

TITLE OF REPORT: CHURCHGATE AND SURROUNDING AREA REDEVELOPMENT PROJECT, HITCHIN – UPDATE & RESPONSE TO KEEP HITCHIN SPECIAL PRESENTATION

REPORT OF THE STRATEGIC DIRECTOR OF FINANCE, POLICY AND GOVERNANCE

1. SUMMARY

1.1 The purpose of the report is to:

- (i) Update Members on the progress of the Churchgate redevelopment project including the Market Licensing issue.
- (ii) Provide a comprehensive response to the presentation made by Keep Hitchin Special (KHS) at the Hitchin Committee meeting on 7th June 2011.

2. FORWARD PLAN

2.1 This report does not contain a recommendation on a key decision and has not been referred to in the forward plan.

3. BACKGROUND & UPDATE

3.1 Following a detailed procurement process, Full Council agreed at its meeting on 25th February 2010 to award the contract for redevelopment of Churchgate and the surrounding area to Simons Developments Ltd as North Hertfordshire District Council's (NHDC) development partner. The contract was subsequently signed on 19th March 2010.

3.2 The proposal that emerged from the competitive dialogue process and formed the tender stage of Simons' bid is a schematic development proposal scheme (equivalent of RIBA design stage B/B+). The preparation of Simons' proposal has been guided by the Hitchin Town Centre Strategy and the Planning Brief for the Churchgate Centre Development Area and surrounding area. The proposal sets out Simons' vision for the redevelopment of the Churchgate area and formed part of the first stage of the public consultation process from 18th May to 5th June 2010. The Council, including Members and Officers has not made a decision on any proposed scheme nor has any decision been requested. The only decision that has been made was on the award of the contract for Simons to act as development partner for the Churchgate project.

3.3 A summary report of the feedback from this first phase has been published and can be viewed on the Council's website and in the Hitchin Library.

- 3.4 Following the feedback from the first phase of the consultation, Simons' identified a number of issues to be discussed with key stakeholders and at the Churchgate Liaison Forum (CLF) meetings as a means of moving the project forward. These included:
- Establishing and clarifying economic principles
 - Dynamics and location of Hitchin Market
 - Scope of public realm improvements
 - Views of St. Mary's Church
 - Car Parking
 - Need for more Retail Space

Notes of these discussions at the CLF meetings are also available to view on the Council's website and at Hitchin Library.

- 3.5 Since last September, Simons have met and started an initial dialogue with the HTCI, Hitchin Markets Limited, the Hitchin Chamber of Commerce, the Hitchin Forum (at which representatives from the Hitchin Society and Hitchin Historical Society were present), the Churchgate retailers and representatives from St. Mary's Church. Initial meetings have also taken place with the Local Planning Authority, landowners and potential retailers. Outcomes from these meetings and how these have contributed to the evolution of the design have been and will be reported on at the CLF meetings and at Hitchin Committee where they are not commercially sensitive.
- 3.6 This process will continue while Simons develops a scheme that will be the subject of future public consultation prior to it being offered as a planning application. Once a proposed scheme has been developed this will be presented to the CLF as part of the public consultation process.
- 3.7 As part of the on-going dialogue with the local community the Council have updated the Churchgate website and provided a Frequently Asked Questions page (FAQs), as a means of keeping people informed on the project. Hard copies of the information on the webpage, including the FAQs, are also available in the Hitchin Library for people to view. The updated FAQs were attached as Appendix 2 to the Information Note presented to Hitchin Committee in June.
- 3.8 In response to the information note presented to the last meeting of the Committee KHS raised a number of points which the Committee requested that officers report back on.
- 3.9 The Council has recently agreed to extend the Hitchin Market contract for a further 2 years to Hitchin Market Ltd who will continue to be responsible for operating the market until 31st July 2013. There is a break clause in the contract for reason of redevelopment.

4. RESPONSE TO KHS PRESENTAION

- 4.1 A full copy of the KHS presentation made on Agenda Item 8 to Hitchin Committee on 7^h June 2011 is attached at Appendix 1 and the Officers Information note is attached at Appendix 2. For ease of responding and for cross reference purposes to this report, the paragraphs in the KHS presentation are numbered in Appendix 1. Although the points in the KHS presentation have been summarised in this report for clarity it is confirmed that the full presentation has been considered.

