

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

REPORT OF THE STRATEGIC DIRECTOR OF FINANCE, POLICY AND GOVERNANCE

1. PURPOSE OF INFORMATION NOTE

- 1.1 To outline the process that is to be followed by Simons and the Council in delivering the Churchgate development project and to summarise the key milestones and trigger points in the Development Agreement that Simons are required to meet on the Project.
- 1.2 This note is in response to the requests made by Hitchin Committee at its meeting on 15th November 2011 under item 66 of the Minutes, i.e.

“ (2) That the Senior Lawyer and Planning Projects Manager be requested to provide details of ‘Trigger Points’ that Simons Developments are required to meet on the Churchgate Development Project in the next Information Note scheduled for 10 January 2012;

(3) That with due regard to commercial sensitivity officers be requested to provide a more comprehensive and detailed Information Note on the Churchgate Development Project to the next meeting of the Hitchin Committee scheduled for 10 January 2012;”

2. THE PROCESS**Background Summary:**

- 2.1 The purpose of the Churchgate Development Project is to develop a high quality retail-led, mixed use scheme, with a residential component which will significantly enhance the town of Hitchin, both in terms of the quality of its retail offer and its visual amenity. The decision to market the Churchgate site and its surrounding area in May 2008 and the procurement process that followed has been well documented in previous reports to Hitchin Committee and on the Council’s website.
- 2.2 Simons Development Limited was the successful bidder and the Council has since entered into a Development Agreement with Simons as its development partner for the redevelopment of the Churchgate Shopping centre and surrounding area. The contract was signed on 19th March 2010.
- 2.3 The purpose of the Churchgate Project Board is to ensure that the project is delivered in respect of all functions required under the signed Development Agreement (DA) and that the redevelopment strategically meets the key objectives of the project. The key objectives for the project are set out in Appendix A and a summary of the functions as required under the DA are set out in Section 3 of this Information Note.

Project Phases:

2.4 Following the appointment of Simons as the Council's development partner, the project can be broken down into the following 4 phases:

- Pre-planning to viability phase,
- Planning Application Phase
- Pre-construction Phase
- Post contractor appointment/construction phase

How each of these phases accord with key milestones and trigger points in the DA are summarised in Section 3.

2.5 Pre-Planning to Viability Stage.

2.5.1 As part of this phase of the project Simons were and are required to:

- Consult on their tender submission in May 2010 which set out their initial vision for the redevelopment of the Churchgate area.
- Present and publish a summary report of the feedback from this initial consultation phase to the Churchgate Project Board, Hitchin Committee and the Churchgate Liaison Forum. This took place from July to September 2010.
- Consult with key stakeholders and the general public in understanding the key issues from the consultation feedback that were 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
- Continue open dialogue with key stakeholders and other interested parties as part of evolving their scheme design. This includes holding discussions with HTCI, Hitchin Markets Limited, the Hitchin Chamber of Commerce, representatives from the Hitchin Forum, Hitchin Society and Hitchin Historical Society, the Churchgate retailers and representatives from St. Mary's Church.
- Undertake negotiations with key landowners and potential key occupiers in working towards a solution that is deliverable.
- Undertake pre-application advice with the Local Planning Authority. Pre-application discussions are critically important and benefit both developers and local planning authorities in ensuring a better mutual understanding of objectives and the constraints that exist. In the course of such discussions proposals can be adapted to ensure that they better reflect community aspirations and that applications are complete and address all relevant issues. It is a requirement of the DA that Simons must submit a number of viability reports which assess whether a scheme is likely to be viable. The financial model is of course affected by a number of factors including the type of land uses proposed, external economic factors, cost of acquiring land, design etc

2.5.2 Outcomes from the various meetings, and tasks listed in this phase 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 legally or commercially sensitive.

