

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

**8****UPDATE ON REDEVELOPMENT OF CHURCHGATE AND ITS SURROUNDING AREA: INFORMATION NOTE**

REPORT OF THE STRATEGIC DIRECTOR OF FINANCE, POLICY AND GOVERNANCE

**1. PURPOSE OF REPORT**

- 1.1 To update Members on the progress regarding the Churchgate redevelopment project.
- 1.2 For the ease of updating Members this Note will be divided into various sub-sections.

**2. BACKGROUND**

- 2.1 Following a detailed procurement process, Full Council agreed at its meeting on 25<sup>th</sup> 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 19<sup>th</sup> March 2010.
- 2.2 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 18<sup>th</sup> May to 5<sup>th</sup> June 2010.
- 2.3 A summary report of the feedback from this first phase has been published and can be viewed on the Councils website and in the Hitchin Library.
- 2.4 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 economic principles
  - Dynamics and location of Hitchin Market
  - Public realm
  - 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.

- 2.5 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 will be reported on at the CLF meetings and at Hitchin Committee where they are not commercially sensitive.
- 2.6 This will be an ongoing process while Simons develops a scheme that will be the subject of future public consultation prior to it being offered as a planning application.

### **3. PUBLIC ENGAGEMENT**

#### **The Churchgate Liaison Forum (CLF)**

- 3.1 The fifth meeting of the CLF took place on 23<sup>rd</sup> March 2011 at Church House, and followed a different format, starting with a formal meeting followed by an extended public session to then close with a formal session. This format worked well and will be followed at future meetings of the CLF.
- 3.2 Simons advised at the meeting in November that they were entering a quiet reporting period for the project as they needed time to find a location for the Hitchin market, discuss various options with all parties and also look at all the other issues raised through the consultation and as a result would have little to report on in terms of progress at the CLF meeting in January. It was proposed by the representatives from Hitchin Society and Hitchin Forum that the January CLF meeting be cancelled and that the CLF reconvene for the meeting on 23<sup>rd</sup> March 2011 when Simons may have more information on the market and other aspects relevant to the scheme for the CLF to discuss. This proposal was agreed by the CLF members.
- 3.3 Simons had hoped to present some initial options on the location of the Market to the CLF meeting on 23<sup>rd</sup> March. Although good progress is being made and the meetings held are moving matters on, progress is not as quick as had been hoped and Simons were not in a position to present options to the CLF. The CLF did however received a presentation from Simons that was presented to Cabinet on 22<sup>nd</sup> March, marking the anniversary of Simons signing the Development Agreement with the Council and to update the Cabinet and the CLF members on Simons progress in the last 12 months.
- 3.4 The presentation raised a number of issues in the public session on the Development Agreement and the 250 year lease, on design aspects relating to the location of the market, servicing requirements, the need to develop on St Mary's car park, likely incentives offered for an anchor store, and if the post office site could be included as part of the scheme. Disappointment was also expressed at the lack of plans been shown at CLF meetings. (See notes of the meeting attached at [Appendix 1](#)).

- 3.5 Simons have stated that they are in a quiet public reporting period at present as they are trying to respond to the concerns raised by the public to their initial vision exhibited in May 2010. They are also considering the various issues that have been raised through the CLF and by key stakeholders such as the market traders representatives, highways etc. Simons have advised that they want to provide sufficient levels of detail to show that they have responded to these issues when they present their proposed scheme. This process will take time, and it was agreed at the CLF meeting that there is no point in holding another meeting until Simons is ready to present their proposed scheme. The date of the next CLF meeting will be set in due course and will be widely publicised.

