

**TITLE OF REPORT : EXTERNAL COSTS INCURRED BY NHDC DURING THE CHURCHGATE PROJECT**

REPORT OF THE HEAD OF FINANCE, PERFORMANCE AND ASSET MANAGEMENT

**1. SUMMARY**

- 1.1 At the 20<sup>th</sup> March 2013 Finance, Audit & Risk (FAR) Committee, Members requested a report to confirm the external costs incurred by NHDC during the Churchgate development project (2002 to 2013), for which the Development Agreement with Simons was terminated in March 2013.
- 1.2 Members also wished to know whether any of the outputs achieved (and therefore costs) could be re-applied to a future Churchgate project.

**2. RECOMMENDATIONS**

- 2.1 That the report be noted.
- 2.2 That Members note that the Department for Communities & Local Government declined the request to allow capitalisation of £524k that was being held to capitalise against a future capital scheme. Therefore these costs will now be a charge to Revenue.
- 2.3 That Members note the estimate that approximately £93k could be held, pending re-application to a future Churchgate project, should the Committee wish to make this recommendation.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 As requested by Members, to inform the Finance, Audit & Risk Committee of the external costs incurred during the Churchgate development project.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 None. This is a report on costs already incurred.

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

- 5.1 Consultation has been undertaken with the Churchgate Project Board Members.

## **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

## **7. BACKGROUND**

- 7.1 Plans to redevelop and regenerate the Churchgate area of Hitchin town centre have been discussed for many years, however the current approach for the Churchgate area broadly started with the planning policy work of the early 2000s.
- 7.2 The background on the Churchgate Project, from the planning policy work onwards, has previously been summarised in the report of the Strategic Director of Finance, Policy & Governance to Full Council on 25 February 2010 (at Agenda Item 10 of that Council meeting).
- 7.3 The Hitchin Town Centre Strategy was the first of the town centre strategies to be produced for each of the District's four towns. Two drafts were formally consulted on in 2002 and 2003, prior to the adoption of the final Strategy by Full Council in November 2004 as the Council's Statement of Policy.
- 7.4 The Churchgate Area Planning Brief was one of the key projects to come forward from the adopted Town Centre Strategy. This Brief was prepared by John Thompson and Partners and DTZ Piedad Consulting (as DTZ were then called) on behalf of the Council. The Churchgate development area covered by the Planning Brief comprises the existing Churchgate Shopping Area plus service areas (Area A1), the market area and the land between the River Hiz and St. Mary's Square (Area A2) and the Biggin Lane Car Park (Area A3). The St Mary's Square (Area A4) and Portmill Lane car parks (Area A5) were also identified as areas for enhancement. All of these land areas are within the Council's ownership and later development plans incorporated all five areas. A Final Report was also prepared by John Thompson & Partners (May 2005), as a background paper to the Planning Brief.
- 7.5 At the Hitchin Town Centre Working Party on 20 May 2008, following advice from DTZ and Eversheds (the Council's development and legal consultants for this project respectively), it was resolved that the opportunity be remarketed using the Competitive Dialogue procurement process (this followed a previous tender exercise that was halted due to a legal case elsewhere). To this point, the Council had spent in the region of £400K seeking external expert advice on Planning and Asset Management issues.
- 7.6 At the Full Council meeting on 25 February 2010, the contract for redevelopment of Churchgate and the surrounding area was awarded to Simons Developments as North Hertfordshire District Council's development partner. During the negotiations leading to this decision the Council sought external legal advice from Eversheds to ensure that it was following due process in concluding the Development Agreement (DA).

## 8. ISSUES

8.1 Discussion and negotiations regarding Churchgate and its redevelopment have been ongoing since 2001. Over this time NHDC has incurred external costs for a number of reasons.

- As landlord/owner of Churchgate
- As Planning Authority
- In concluding a Development Agreement

These functions (and costs) associated with the first two functions pre-date the commencement of the competitive dialogue process (to produce the Development Agreement) and were incurred as part of Town Centre strategy work by NHDC.

### Examples of Landlord Functions:

- Ground condition survey
- Car parking study
- Excavation of trial trenches to support Archaeological work
- Market redevelopment and location
- Background work to support preparation of Planning Brief
- Town Centre Strategy

### Examples of Planning Authority activities:

- Public consultations
- Archaeological advice
- Planning Brief report & exhibition
- Retail study of floor space capacity and retail demand.
- Hall hire for exhibitions

### Examples of Competitive Dialogue activities:

- agreement of legal documentation in consultation with our Legal advisors (Eversheds)
- commercial property market advice to inform the dialogue from our property advisors (DTZ)

8.2 DTZ have been involved from the early days of the project (initially as Donaldsons, who were later bought out by DTZ) as NHDC does not have in-house staff experienced in town centre developments. Eversheds were engaged more recently at the beginning of the competitive dialogue procurement process (in the spring of 2008) for the selection of a preferred developer.