2.6 Planning Application Phase

2.6.1 This phase will include:

- Preparing and agreeing a scoping and Environmental Impact Assessment (EIA) screening Report with the LPA. It is a requirement under schedule 2 of the 1999 EIA regulations for a scheme such as that being proposed by Simons that they prepare and submit an Environmental Statement containing the result of their EIA as part of their planning application. The EIA must draw together in a systematic way an assessment of the project's likely significant environmental impacts and how these can be reduced. Once prepared this is a public document.
- Preparing necessary technical documentation to support a planning application as required by the LPA, which may include retail and traffic impact assessments, car parking surveys, archaeological surveys of the site, ecological surveys of the river and preparation of a flood risk assessment. Note this is not an extensive list.
- Developing a design solution for planning application submission
- Submitting a detailed planning application in accordance with planning legislation and guidance. In terms of the DA Simons must submit a planning application by the first cut off date.
- Undertaking s106 negotiations as part of the planning application process and agreeing Heads of Terms.
- Giving consideration to the planning application by the LPA and agreeing whether to grant planning permission or not.
- Subject to planning permission being granted then planning conditions precedents are agreed and signed off. This should include the agreement of a phasing plan for construction.

2.7 Pre-construction Phase

2.7.1 This phase will be project managed by Simons and will include:

- Preparing tender documents for procuring contractors
- Appointing contractor
- Discharging conditions and S106 requirements
- Liaising and consulting with the local business community, residents and other affected parties in leading up to the construction phase.

2.8 Post contractor appointment/construction phase

2.8.1 The construction phase will be project managed by Simons and will include:

- Setting up construction design work and lead in period for construction on site
- Undertaking construction in accordance with agreed phasing plan
- Release of retail and residential accommodation for occupation
- Management and maintenance agreements with the Council and other relevant parties being agreed and signed.

2.9 The above process is summarised in the timeline attached at Appendix B.

2.10 The planned timeframe for the delivery of the project is set out in the Development Agreement and is based on the recovery of the economy. Simons will only submit a detailed design scheme for planning permission if the planning viability test is met. See para 2.6.1 above given the current economic climate, it is anticipated that the project could take approximately 4 to 6 years to completion. There are a series of break clauses in the Development Agreement that protect both the Council and the developer throughout the various phases of the project and are summarised in Section 3.

3. **DEVELOPMENT AGREEMENT**

3.1 The above section of the Information Note sets out in practical terms what Simons are looking to do in each stage (some of which is as a result of requirements of the Development Agreement). This section of the Note will provide specific information on the contractual requirements on Simons in the Development Agreement, in particular the 'trigger points' which was requested by the Committee. This is not intended to be a comprehensive summary of several hundred pages of legal agreements, rather highlighting particular points that may be of interest.

3.2 Subject to the satisfaction of certain pre-conditions, the Agreement imposes obligations on Simons for the construction of a mixed use development comprising predominantly retail and leisure accommodation (including an anchor store), residential accommodation, car parking and service/loading areas. The Agreement is conditional upon the satisfaction by Simons of various conditions which means that Simons are not obliged to carry out any development until these conditions have been satisfied.

3.3 In the initial phase of the Development Agreement Simons are required to provide regular updates on the financial viability of their proposals and submit a planning application by the First Cut Off Date, which can only be extended by agreement of both parties. The purpose of these Viability Tests is twofold. Firstly it prevents Simons sitting on a scheme which meets the viability requirements and unnecessarily delaying preparing a planning application (i.e. from the Council perspective it can potentially keep the process moving if there is an acceptable scheme). Secondly from the Simons perspective it allows them to hold off committing monies to preparing a planning application if a scheme is not sufficiently viable (i.e. a cost management measure).

3.4 Once a planning application is submitted Simons then have until the Second Cut Off Date to achieve the remaining 'pre-conditions'. These are:

i. Grant of Satisfactory Planning Permission

Satisfactory planning consent must be granted. The Agreement provides that the Second Cut Off Date can be extended if a decision on the planning permission, the CPO or a stopping up order is awaited.

ii. Stopping Up Order

Stopping up orders must be obtained in respect of any highways / footpaths crossing the site.

iii Viability Date

The development scheme must be viable prior to the Development Agreement going unconditional. The viability test is run once all other preconditions are satisfied.

iv.Anchor Tenant Pre-let

The Developer must procure a tenant for the anchor unit.

