

<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>  <b>7</b>
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**TITLE OF REPORT: CHURCHGATE AND SURROUNDING AREA, HITCHIN: LEGAL ADVICE**

REPORT OF THE PROJECT EXECUTIVE FOR THE CHURCHGATE PROJECT BOARD

**1. SUMMARY**

1.1 The purpose of the report is to:

- (i) Report on the legal advice sought in response to resolution (i) of the Report to Full Council on 24<sup>th</sup> July 2014 on the Council's ability to enter into an exclusivity agreement with a developer. Eversheds legal advice is attached at Appendix A.
- (ii) Make a recommendation on the way forward based on consideration of the legal advice given and on the report.

**2. RECOMMENDATIONS**

2.1 That the legal advice at Appendix A be noted.

2.2 That the Council consider its aspirations for the future of the Churchgate site and its surrounding area and decides whether to:

- (i) continue with the current approach based upon the Churchgate Planning Brief;

OR

- (ii) discontinue the current approach based upon the Churchgate Planning Brief and consider alternative approaches for a smaller scheme in the short term;

OR

- (iii) await publication of the draft submission of the Local Plan, and continue an open dialogue with all interested developers on the Churchgate site in the interim.

2.3 That officers be requested to investigate the Council's preferred approach as agreed in 2.2 above and report back to Full Council setting out options and points for consideration to progress the project.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To allow the Council to clearly state its current aspirations for the Churchgate area of Hitchin in the light of the history of the project to date and provide clarity on its preferred approach going forward.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 See Sections 8, 9 and 10 of the report.

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

- 5.1 The Leader of the Council, the Portfolio Holder for Finance & IT, the Portfolio Holder for Planning & Enterprise and also the former Chair of Hitchin Area Committee, as members of the Churchgate Project Board, have discussed and noted the legal advice and options forming the content of this report.
- 5.2 Members are reminded that in accordance with the Terms of Reference of the Churchgate Project Board  
*“1.1 To act on behalf of the Council in respect of all functions required under the Development Agreement and the delivery of the Churchgate project generally.”*  
Any submission would be presented and discussed with the Members of the Churchgate Project Board, prior to any report being presented to Full Council.
- 5.3 Information notes have been provided to Hitchin Committee at appropriate stages through the project to keep local members updated on progress.

### **6. FORWARD PLAN**

- 6.1 The report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 January 2013.

### **7. BACKGROUND**

- 7.1 A report was submitted to Full Council on 24<sup>th</sup> July 2014, which provided an update on discussions with interested parties regarding potential development options for Churchgate and its surrounding area. Full Council received a presentation from one of the interested developers and copies of their proposal were submitted with the report under Parts 1 and 2. The other interested party's proposal, albeit at a very early stage, was also discussed under Parts 1 and 2.

7.2 Both parties requested entering into some form of exclusive discussions with the Council as a means of providing some commitment towards the progression of their scheme. The proposals and various issues were debated by Full Council in July. It was recommended that any interested party should rather be encouraged to seek pre-application advice and full planning permission prior to approaching the Council as landowner to seek to enter into exclusive discussions on their scheme. This was in light of:

- the uncertainty around the delivery of a financially viable scheme by either party;
- that neither party were fully seeking to meet the four key aspects as set out in the Council's guidance as landowner, (i.e. being a solution for the market; solution for car parking; financial viability of the proposal; and providing an impact assessment on remaining Council land holdings in the area); and
- the possible risk of challenge from other parties.

However it was agreed, that advice should be sought at this stage on the Council's ability to enter into an exclusivity agreement with any developer.