### **Recent Press coverage**

- 3.6 The Committee will be aware of recent articles and letters in the Advertiser and the Comet that relate to the Churchgate Development Agreement (DA) and to criticism of the Council for allowing the proposed development to include St Mary's and Portmill Lane car parks.
- 3.7 With regard to the Development Agreement, the Churchgate Project Board working together with officers and Simons have responded to the press articles in an attempt to correct any inaccurate information and have also updated the Frequently Asked Questions (FAQs) page on the Council's Churchgate website pages. A redacted version of the DA was made publicly available last year and whilst parts remain confidential for reasons of commercial sensitivity, this has been balanced with the need to correct common misunderstandings.
- 3.8 The most recent FAQs refer to the purpose of the DA and explain what profit Simons are allowed under the terms of the agreement. In addition the FAQs attempt to explain the rationale behind the 250 year lease and the income that the Council will receive once the lease is granted. Simons ability to seek a Joint Venture Partner under the terms of the DA is also explained and confirms that such a partner would have to be approved by the Council.

A copy of the updated FAQs is attached at [Appendix 2](#).

- 3.9 In these responses the Council has tried to make it clear that:
- Figures for return on investment currently being quoted are based on the Simons' vision of what might be possible on the site and were indicative and for tender evaluation purposes only. It is premature at this stage to anticipate the return on investment that Simons is likely to receive from a successful development as it is still working on the proposed scheme, and until this scheme is fixed the detailed final financial modelling cannot be undertaken.
  - At the time of drawing up the DA the Council sought expert advice from DTZ (development adviser) and Eversheds (legal adviser) on the requirements of the bidders for a 250 year lease. Both companies advised that a lease of this length is normal and is required by funders and reflected the requirements of the development market as it offers the level of security required for funding multi-million pound developments.

- The DA imposes certain conditions that must be satisfied by Simons prior to the grant of any 250 year lease, or the carrying out of any development on the site. This includes having planning permission granted. The lease contains safeguards to protect the public interest and the Council's financial return.
- The Council will retain the freehold, as it owns the majority of the land potentially being used in the scheme. The Council will not receive payment for granting the lease, instead, in return for granting the lease, it will receive a share of the rental income. Simons could sell the lease onto a funder, such as a pension fund, which is the usual approach for this type of development.
- There are certain milestones within the agreement that must be met and break clauses should Simons fail to meet its obligations as set out in the DA.
- Under the terms of the DA Simons is allowed to appoint a Joint Venture Partner, subject to the Council's approval. As yet no proposal has been put forward by Simons in seeking the Council's approval for a Joint Venture Partner.
- The Council is not required to make any further financial contribution to the development. However it is accepted the Council would have to forgo some rental and car-park income during the construction period. Only when the final scheme is known, will discussion take place regarding phasing of the construction works to seek to minimise any loss of income.
- Contrary to public speculation the DA does not state that Simons must only enhance (and not build on) on St Mary's Square or Portmill Lane car parks. This comes from a misreading of the background section of the DA. The DA is not prescriptive as to the content of the final scheme, as this is a matter for Simons and the Local Planning Authority, although the Project Board must give its consent to any scheme prior to it being submitted as a planning application.
- As part of the £50 million project there will be improvements to some areas of Hitchin Town Centre, including a river walkway, public space and market, and the taxpayer will make no financial contribution to these improvements.

3.10 With regard to the process and the Council not listening to the people of Hitchin in allowing development on St Mary's and Portmill Lane car parks, officers have repeatedly advised through the Churchgate Liaison Forum and various correspondence as well as via other FAQs on the Council's website that:

- The Council, including Members and Officers has not made a decision on any proposed scheme. The only decision that has been made is on awarding Simons the contract to act as development partner for the Churchgate centre and its surrounding area.
- The awarding of the contract was made by the whole Council and not Cabinet.