4.2 The stated purpose of the KHS presentation note was to:

- “ 1) to point out significant misrepresentations of fact in the Information Note;
- 2) to request Hitchin Committee to recommend to Council (via Cabinet) that:
- a) significant misrepresentations of fact in the Information Note should be corrected and the Note re-issued; any similar misrepresentations of fact in the FAQ's on the Council's website should also be corrected;
 - b) the Council should reaffirm that the Churchgate Planning Brief remains the Council's Statement of Policy and that Option A in the Planning Brief Final Report should be confirmed as the Council's preferred option;
 - c) delegation of power to the Churchgate Project Board to approve a scheme by Simons prior to submission of a Planning Application should be rescinded and that decision should be reserved to Full Council. “

4.3 The first part of the KHS presentation refers to their reasons for representations by KHS.

- 4.3.1 KHS Para 1.1.1 refers to the function of KHS, which in their words ' is to represent views within Hitchin not otherwise represented by the formal civic societies.' Their stated function is noted but the Council is not aware of a constitution or Terms of Reference for KHS, or the extent of their membership list. KHS had the opportunity to seek membership of the CLF but chose not to apply.
- 4.3.2 The Council does listen to all views made by people be it through organisations, representative bodies or as individuals. People can make their views known through the Hitchin Town Talk, the media and by writing to or emailing the council, where a specific email address has been set up at 'churchgate@north-herts.gov.uk'.
- 4.3.3 KHS Para 1.1.2 refers to the Council misrepresenting facts in publications and KHS's view of the significant impact of the Churchgate redevelopment on the character of the town.
- 4.3.4 The Council absolutely refutes the suggestion that it has published misrepresentations of fact. The Council have already released a large amount of information into the public domain over the last 14 months and have updated the FAQ page at regular intervals as a means of providing clarity on issues raised on the DA, the Procurement Process, the status of the Churchgate Planning Brief, the role and function of the Churchgate Project Board, the Council decision making process, separating the planning function from the asset management function etc. At all times the information has been correct at the time of publication. Where subsequent events have changed the position, the information has been updated. Council officers will continue to review the web pages and the FAQs to try to ensure the information is presented as clearly as possible. Any remaining information that is not in the public domain is for commercial sensitivity reasons.

- 4.3.5 It is agreed that the project to redevelop Churchgate and the surrounding area is an important project for Hitchin which provides an opportunity for improving the town centre, whilst recognising its historic character. It is a requirement of the Development Agreement (DA) that Simons consult on their proposed vision and on their proposed scheme taking into consideration comments received to their initial vision and to their scheme as it continues to change. This has been widely publicised and a number of comments have been and continue to be made, i.e. at the May 2010 initial consultation exhibition, at the CLF meetings and indeed through the means outlined in KHS presentation. It is to be noted that only a small minority of the public appear to be following the project on the Council's website. Over the past 4 months the most popular Churchgate page has averaged 125 views per month, of which 99 were unique views (i.e. different computers accessing the page), this despite Churchgate featuring prominently on the Council's Home Page on a number of occasions during this period and references to the FAQs in Outlook and media coverage. To provide some context, the Home Page averaged 13,990 unique views per month during the same period. The website has proved useful previously, with the peak interest on the most popular Churchgate page in May 2010 of 2,800 page views, of which 1,015 were unique views. However all documentation that is on the website is also available in Hitchin Library making it a little difficult to ascertain the actual numbers of people that are actively interested in the progress of the project and are looking at the documentation. There is a large silent majority, in particular younger people that both the Council and Simons would like to hear from. As part of this quiet period Simons will continue to engage with key stakeholders and with younger people by going to the secondary schools to seek their views. Once Simons is ready to consult on their proposed scheme every effort will be made to actively engage with all in the wider community in Hitchin.
- 4.3.6 KHS Para 1.1.3 refers to the status of the Planning Brief, Simons apparent failure to follow the principles of the Planning Brief and the lack of a reassurance by the Council that it will uphold its own adopted policy .
- 4.3.7 There is a clear misunderstanding as to the status of the Planning Brief for the Council in its separate roles as Local Planning Authority and as Landowner. Full Council adopted the Planning Brief as a planning policy document in November 2005. As previously explained in the FAQs and at the CLF, the Planning Brief remains a relevant document for the Local Planning Authority when it considers any planning application for the area. This decision to adopt a planning policy does not, however, bind the Council as landowner, although it was used to inform the procurement process which appointed Simons and will also inform any scheme brought forward by Simons. It will be for the Local Planning Authority to decide, based on all applicable planning considerations including the Planning Brief, what is acceptable for the site.
- 4.3.8 Officers have previously stated that the Churchgate Planning Brief is highly relevant and the most locally specific policy document which provides a set of planning principles and a robust urban design rationale to guide and allow for high quality redevelopment of the site. The Council has provided a detailed response to the letter submitted by the Hitchin Society at the first meeting of the CLF in relation to the status of the Planning Brief which refers to various elements of the Simons tender submission that sought to meet the guidelines in the Churchgate Planning Brief. The Council has also set out the planning context on its Churchgate web pages. Simons will be required to justify any departure from the Churchgate Planning Brief when submitting their planning application