7.3 The following resolution was agreed:

**RESOLVED:** *That, having considered the proposals by the various interested parties, and the risks to delivering the Council's aspirations for the Churchgate area, it be agreed to:*

- Commit budget of £10,000 at this stage to enable procurement advice to be sought on the Council's ability to enter an exclusivity agreement;*
- Continue to await the publication of the draft Local Plan, whilst at the same time considering the approach to take (as per recommendation (v) below) based on the options considered in the 18<sup>th</sup> July 2013 Full Council report;*
- Not to enter into any form of exclusive discussions with any interested party until full unchallenged planning permission is gained and a solution for the market and car parking is obtained as part of such planning permission;*
- Consider the option of a 150 year lease agreement as part of any development agreement on a scheme which has gained full planning permission;*
- Continue an open dialogue with all interested developers on the Churchgate site in the interim. Any discussion over the design of proposals are to be with the local planning authority only as part of normal pre-application discussion; and*
- Commit budget for expert advice and support in progressing a development agreement only once a developer has obtained full planning permission and procurement advice has confirmed exclusivity is possible.*

**REASON FOR DECISION:** *To allow the Council to progress its aspirations for the Churchgate area of Hitchin to protect the medium to longer term vitality and viability of the town, in the light of updated planning policy considerations and prudent use of Council funds.*

- 7.4 Officers, following the above Full Council meeting, prepared a series of questions to inform the legal advice being sought. These questions were prepared in consultation with the members of the Churchgate Project Board. It was important to ensure that the questions being asked were relevant to the type of information the Council was seeking, being the Council's ability to enter an exclusivity agreement with any developer, and broad enough to cover future scenarios, given that the two developers as part of their proposal had asked for exclusivity and that others may do in the future. Eversheds were subsequently appointed to provide the necessary legal advice, having advised the Council in the past on the project.

## 8. LEGAL ADVICE

- 8.1 Eversheds legal advice is appended at Appendix A. Their advice is in response to the following questions:
- a) *Can the Council deal exclusively with one developer without running either a procurement exercise or some form of market testing exercise?*
  - b) *If so, how could the Council demonstrate best consideration for use of its assets?*
  - c) *Does the scale of any proposed development affect the answer to a) above?*
  - d) *Is the answer to a) above different if a potential developer already has a lease on part of the site (including whether the percentage of ownership of the proposed new development area is a factor) as opposed to a developer with no existing land interest in the site?*
  - e) *Does the scale of development in relation to an existing lease affect the answer to a) above? Does the extent to which an existing lease is extended and/or re-geared affect the answer to a) above?*
  - f) *Are there any other relevant considerations?*

Representatives from Eversheds will be at the Full Council meeting to answer any queries Members may have regarding the advice.

- 8.2 The advice concludes that the Council may in certain circumstances deal exclusively with one developer without undertaking an EU procurement process. The advice is clear that such a process is not risk free. It also suggests that in order to properly assess the question of exclusivity the Council should be clear on what it is looking for from the site, including agreeing the minimum requirements for the site as this will clearly have an impact on the potential approaches available. The more prescriptive the Council is in terms of its requirements for the site, for example if the re-provision of the market and car parking are to be included within such requirements, then the more it is likely to be caught by the EU procurement process. In short the Eversheds advice is that at this stage the Council needs to decide what it wants, not who it wants. That decision will then inform the potential options available.
- 8.3 The potential options include considering the project solely as a land transaction (with a number of ways of conducting that), market testing (short of procurement), a further procurement exercise, exclusive negotiations (in certain circumstances) etc. An important starting point, to judge best value and state aid against, will be an independent valuation of the property. Clearly the valuation will depend on what it is the Council decides to include in the development opportunity.

8.4 It is therefore important to be clear about what the Council now wants for the site and why. The Eversheds advice also flags the potential for any decision regarding the site to be at risk of challenge by way of judicial review from any interested party. To be clear, this does not prevent the Council making a decision, or changing approach, but it means that the decision Council takes needs to be a reasoned and evidenced one.

## **9. THE PROCESS TO DATE**

9.1 In considering which approach to follow Members are reminded below of the process followed so far and the aspirations/requirements the Council has previously set for the site in seeking to bring it forward for development.

9.2 The current approach to the Churchgate area broadly started with the planning policy work of the early 2000's, however the Council as landowner has been considering the future of the Churchgate centre and surrounding area for much longer than that in terms of third party interests. It is noted that Hammersmatch Ltd, the current lease holder for the Churchgate Centre completed the purchase of the shopping centre in early 2001 and has since been in discussion with the Council both as landowner and Local Planning Authority (LPA) on the future development of the area. A full history of the Churchgate Development Project is set out in the report to Full Council on 31<sup>st</sup> January 2013.