- All councillors have seen the same detail of information, not just Cabinet members.
- Officers have responded in detail to the points previously raised regarding the Churchgate Planning Brief and Simon's initial vision exhibited in May 2010. This detailed response to Hitchin Society is publicly available on the Churchgate Liaison Forum webpages on the Council's website.
- The Council has also previously responded on its Compulsory Purchase Order (CPO) powers, advising that Simons will try to negotiate with all relevant land owners to purchase the land by way of private agreement. Only if this is unsuccessful, following reasonable negotiations, will a CPO be considered. Simons is in discussion at present with key landowners such as Hammersmatch and at this stage it is premature to advise if CPO powers will be necessary.
- Simons is in a quiet public reporting period at present as mentioned in para 3.5 above and that this process will take time.
- Members are listening to the local people and are aware of all the letters that are being published in the press. The Churchgate Project Board regularly receives an update on public liaison and discusses the issues that are raised at the CLF meetings. The notes of the CLF meetings are also regularly reported to Hitchin Committee, again ensuring that local councillors are kept fully informed.
- The time to judge whether consultation and listening to local views has had an impact will be when Simons' design proposal is published. Until then, neither the Council nor the people of Hitchin are in a position to judge. Once Simons has a revised scheme it will be publicly consulted on before it is submitted as a planning application.
- Simons is required to gain Council approval for its proposal before it can be submitted as a planning application, and, depending on obtaining Council agreement to that proposed scheme going forward as a planning application, it will be the Local Planning Authority which will ultimately make the final decision on the scheme.
- Planning is a statutory process and has a framework as to how applications must be processed in accordance with central government guidance. There is a clear separation between the Councillors and officers sitting on the Churchgate Project Board and those that will be considering the planning application. The councillors sitting on any future Planning Control Committee are required and trained, to judge applications independently in light of the various policy considerations and the Committee has regularly shown a willingness to make its own decisions.

3.11 The Churchgate Project Team in consultation with the Churchgate Project Board will continue to update the FAQs as issues arise during the course of the project.

#### **4. REPORTS TO CABINET**

4.1 None

#### **5. AVAILABLE INFORMATION**

5.1 The Council will continue to proactively publish information about the project in order to assist and inform the public debate. All documents are available to view on the Council's website at [www.north-herts.gov.uk](http://www.north-herts.gov.uk) and in the Hitchin Library.

5.2 It is to be noted that some of these documents contain redactions for commercial sensitivity reasons.

5.3 As the on-going consultation with Stakeholders continues the Council will update the 'Frequently Asked Questions' section on the website.

#### **6. CONCLUSION**

6.1 That the Hitchin Committee note the content of this Information Note.

#### **7. APPENDICES**

7.1 Appendix 1 - CLF Notes of 23 March 2011 meeting.

7.2 Appendix 2 - Frequently Asked Questions – updated May 2011

#### **8. CONTACT OFFICERS**

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## CHURCHGATE DEVELOPMENT PROJECT

### FAQ UPDATE FOR WEBSITE MAY 2011

#### **What is the status of the Churchgate Project Board?**

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.

#### **Which Councillors sit on the Project Board?**

There are four Councillors on the Project Board, none of whom are Planning Committee Councillors, to ensure separation of duties at Member level. The portfolios which currently make up the project board are: Leader of the Council; Finance Portfolio Holder; Planning and Enterprise Portfolio Holder and Chair of Hitchin Area Committee.

#### **What is the purpose of the Development Agreement?**

The Development Agreement is a legal contract signed between the Council (NHDC) and Simons Developments as its developer for the Churchgate centre and the surrounding area. It outlines the steps required to deliver the scheme and it is normal practice to have such an agreement at the start of such an important project.

The Agreement imposes certain conditions that must be satisfied by Simons prior to the grant of any lease or the carrying out of any development on the site. There are certain milestones within the agreement that must be met and break clauses should Simons fail to meet its obligations as set out in the Agreement.

#### **What profit are Simons allowed under the terms of the Development Agreement?**

The Development Agreement provides for Simons to receive a fixed profit on their investment, in carrying out the development. If that fixed profit level is exceeded the Council and Simons will share in any additional profit.

It is premature at this stage to anticipate the profit as Simons are still working on their proposed scheme, and until this scheme is fixed the detailed final financial modelling cannot be undertaken.

#### **Does the Development Agreement prevent Simons from building on St Mary’s Square and Portmill Lane?**

No – the Development Agreement does not preclude development on these sites. Within the background section of the Development Agreement there is reference to the key development objectives of the procurement exercise, one of which was development on Churchgate, the Biggin, the market and enhancement of St Mary’s Square and Portmill Lane. This background section is not legally binding . It is there to assist with the interpretation of the Development Agreement in the event of a dispute.

Ultimately the Planning Authority will decide what, if any, development is appropriate on the entire site including St Mary's Square and Portmill Lane.

