6.1 In order to progress with its investigations the Council may require further external legal and commercial advice depending on what options may come forward as part of the officers' investigations for a smaller scheme. It is suggested that up to £25,000 be set aside for such advice should it be required.
- 8.6.2 Depending on the options taken forward, Members are advised that alternative sources of funding will need to be found to provide for or backfill any necessary staff resources, given that the current officers on the Project Team are actively involved in delivering other key priority projects for the Council, such as the Local Plan, the North Herts Museum and Community Facility project at Hitchin Town Hall, Asset Management Strategy, Office Accommodation project and other capital programme schemes.
- 8.6.3 It is important to reiterate the point that considering alternative approaches for a smaller scheme would not be without risk and potential further cost to the Council in the event of challenge.

## **9. LEGAL IMPLICATIONS**

- 9.1 Full Council made the original decision to award the contract to Simons on 25 February 2010. The reason Council was asked to make the decision as to whether to award the contract or not was that the likely land values of the Council land being used for the project fell within Council's terms of reference.
- 9.2 Full Council adopted the Hitchin Town Centre Strategy on 18 November 2004 and the Churchgate Development Area Planning Brief on 3 November 2005.
- 9.3 As Full Council has made these previous strategic decisions, Full Council should make the decision as to the future strategy for the Churchgate Area.
- 9.4 The Council has chosen a strategy to investigate alternative approaches for a smaller scheme in the short term and not to await the outcome of the Local Plan work, therefore the legal implications of potential options will need to be considered. The legal implications would likely include procurement, contract, governance and property considerations. Further external legal advice may be required depending on what comes forward following the investigations.
- 9.5 In accordance with previous reports to Full Council, Members are advised that taking part in Council decisions on the strategy to adopt for the Churchgate Area was unlikely to create a valid perception of predetermination in relation to a Member of the Planning Committee who takes part in the decision relating to any future planning application.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Under Section 123 of the Local Government Act 1972, the Council is required to get best consideration reasonably obtainable for all of its assets, and with regard to Churchgate this potentially includes the freehold of the Churchgate Centre, the market and the adjoining car parks (St Mary's; Portmill East & West and Biggin Lane).

- 10.2 In this period of ongoing Government funding reductions the Council's alternative (i.e. non Government) sources of income are particularly important. Gross direct annual income in total from the Churchgate car parks amounts to over £500k, and the Council also receives an annual rental income for the Churchgate Centre that is reviewed every 14 years, as well as income from the market operation. Therefore any proposal that adversely impacts on these income streams would at least need to provide sufficient return to the Council from other sources to compensate fully for this impact.
- 10.3 The Council has incurred external costs of almost £1 million in total over the past ten years in respect of pursuing development opportunities for Churchgate, and up to a further £10,000 for the recent Eversheds legal advice. The Churchgate area does not currently feature in the Council's capital programme for major investment, although funding for some works to the car parks and related areas for resurfacing, replacement and repairs has been allocated, with some works completed.
- 10.4 The contract previously signed with Simons Developments did not require Council financial resources to be allocated to the development of this scheme. The Council's contribution was to make its land holdings available for the development. Enquiries subsequently made by Simons in 2012 regarding the possibility to vary the terms of the Development Agreement, including whether the Council could consider making further financial contributions to the scheme, were declined. It remains the position that Council financial resources should not be required to contribute to a development scheme and a Full Council decision would be required if this position was to change, taking full account of whether this was permissible in State Aid terms.
- 10.5 It is clear that in order to progress any scheme as landowner, be it with Hammersmatch, or any other interested party, will require further investment by the Council in seeking the necessary property, legal and financial advice.
- 10.6 If the Council were minded to instruct officers to proceed with the necessary investigatory work required, officers would require authority to incur external expert advice, and a Full Council decision to release additional funding of up to £40,000 for this work is being sought.
- 10.7 It should be noted that when a viable solution is proposed by a developer the Council will require further specialist advice on legal, valuation, markets and development issues and that further funding is likely to be required at that time. The Council may seek to recover some or all of these as development costs.

## **11. RISK IMPLICATIONS**

- 11.1 The Council has identified Churchgate and Surrounding Area as a Cabinet Risk. This risk is monitored and updated regularly as part of the Council's risk management procedures.
- 11.2 The Top Risk has been amended to include the Council's resolution of 27<sup>th</sup> November 2014 and currently has the following description:  
"The risks arising from continuing to work with any interested developers during production of the new Local Plan due for submission in late 2015 and considering alternative approaches for a smaller scheme in the short term, includes:

- impact on available resources in continuing a dialogue
- public perception that developers proposals in terms of planning permission are at a more advanced stage than is the case
- proposals that are developed may not be in adherence to the final Local Plan
- proposals are developed that fail to make the best use of Council assets
- proposals that are developed might not meet the expectation of all stakeholders
- proposals that are developed for a smaller scheme in the short term might hinder ability to fulfil longer term needs for the District
- a phased approach to development may impact on financial viability of any future development of the site and the development value of the rest of the area
- possible challenge from other parties”

11.3 The Council's Risk and Opportunities Management Strategy refers to Contractors and Partners as follows: *"Contractors and Partners are included in the Risk & Opportunities Management Strategy for NHDC. The risk appetite for both contractors and partners should be considered prior to engaging into contracts or partnerships. Ideally a joint Risk Register should be in place for significant contracts and partnerships. In order to achieve the Council's priorities, Client Officers/relationship managers should implement an ongoing review of risks jointly with appropriate contractors/partners. Contractors and Partners should be able to demonstrate that they have resilient business continuity plans in place."*

11.4 In accordance with this Strategy the Churchgate Development Project with Simons Developments had its own Risk Register. Such a document would also be considered should the Council decide to proceed with a development of any size on this overall site in the future.