- 4.3.9 KHS para 1.1.4 makes reference to the role of the Project Board and the decision making process in terms of agreeing Simons proposed scheme, granting of a planning application and confirmation by Secretary of State in terms of granting CPO powers to the Council.
- 4.3.10 The Churchgate Project Board was established by Full Council to act on behalf of the Council in respect of all functions required under the Development Agreement (DA) and the delivery of the Churchgate project generally. This includes approving any scheme prior to its submission for a planning application. The officers reporting to the Project Board are responsible for working together with Simons and ensuring that they deliver on various aspects of the project .The Project Board meets bimonthly to monitor the project. It is normal practice for a project of this scale to have a Project Board that can discuss confidential matters and agree to release what information it can into the public domain that is not commercially sensitive. The Project Board receives updates at every meeting on the ongoing consultation. We note the suggestion that the Project Board will make its decision on a potential scheme without public consultation. The consultation strategy includes further public presentations on any scheme proposed for a planning application and the Project Board therefore has the benefit of being able to consider the response to this consultation prior to making its decision. The Project Board reports to Cabinet where necessary and Cabinet may then refer matters to Full Council
- 4.3.11 In terms of the last two decisions identified, the LPA will retain its complete independence irrespective of the fact that the Council is a development partner with Simons. The LPA will make the final decision as stated in para 4.3.7 above, and should CPO be required, the Council will then follow the due process as set out in Planning legislation.

4.4 The second part of the KHS presentation refers to their suggestion of apparent misrepresentations of fact by officers and the Council.

- 4.4.1 KHS para 2.2.1 questioned whether the Council, including Members and Officers have not made a decision on any proposed scheme.
- 4.4.2 The decision to market the development opportunity was made by Cabinet on 4th September 2007. On 20th May 2008 the Hitchin Town Centre working Party chose Competitive Dialogue as the preferred option for the procurement process, based on professional advice that it was the correct procurement process to follow, and requested that officers commence marketing the site on that basis. In August 2008 the development objectives were set for the whole procurement process, based on the principles of the Planning Brief and the Hitchin Town Centre Strategy. It was made clear at the outset the detail that would be required going through the Competitive Dialogue process and that the successful bidders invited to submit their tenders would be expected to submit a tender as far as RIBA design stage B/B+. This is not an unusual procurement process for such development schemes. The Hitchin Town Centre Working Party was kept informed on progress during the Competitive Dialogue period. The Council required sufficient detail to be able to make an informed decision in selecting its development partner, in terms of meeting both its design objectives and financial criteria set out as part of the procurement process. The resolution of Full Council on 25 February 2010 was "That the contract for the redevelopment of Churchgate shopping centre and surrounding area be awarded to Simons Developments Limited". The resolution does not relate to a specific scheme.