v. Residential Sub-Developer Plots

Any plot identified for principally residential use must be subject to an agreement for sale with a residential sub-developer(s).

vi. Retail Agreements for Lease

Simons must have signed up a certain percentage of retailers (known as pre-let) in terms of estimated rental value of the commercial units.

vii. Funding

A funding agreement must be in place or the Developer must be able to demonstrate that it has sufficient funding from its own resources to progress the development.

viii. Site Assembly

The site needs to be assembled either by way of Compulsory Purchase Order or private treaty.

ix. Site Survey

Ground conditions must not be such that the cost of remediation would make the development appraisal unviable.

x. The River Hiz

Consents required in respect of the River Hiz (including over-bridging) must be in place.

Under the terms of the DA, the Developer is entitled to waive some of the pre-conditions (viability, residential sub-sale, pre-letting, site survey and River Hiz consents).

- 3.5 It is important to note that no land will be transferred from the Council to Simons unless all of the above pre-conditions are first met. This is known as the 'unconditional date'. Simons are required to commence works within 6 months after the transfer of the land. They are then required to complete the commercial elements (and any residential above the retail) within 4 years of the unconditional date and the residential elements within 6 years of the unconditional date.
- 3.6 The final aspect of the Development Agreement it is felt useful to highlight are the termination provisions. Either party may terminate the Agreement if the planning application has not been submitted by the First Cut Off Date or if any other pre-conditions have not been satisfied by the Second Cut Off Date. If the planning application is refused there is also a clause that allows either the Council or Simons to terminate the Development Agreement by serving written notice in the event that Counsel advises less than 50% chance of overturning a Planning Refusal
- 3.7 The Council may also terminate the Agreement if:
- Simons becomes insolvent;
 - Simons commits a breach of the Agreement which cannot be remedied;
 - Simons commits a breach of the Agreement which it fails to remedy within a reasonable period;
 - if the CPO Indemnity Agreement is terminated;
 - if the development works are not completed by the relevant deadline; or
 - if Simons fails to commence the works within 6 months of completion of its leases.
- 3.8 Simons may terminate the Agreement before the earlier of (i) completion of the leases or (ii) transfer of any residential plot, if the Council is in material breach of its obligations and fails to remedy such breach within 3 months or such longer period as the parties reasonably agree.
- 3.9 Before serving notice to terminate the Council must give notice to any approved funder giving it the opportunity to step in and perform Simons' obligations or to find another appropriate person to do so.

4. LENGTH OF THE PROPOSED LEASE

- 4.1 It is fair to say that the length of the proposed lease, 250 years, has attracted criticism from some quarters. Some have described it in correspondence as unprecedented (which is not the case). When asked officers have always made clear that the length of the lease was considered acceptable by professional advisers based on the requirements of the funding market and was reported to Members at the time of the Full Council decision on 25 February 2010.
- 4.2 A quick Google search on '250 year lease redevelopment' brings up the following projects within the first couple of pages, all of which appear from following the links to have 250 year leases and date from the last four years.
- Hereford – Edgar Street Grid/ Cattle Market development

- Abingdon – The Charter redevelopment
- Burgess Hill – town centre development
- Preston – Tithebarn development
- Liverpool – Liverpool One/ Paradise Street development
- Liverpool – Garden festival site
- Oldham – Royton development
- Salford – Tootal Drive redevelopment
- London – 73/77 and 79/89 Oxford Street
- Manchester – City of Manchester Stadium
- London – Olympic Stadium

The above list includes different types of project - some town centre, some retail/office, some residential. Clearly some of the locations are much larger than Hitchin, but the first three are comparable in size and/or history. As has been continually stated by the Council a 250 year lease is clearly not unprecedented.

5. AVAILABLE INFORMATION

- 5.1 The Council has and will continue to proactively publish information about the project in order to assist and inform the public debate. All publicly available documents can be viewed on the Council's website at 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.

6. CONCLUSION

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

7. APPENDICES

- 7.1 Appendix A – Churchgate Project Key Objectives
- 7.2 Appendix B – Churchgate Project Process Timeline

8. CONTACT OFFICERS

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