11.5 In addition, throughout this report, various risks have been described. The Council has identified and included the preparation of the Local Plan and Sustainable Development of the District as Top Cabinet Risks. The Local Plan risk identifies a number of risks but one that is key here is failure to recognise long term needs for Town Centres. The Sustainable Development risk identifies both failure to protect the environment for our communities and failure to provide the right mix of residential/commercial development to meet local needs. An adopted Local Plan in place will provide the strategic planning policy objectives for the district to 2031 and will also strengthen the Council's position against hostile planning applications.

## **12. EQUALITIES IMPLICATIONS**

12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in the next paragraph, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.3 Depending on what may be considered, any future development proposals for the site, detailed proposals surrounding thoroughfares, access, surface treatments etc. and needs of any users for any resulting development will be considered and recorded under separate equality analysis at the time of such application.

### **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 The recommendations made in this report do not in themselves constitute a public service contract, subject to the measurement of 'social value' as required by the Public Services (Social Value) Act 2012, although potential equalities implications and opportunities are identified in the relevant section at paragraphs 12.3. However, any decision Council may make with regard to Churchgate which could, either in whole or part, constitute a public service contract would need to report on the social value implications at the time of consideration. This would, in brief, consider how every £1 spent could best be spent to benefit the local community, which may include award of some aspects of redevelopment or management of the centre etc. by local social enterprises.

### **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 In terms of human resource implications the preparation of the Local Plan and the delivery of the other identified corporate priorities and key projects have been factored into work plans as identified at paragraph 8.6.2. If the Council sought to pursue a strategy for the Churchgate Area in the interim this would impact on the Council's current staff and financial resources and would result in the need to review existing work plans and objectives and/or the need for employing external expertise.

### **15. APPENDICES**

- 15.1 Appendix A – Site Plan from Churchgate Planning Brief.

### **16. CONTACT OFFICERS**

Norma Atlay, Strategic Director of Finance, Policy and Governance. Telephone: 01462 474297. E-mail address: [norma.atlay@north-herts.gov.uk](mailto:norma.atlay@north-herts.gov.uk) (Project Executive on Churchgate Project Board)

Louise Symes, Strategic Planning & Projects Manager. Telephone 01462 474359. E-mail address [louise.symes@north-herts.gov.uk](mailto:louise.symes@north-herts.gov.uk) (Project Manager on Churchgate Project Board)

Anthony Roche, Acting Corporate Legal Manager and Monitoring Officer. Telephone 01462 474588. E-mail address [anthony.roche@north-herts.gov.uk](mailto:anthony.roche@north-herts.gov.uk) (Legal Advisor on Churchgate Project Board)

Andy Cavanagh, Head of Finance, Performance & Asset Management Telephone 01462 474243. E-mail address [andrew.cavanagh@north-herts.gov.uk](mailto:andrew.cavanagh@north-herts.gov.uk) (Financial Advisor on Churchgate Project Board)



Simon Ellis, Acting Development and Conservation Manager. Telephone 01462 474264. E-mail address [simon.ellis@north-herts.gov.uk](mailto:simon.ellis@north-herts.gov.uk) (Planning advisor on Churchgate Project Board)

Fiona Timms, Performance & Risk Manager. Telephone : 01462 474251. Email address [fiona.timms@north-herts.gov.uk](mailto:fiona.timms@north-herts.gov.uk)

Liz Green, Head of Policy and Community Services Telephone 01642 474230 E-mail address [liz.green@north-herts.gov.uk](mailto:liz.green@north-herts.gov.uk) (contributor: Equalities and Social Value Implications)

## **17. BACKGROUND PAPERS**

- 17.1 Full Council Report 31<sup>st</sup> January 2013 – Churchgate and surrounding area redevelopment project, Hitchin
- 17.2 Report to Finance, Audit and Risk Committee 13<sup>th</sup> June 2013 – External costs incurred by NHDC during the Churchgate Report.
- 17.3 Full Council Report 18<sup>th</sup> July 2013 – Options for the future of Churchgate and Surrounding Area, Hitchin
- 17.4 Full Council addendum Report 18<sup>th</sup> July 2013 – Options for the future of Churchgate and Surrounding Area, Hitchin
- 17.5 Full Council Report 24<sup>th</sup> July 2014 – Update on Churchgate and Surrounding Area, Hitchin
- 17.6 Full Council Report 27<sup>th</sup> November 2014 –Churchgate and Surrounding Area, Hitchin: Legal Advice