- 4.4.3 The purpose of the tender process was to enable the Council to select a developer who had the skills and expertise to act as the Council's partner in the development of Hitchin. As stated above the Council needed to be satisfied that the successful bidder would be capable of meeting the objectives and criteria set out in the procurement process. Simons "solution" refers to all aspects of the tender submission, for example their initial design ideas, the financial model, the terms of the legal agreements etc. Officer comments on the tender scoring, legal and financial advice given by the Council's advisors were all part of the information provided and made available to councillors when making the decision to award the contract to Simons at the meeting of Full Council on 25th Feb 2010.
- 4.4.4 The procurement process has been correctly followed by the Council acting as land-owner. Prospective bidders were made aware of the existence of all relevant planning documents that would impact on the planning application they would ultimately make. Bidders were clearly told that if they were proposing extensive works on areas 4 and 5 (St Mary's and Portmill Lane car parks), they would have to justify that approach, firstly to the Council as land-owner to enable the Council to reach a decision on appointment of a development partner and then separately to the Planning Authority. As part of the process (and indeed prior to the process when others have looked at the site) all the bidders proposals tended to be of a similar size to achieve a viable scheme, due to the constraints of the site and the type of development needed to deliver the Council's objectives. At no time was the decision taken in a vacuum, councillors were advised of all facts. As repeatedly explained, it will be the Planning Authority who will decide what, if any, development is appropriate on the site following the submission of a planning application.
- 4.4.5 KHS Para 2.2.2 questions the status of the Planning Brief. The status of the Planning Brief is covered in paras 4.3.7 and 4.3.8 above. It is guidance which the LPA will take into consideration alongside all other relevant planning considerations when making its decision. The Brief is still considered to be relevant in policy terms and will be taken into consideration by the LPA when considering any planning application for the site.
- 4.4.6 KHS at para 2.2.3 raise the issue of the existing owner of the Churchgate centre. The Council's statement is not misleading. The Council has been advised that Simons have been and are continuing to be in discussions directly with the leaseholder and not through the agent with whom KHS are corresponding, and at this point in time sees no need to alter the wording of the FAQ. Should negotiation not be successful then the wording in the FAQ will be updated accordingly. It is to be appreciated that the project is evolving and the information will be updated to reflect the current situation.
- 4.4.7 In terms of using CPO powers, Simons must first enter into reasonable negotiations with relevant landowners to purchase the land by way of private agreement. Only if this is unsuccessful will the Council consider using its CPO powers. This is clearly stated in the archived FAQs. Under the Council's constitution the use of CPO powers is a decision that would ultimately have to be made by Full Council. A CPO is a statutory procedure which, if authorised to do so by the Secretary of State, allows NHDC to compulsorily acquire (on behalf of the developer) all of the property required for the development proposal. This could not happen until planning permission has been granted for a scheme and again the Council will update its FAQs should the Council agree to pursue the use its CPO powers.
- 4.4.8 KHS para 2.2.4 questions the principle of building on St Mary's and Portmill Lane car parks and the time and cost associated with the consultation process.

4.4.9 The Hitchin Councillors and the Churchgate Project Board are fully aware of the public views that have been expressed and the concerns expressed by some regarding Simons proposal to build on St Mary's and Portmill Lane car parks. It should be noted that other members of the public have not voiced an objection in principle to building on St Mary's, even those seeking that the gap between any buildings be larger than that shown in the initial vision. Simons are the developer and they are responsible for preparing a scheme that will be submitted as a planning application. As previously explained Simons are continuing to work with key stakeholders, technical organisations and will be having ongoing pre-application discussions with the LPA up until the time they submit a planning application. As previously explained Simons will be required to submit all necessary information to justify their submission as part of the planning application. It is to be noted that the cost and risk for progressing and implementing the project is with the developer. The Council is not required to make any further financial contribution to the development during this phase of the project unless it seeks to bring in external advisers to inform decision-making.

4.4.10 KHS at para 2.2.5 are questioning the separation between the Council's function as landowner and as Local Planning Authority. The Council has previously answered this point and a full response is in the FAQs published in April 2011 as previously reported to the Committee. This situation is not unusual and is repeated around the country.

4.5 KHS also makes reference to Hitchin Committee's role in the process at para 3.1.

4.5.1 The NHDC Constitution does allocate responsibility to Area Committees to report to Council on any matter affecting their area. The Hitchin Committee will continue to receive updates and reports as considered necessary by the Chair of Hitchin Committee on the Churchgate Project. This will ensure that the Local Ward Councillors are kept fully informed and that Hitchin Committee can make recommendations on matters that it considers important to Cabinet and Full Council. The Council is following a democratic process in being as open and transparent as it can. It is only withholding information for legal and commercially sensitive reasons until it can be released. The public are being kept fully informed about the project via reports to relevant committees, the Churchgate Liaison Forum, updating the Council's website and making information available in the Hitchin Library. Points already acknowledged by KHS in their presentation. The public have already been consulted on Simons' initial vision for the area (May 2010) and will be given the opportunity to comment on a proposed scheme prior to it being submitted as a planning application. The public will again be afforded the opportunity to comment during the planning application stage. The Council will continue to listen to the views of the community during the course of the project and in taking informed decisions will demonstrate its reasoning and be fully accountable for any decisions made.

5. LEGAL IMPLICATIONS

5.1 There are no direct legal implications arising out of this report. Decisions by the Council acting as land owner will be made in line with the requirements of the Constitution.