### **Where can I access a copy of the Development Agreement?**

A redacted version (redacted for commercial sensitivity reasons) of the Development Agreement is available to view under the Procurement Process webpage.

### **Why has the Council agreed to a 250 year lease for the development?**

At the time of drawing up the Development Agreement the Council sought expert advice from DTZ (development adviser) and Eversheds (legal adviser) on the requirements of the bidders for a 250 year lease. Both companies advised that a lease of this length was required by funders and reflected the requirements of the development market as it offers the level of security required for funding multi-million pound developments.

### **When will the lease be granted?**

The Development Agreement allows for a 250 year lease to be granted subject to Simons having first met a number of requirements in the Development Agreement including having planning permission granted. The lease contains safeguards to protect the public interest and the Council's financial return.

### **Will the Council retain any ownership of the land and who will ultimately own the lease?**

The Council will retain the freehold as it owns the majority of the land potentially being used in the scheme. The Council will not receive payment for granting the lease, instead in return for granting the lease it will receive a share of the rental income. Simons could sell the lease onto a funder, such as a pension fund, which is the usual approach for this type of development.

### **Where can I see a copy of the lease?**

A redacted version (redacted for commercial sensitivity reasons) of the lease is available on the Procurement Process web page.

### **What income does the Council receive under the lease?**

The Council will have a minimum guaranteed annual income of £200,000 from day one of the scheme opening. The current estimates are that the Council's income will be £350,000 per year, equivalent to existing income from the Churchgate centre and surrounding car-parks.

### **Why has the Council accepted 10% ground rent for any new scheme when the current Churchgate owner pays approximately 40%?**

Seeking to compare the percentages of rent paid to the Council is misleading. It is anticipated that the redevelopment will increase the overall income generated by the site. Therefore a smaller percentage figure is acceptable as it will still give at least the same and potentially a greater return than currently received. For example, if we get 40% of £100 we get £40. If we get 10% of £400 we still get £40.



### **Is the Council required to make any further financial contribution?**

The Council is not required to make any further financial contribution to the development. However, the Council would have to forgo some rental and car-park income during the construction period. When the final scheme is known, discussions will take place regarding phasing of the construction works to seek to minimise any loss of income to the Council.

### **What benefits will the development bring to the town other than shops and housing?**

As part of the £50million project there will be improvements to some areas of Hitchin Town centre, including a river walkway, public space and market. Council taxpayers will make no financial contribution to these improvements. In the current financial climate, it is extremely unlikely that the Council could afford to carry out any investment itself. In the longer term, repairs and maintenance costs of some areas, e.g. any multi-storey car-park, will also be covered and will therefore represent a saving to the council tax payer.

### **Are Simons allowed to have a Joint Venture Partner?**

Under the terms of the Development Agreement Simons can seek a Joint Venture partner but that partner would have to be approved by the Council. No proposal has been put to NHDC at this time (11 May).

### **Why is Simons entering into a joint venture partnership with a third party to fund the scheme?**

Simons are in negotiations to bring in a joint venture partner for the development. This will enable them to acquire key assets that would enable progress to be made on certain elements of the scheme including the purchase of the existing Churchgate centre. A joint venture partner also has the potential to be the long-term owner and operator of the site.

By seeking a partner now, Simons will be able to focus their resources on the development and planning aspects while the partner deals with acquisition of key assets to ensure that any scheme that receives planning approval is capable of being delivered in a timely fashion. Simons would still head the development and be responsible for delivering it.

### **Who is responsible for leading the public consultation process?**

Simons are responsible for leading the consultation process with input from the Council where appropriate. The Development Agreement states that Simons must hold public consultations in respect of the development in accordance with a consultation strategy agreed with the Council.

Mechanisms are in place to ensure that all comments and feedback are recorded, for example through the Churchgate Liaison Forum Meetings, through regular updates to the Hitchin Committee, and through the Council's website. These are reported to the Churchgate Project Board for awareness and action where appropriate.

Simons will have a public exhibition on their revised scheme prior to it being submitted as a formal planning application.