

**TITLE OF REPORT: CHURCHGATE AND SURROUNDING AREA REDEVELOPMENT PROJECT, HITCHIN**

REPORT OF THE PROJECT EXECUTIVE FOR CHURCHGATE PROJECT BOARD (STRATEGIC DIRECTOR OF FINANCE, POLICY AND GOVERNANCE) AND CHAIRMAN OF THE CHURCHGATE PROJECT BOARD (CLLR MRS L.A. NEEDHAM)

***HITCHIN MEMBERS TO NOTE THAT THIS REPORT AND APPENDICES WAS PRESENTED TO CABINET ON 1 NOVEMBER 2012***

**1. SUMMARY**

1.1 The purpose of the report is to:

- (i) Seek Members agreement to recommend to Council a short extension of the first cut off date from that specified in the Development Agreement.
- (ii) Provide Members with an overview of the context and rationale behind the request for this extension.

**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**

3.1 Following a detailed competitive dialogue 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 (“Simons”) as North Hertfordshire District Council’s development partner. The Development Agreement (“DA”) was subsequently signed on 19<sup>th</sup> March 2010.

3.2 The DA included a number of key dates for viability appraisals and cut off dates by which certain events must have occurred. Simons are not able to meet the terms of the First Cut Off Date in the DA, which required them to have submitted a planning application by the third anniversary of the signing of the DA (i.e. 19 March 2013). Following a request received from Simons (letter attached at Appendix A) this report requests approval to extend the First Cut Off Date, and the related viability test date, by up to six months. The full details of this request are set out in paragraph 4.1 onwards below.

3.3 Members will be aware that the current economic climate remains very weak and interest rates are very low. The ongoing instability in the Eurozone and also the poor economic conditions in the United States also add to overall economic uncertainty.

These factors represent the backdrop against which Simons are seeking to identify a viable scheme. A recent article by DTZ Property Advisors (attached at Appendix B) also gives some general background to the poor health of the British development market.

- 3.4 Against this overall uncertainty, there is also a lack of clarity regarding Local Government Finance that may have a material impact on the Council. This could have significant revenue implications and therefore effectively prevents the Council from considering, at this specific time, whether to proceed with the current development partner or whether to explore alternative options.
- 3.5 In the period since the Development Agreement was signed, Simons have put forward a number of broad scheme ideas for consideration by the Project Board. These have been debated at length within the Project Board, and subsequently with Simons representatives to further their understanding of why these proposals have been rejected as not meeting the design requirements specified by the Council. Ideas which have been rejected as unacceptable were those which it was felt failed to sufficiently address concerns raised previously by Councillors, officers and the public, for example with regard to the market, River Hiz enhancement, height and massing of buildings etc.
- 3.6 Simons have also produced some tentative outline ideas that have been more positively received by the Project Board in terms of their potential for acceptance, but they are not currently viable in financial terms. Until there is greater certainty regarding viability, and therefore some prospect of delivery, it would be premature to consult on these options and therefore these ideas are not being circulated at this time.

#### **4. ISSUES**

- 4.1 Simons Developments have formally requested that the Council agrees to extend the First Cut Off Date for submitting a planning application, which is currently set at 19<sup>th</sup> March 2013, this being three years from the date of the Development Agreement. Specifically this request is for an extension of six months (to 19<sup>th</sup> September 2013). In addition Simons also request the "Planning Viability Appraisal Date" (to check whether there is a viable scheme prior to committing to the cost of the planning process) is extended from 19<sup>th</sup> December 2012 to no later than 19<sup>th</sup> June 2013, although Simons would seek to proceed along shorter timescales once there is sufficient clarity regarding the Council's financial position (see paragraphs 4.3 and 4.4 below). As stated above it is not possible now for Simons to meet the 19 March 2013 deadline for submission of a Planning application. To be clear the purpose of seeking a short extension of the First Cut Off Date is **not** to enable Simons to submit a planning application before 19 September 2013, as this is unfeasible given the amount of work required to prepare a planning application for a town centre redevelopment of this nature. The purpose for seeking a six month extension is to enable the Council to fully consider the alternatives outlined at paragraph 4.5 below based on a complete understanding of the Council's financial position moving forward.
- 4.2 From the Council's perspective there is a key issue relating to this development, outside the control of Simons, that the Council would wish to understand more due to its potential to have a significant impact on the future funding position of the Council. This issue is the Business Rates Retention scheme and the wider review of funding arrangements for local Authorities.
- 4.3 As Members may be aware, the Government will not publish the detail of the scheme operation until December 2012 at the earliest, although it becomes operational on 1<sup>st</sup>

April 2013. Under this scheme it is proposed that local authorities will retain 50% of all Business Rates generated in their area (to be split 40% to District Council and 10% to the County Council), although this is also subject to a series of tariffs, top ups, levies and assumptions regarding annual Business Rates growth. Much of the detail is yet to be confirmed although the Council already recognises the potential positive Business Rates benefit to the District that may result from the increased business rates income from a successful Churchgate scheme.

- 4.4 Significant revenue implications (positive or negative) could arise from the Business Rates retention scheme and the granting of a short extension to Simons would also be beneficial to NHDC in terms of providing sufficient time to understand the likely outcomes for the Council's overall financial position from either proceeding with Simons until viability is achieved or seeking alternative solutions. Consequently, the Council would then receive a further report on both of these potential courses of action in the light of more complete information regarding the Council's overall financial position and therefore the feasibility of undertaking any of the alternative options, should that be the chosen route forward.
- 4.5 **For information only at this stage**, alternative options to be explored (in the event that it was decided in due course not to proceed with Simons) are set out below. Please note it is possible that some options could be combined, although other ideas may also come forward following further discussion.