5.2 The Planning Authority will require that consultation on the scheme be carried out prior to submission of the planning application and will require this to be genuine consultation (i.e. it is not a mere presentation of the final scheme). The LPA will act independently within its powers when considering a planning application. Should the Planning Committee decide to reject the application, Simons could then consider whether to make an appeal. Any appeal would be heard by a Planning Inspector.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 There are clearly significant potential financial implications associated with the redevelopment of the Churchgate Centre. The contract signed with Simons does not require Council financial resources to be allocated to the progression or development of this scheme. The Council's contribution is to make its land holdings available for the development. The other resources committed by the Council going forward take the form of officer time required for project management and project support activities and some external specialist skills, which will be funded from existing budgets.
- 6.2 With regard to legal, marketing and consultancy costs already incurred by the Council, it is expected that part of this will be recouped from Simons under the terms of the Development Agreement. Estimated figures for likely costs were provided to the bidders for inclusion in their viability calculations.
- 6.3 Under Section 123 of the Local Government Act, the Council is required to achieve the best consideration reasonably obtainable for all of its assets, and regarding Churchgate this potentially includes the Churchgate Centre, the market area and the three adjoining car parks. In terms of pursuing the Council's immediate priorities – in particular town centres - a significant issue and associated identified action which relates to the redevelopment of the Churchgate area of Hitchin. The project is therefore logged as part of the Council's risk management procedures. The project also has its own risk register which is confidential and is reviewed regularly by the Churchgate Project Board.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 7.1 In terms of Human Resource implications, the level of officer involvement in the post-contract process is being factored into work plans. Where necessary specialist skills may be required to deal with matters such as legal support and advice, commercial viability and marketing of the site. It should be noted that post-contract award the identified development partner will be expected to take the lead on most issues and so the requirements going forward are likely to be of a monitoring nature.
- 7.2 The Council recognises the changing nature of equality legislation and incorporates national legislation and regulations into its scheme and services as appropriate, as set out in the Council's Corporate Equality Strategy. The Race Relations (Amendment) Act 2000 marked a very significant innovation in the legal framework. It placed much of what was previously only advisory and voluntary on to a statutory footing. The Act extends the provisions of the Race Relations Act 1976 to cover all the activities of all public authorities. It makes important extensions to public authority duties. Equivalent statutory duties have been created for disability by the Disability Discrimination Act 2005 and for gender by the Equality Act 2006. These duties divide into a general duty and specific duties.
- 7.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups. During the development and consideration of the project the impact of equality of access and outcomes should be considered.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 8.1 The consultation process on Simons' tender submission outlining their vision for the redevelopment of Churchgate and the surrounding area took place in May 2010. Since then views have been submitted through the Churchgate Liaison Form, various organisations and individuals on various issues. The public and external organisations will be afforded the opportunity to comment further on a proposed scheme to be submitted for public consultation prior to the submission of a planning application.
- 8.2 Ward Members and Councillors are kept informed through reports to Hitchin Committee and updates through Member Information Service.

9. RECOMMENDATIONS

- 9.1 That Members note the update provided in the report.
- 9.2 That Members note the officers responses to the presentation by KHS and agree that the content of the officers Information note presented to Hitchin Committee on 7 June 2011 has been clarified.
- 9.3 That Members note the status of the Churchgate Planning Brief as the Council's Statement of Policy for Local Planning Authority purpose only and note the requirement by the developer to justify any departure from the Brief as part of submitting any planning application.
- 9.4 That Members note the role of the Churchgate Project Board as set up by Full Council, and request that Hitchin Committee continues to receive updates and reports on the Churchgate Project to enable the Committee to fulfil its functions.

10. APPENDICES

- 10.1 Appendix 1 – Full presentation by KHS to Hitchin Committee on 7 June 2011
- 10.2 Appendix 2 – Officer Information Note submitted to Hitchin Committee on 7 June 2011

11. CONTACT OFFICERS

Norma Atlay, Strategic Director of Finance, Policy and Governance. Telephone: 01462 474297. E-mail address: norma.atlay@north-herts.gov.uk

Andy Cavanagh, Head of Financial Services. Telephone 01462 474243. E-mail address andrew.cavanagh@north-herts.gov.uk

Louise Symes, Planning Projects Manager. Telephone 01462 474359. E-mail address louise.symes@north-herts.gov.uk

Simon Ellis, Principal Planning Officer. Telephone 01462 474264. E-mail address simon.ellis@north-herts.gov.uk

Anthony Roche, Senior Lawyer. Telephone 01462 474588. E-mail address anthony.roche@north-herts.gov.uk