8.3 The external costs incurred over the course of the current (halted on 19<sup>th</sup> March 2013) project amount to £988k and are summarised in Table 1 below:

**Table 1 – Summary of Costs**

Function	Amount £000's	Notes/Supplier
Landlord functions:		
- car park survey/study	17	Arup Transport
- Archaeological study	81	Molas
- options & designs for markets	10	TFH Architecture
- ground conditions survey	2	Arcadis, Geraghty & Miller
- topological survey	4	CSL Surveys

- other costs	7	
<b>Landlord costs</b>	<b>121</b>	
Planning authority functions:		
- development options for planning brief	82	John Thompson & Partners
- illustrations for planning brief	17	LSI Architects
- retail study capacity & demand	15	Nathaniel Lichfield & Partners
- other costs	14	
<b>Planning Authority costs</b>	<b>128</b>	Primarily concerned with initial public consultation –there will be more public consultation once preferred bidder selected
Consultancy support with the above functions from DTZ	<b>151</b>	Development advice. Involvement began in 2001 when they were engaged to assist with development of the Town Centre Strategy and input to Planning Brief.
<b>Sub total of Landlord, Planning activities &amp; associated consultancy support</b>	<b>400</b>	These costs would have been incurred anyway as part of NHDC landlord function/Town Centre Strategy work
<b>Initial tender exercise, followed by dialogue process to conclude Development Agreement:</b>		
Consultancy support/advice		To ensure best overall result for NHDC and residents.
Eversheds Solicitors	289	Specialist property and procurement legal advice
Donaldson's, now DTZ property	292	Subsequent property development advice and expertise to assist in concluding the Development Agreement. This followed on from the landlord and planning activities referenced above.
Other	7	
<b>Total support costs</b>	<b>588</b>	
<b>TOTAL</b>	<b>988</b>	

- 8.4 Of the above total costs, £524k was held to be capitalised against a delivered scheme and £200k of this figure would have been recoverable from the developer when they commenced work on site. All but a very small amount of this cost related to work performed by DTZ and Eversheds. A request was made to the Department for Communities & Local Government in March 2013 to allow “capitalisation” of the £524k sum, but this was declined. Therefore these costs will now be a charge to Revenue.
- 8.5 The £524k was held as Revenue Expenditure Funded by Capital Under Statute in 2008/09 and 2009/10. This was funded partly by capital receipt (£324k) and partly by an anticipated contribution from the developer of £200k. The £200k has been held on the Balance Sheet as a long term debtor.
- 8.6 As a result of the project being brought to a close the general fund will be reduced by £524k and the capital receipt reserve will be increased by £324k. The long term debtor

will be deleted. The expenditure of £524k will not appear in the I&E account (net cost of services) again because it is already been shown here in 2009/10. The change is with regard to how it is funded. This was identified as a financial risk for 2013/14.

- 8.7 In the main, it is not envisaged that the outputs from the sums incurred can be re-used. For example, the Town Centre strategy and Development Brief will need to be revisited, the property and legal advice was specific to the scheme, market and wider economic conditions at the time. Other studies, such as for car parking and the Market, would need to be carried out again to reflect current usage and conditions. The extent of previous works that **may** not need to be incurred again include archaeological excavations, ground conditions survey, topographical survey, contaminated land assessment. These are Landlord functions and Planning Authority activities.
- 8.8 Activities and costs that may not need to be repeated and so could be applied to any future scheme, are summarised in Table 2. No decision has yet been taken as to whether the Council continues to hold these costs pending capitalisation against a future scheme, or charges these costs to revenue at this point. FAR Committee may wish to consider which option to recommend.

**Table 2**

<b>Supplier</b>	<b>Description</b>	<b>Amount £</b>
Arcadis, Geraghty & Miller	Ground condition survey	2,450
CSL Surveys	Topographical survey	3,650
Molas	Archaeological excavations	81,930
Herts CC/Heritage network	Archaeological advice	1,510
Landmark Chambers	Contaminated land opinion	3,500
	<b>Total</b>	<b>93,040</b>

## **9. LEGAL IMPLICATIONS**

- 9.1 The legal implications of the Churchgate redevelopment and the Development Agreement with Simons have been covered in previous reports. There are no legal implications arising directly from this report.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The financial implications arising from this activity are contained in the main body of the report.
- 10.2 Under Section 123 of the Local Government Act, the Council is required to get best consideration reasonably obtainable for all of its assets, and regarding 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).

## **11. RISK IMPLICATIONS**

- 11.1 The Council has identified Hitchin Town Centre as a top Cabinet Risk. Within the description of this risk were the proposals for the redevelopment of the Churchgate area. This risk was monitored and updated regularly as part of the Council's risk

management procedures. With the decision not to extend the Development Agreement the Council is now in the process of exploring alternative options. An initial assessment of options was included in the report to Full Council on 31<sup>st</sup> January 2013 and the resolutions agreed included to reject Simons request for an extension of the first cut off date in the Development Agreement. No planning application was subsequently received from Simons by this cut off (19th March 2013) and therefore NHDC implemented the break clause as instructed by Full Council.

- 11.2 Council also required that alternative options be brought back to Council on 18th July 2013 for further discussion.

## **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 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 The recommendations made in this report are concerned with the financial costs incurred and do not raise any direct equalities implications.

## **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.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no direct Human Resource implications arising from this report.

## **15. APPENDICES**

None

## **17. CONTACT OFFICERS**

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## **18. BACKGROUND PAPERS**

Numerous reports over a number of years  
Report to Full Council 25<sup>th</sup> February 2010  
Report to Full Council 31<sup>st</sup> January 2013