The Council could consider granting Simons a long extension to the current Development Agreement, with no change to its terms. Alternatively it might decide to step away from the Development Agreement and undertake no re-development for a number of years. If the Agreement with Simons ends the Council could undertake a further procurement exercise in the medium to long-term future to find an alternative development partner. The Council could choose to commit to investing more funds in the current project (or making other financial concessions) to assist in achieving viability and grant a longer extension to the Development Agreement to enable a planning application to be submitted. It could explore Tax Increment Financing Funding and any other alternative sources of funding which could be allocated to the scheme, refurbishment of the existing Churchgate Centre by Hammersmatch (to be noted as outside the Council's control), or refurbishment of the Car parks (this will be necessary in the interim whichever option is ultimately pursued). The Council could consider, as Local Planning Authority, developing a new planning brief (or updating the existing one) in the medium to long-term. It could explore selling the land to the highest bidder for development, or working up a scheme to achieve planning permission which is then sold/procured against, or seek to acquire the Hammersmatch interest in order to simplify land assembly for any future scheme. Discrete sections of the site could be sold off for residential development and using s106/CIL income from this to fund more limited improvements to the Churchgate area.

- 4.6 The options outlined at 4.5 and any others which might arise through discussion would be considered in detail in a subsequent report to Council once sufficient clarity is known on the Council's future financial position. Feedback is therefore not sought at this time as it is premature to consider the options in depth due to the lack of clarity as to the financial implications of each. It is acknowledged that some of the above options may ultimately prove not to be feasible upon further investigation.

## 5. LEGAL IMPLICATIONS

- 5.1 The request to extend the First Cut Off Date, if approved will require an amendment to the Development Agreement.
- 5.2 State Aid Legislation will need to be taken into account when assessing any potential options for moving forward in due course, either with Simons or without.
- 5.3 If the extension of the Development Agreement is not approved, or if it is approved but it is decided in due course not to proceed with Simons, then under clause 15.1 of the Development Agreement the Council could terminate the Agreement by serving written notice on Simons if it has not submitted the Planning Application by the First Cut Off Date of 19 March 2013 (or 19 September 2013 if extension is approved).

## **6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 There are clearly significant potential financial resource implications associated with the redevelopment of the Churchgate Centre and it's surrounding area. Churchgate does not currently feature in the Council's capital programme for major investment and there is no budget provision for any unrecoverable fees relating to the competitive dialogue process. The budget risk relating to the Developer failing to achieve a viable scheme, and therefore being unable to proceed, has been incorporated into the business planning process for each year since the Development Agreement was signed.
- 6.2 The contract signed with Simons 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. The other resources currently committed by the Council going forward take the form of officer time required for project management and project support activities and also some external specialist skills, as and when required, which will be funded from existing budgets. No external specialist costs have been incurred (other than in respect of FOI advice) since the signing of the Development Agreement.
- 6.3 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 Marys; Portmill East & West and Biggin Lane). The redevelopment of the Churchgate area of Hitchin, under the title "Hitchin Town Centre Development" is identified as a top Cabinet Risk as part of the Council's risk management procedures.
- 6.4 The situation regarding any potential amendments to the Development Agreement will be kept under review by the Project Board and external expert advice sought where necessary. This will include, but not be limited to, consideration of any impacts on the design and build quality of the scheme, potential State Aid issues and also the broader context of the Council's overall financial position.
- 6.5 An initial review of the Competitive Dialogue procurement process by DTZ in 2010 concluded that the completion of a Development Agreement was a successful outcome. This was particularly notable as this was achieved during challenging times in the development market where other similar projects had either stalled or been shelved.

## **7. HUMAN RESOURCE IMPLICATIONS**

- 7.1 In terms of Human Resource implications, the level of officer involvement in the post-contract process has been 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, however this support has not yet been called upon since contract award. Should Members approve the extension of the First Cut Off Date, external legal expertise may be required to amend the Development Agreement.

## **8. EQUALITIES IMPLICATIONS**

- 8.1 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.
- 8.2 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.
- 8.3 The proposals made in this report are to assist in achieving a viable development scheme that is also acceptable to Full Council. In order to do this it is essential to ensure all reasonable routes to viability can be explored by Simons and by the Council. Therefore, 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.

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

- 9.1 The most recent Public consultation was undertaken in May 2010, following the appointment of Simons Developments. Following this, the Churchgate Liaison Forum was introduced and facilitated by Simons to enable public discussion regarding the scheme between Simons and representatives of the Community. This met periodically until March 2011 when it was agreed to suspend the Forum until there was tangible scheme progress to review.
- 9.2 The Leader of the Council, the Portfolio Holder for Finance & IT, The Portfolio Holder for Planning & Transport and also the former Chair of Hitchin Area Committee are members of the Project Board.

## **10. RECOMMENDATIONS**

- 10.1 That Council be recommended to approve the extension of the First Cut Off date to 19<sup>th</sup> September 2013.

- 10.2 That Council be recommended to extend the Planning Viability Test date by six months to no later than 19<sup>th</sup> June 2013.
- 10.3 That the Project Executive (the Strategic Director for Finance, Policy & Governance) report back to Cabinet and Council as soon as practicable once there is sufficient clarity regarding the Council's overall financial position and how it may impact the project. This will then enable the Council to make a decision with respect to the way forward.

## **11. APPENDICES**

- 11.1 Appendix A – Letter received from Simons Developments.
- 11.2 Appendix B – DTZ Town Centres Article from The Authority - Summer 2012.

## **12. CONTACT OFFICERS**

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