9.3 The Council has long held an aspiration to improve the Churchgate centre and its surrounding area as a means of contributing to the future viability of the Hitchin town centre. These aspirations are detailed in the adopted Hitchin Town Centre Strategy (Nov 2004) and the Churchgate Area Planning Brief (Nov 2005), which provided the necessary guidance for development of the site.

9.4 In 2007 Cabinet agreed to market test the site under open competition. This followed discussions with Hammersmatch and other third party interests, where it was apparent that the reason why Hammersmatch hadn't submitted a planning application by late 2006 was because they did not consider that they could deliver a commercially viable scheme within the confines of the Planning Brief, i.e. sites A1 to A3. Having sought external commercial advice on the views put forward by Hammersmatch and on the deliverability of the Planning Brief, it was advised that the Council should consider market testing the site under open competition to confirm or otherwise that view. The Council had also received a threat of legal action from an interested party in the event that it decided to proceed with Hammersmatch without giving other potential developers an opportunity. The marketing exercise was halted following the ramifications of the Roanne case (Auroux and others vs Commune de Roanne) as the marketing strategy being followed was unlikely to comply with the public procurement regime.

9.5 In 2008 the Council remarketed the site using the Competitive Dialogue procurement process. This process was chosen by the Council following advice by DTZ and Eversheds (the Council's development and legal advisors for the project) that this was the best method to bring forward a complex contract such as the Churchgate project. The Competitive Dialogue process took some 22 months with the award of contract to Simons Development by Full Council at its meeting on 25<sup>th</sup> February 2010. As part of the process the Council clearly set out its key objectives for the project based on Quality and Design, Viability, Financial Return and Commerciality for the site.

- 9.6 In March 2010 a Development Agreement (DA) was signed with Simons which outlined the steps required to deliver the scheme and imposed 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. Subject to certain pre-conditions, the Agreement imposed obligations on Simons for the construction of a mixed use development comprising predominantly retail and leisure accommodation, residential accommodation, re-provision of the market, car parking plus loading and servicing requirements. The first cut off date in the Agreement required Simons to have submitted a planning application by the third anniversary of the signing of the DA (i.e. 19<sup>th</sup> March 2013).
- 9.7 On the 31<sup>st</sup> January 2013 a report was submitted to Full Council which considered the request by Simons to extend the first cut off date in the DA by 18 months to September 2014 with a break clause of December 2013 should they have failed to either exchange heads of terms with an anchor tenant or submit a planning application. This report included the context and rationale behind the request for an extension of time, primarily based on a weak economic climate and also provided an analysis of alternative options on the way forward to allow members to consider the wider impact of their decision. The Council resolved to reject Simons request for an extension to the first cut off date in the DA and instructed the relevant officer to implement the break clause in the Agreement should Simons fail to meet the first cut off date, subject to there being no material changes in circumstances.
- 9.8 On 20<sup>th</sup> March 2013 a letter terminating the DA was sent by the Project Executive to Simons. This concluded the project with Simons for the redevelopment of Churchgate and surrounding area. Members are reminded (as reported in the officers' report to Full Council on 18<sup>th</sup> July 2013) that Simons in their reply to the termination of the DA advised that once the Council had a view on the way forward they remained interested in playing a part in the future redevelopment of Churchgate.
- 9.9 During this period, and since the termination of the DA with Simons, Hammersmatch have been in dialogue with the Council as landowner and as LPA in pursuing their development proposals for a smaller part of the site, although occupying a larger area than their current leasehold. As Members are also aware, officers have also been in dialogue with other potential interested parties for the site. This resulted in two further reports to Full Council. The first report on 18<sup>th</sup> July 2013 considered potential future options for Churchgate and the surrounding area as requested by Council at its meeting on 31<sup>st</sup> January 2013, plus an addendum report in respect of information received from Hammersmatch regarding their latest proposals for the site. The second report on 24<sup>th</sup> July 2014 explained the discussions with, and requests by, interested parties regarding development options for Churchgate and its surrounding area.

## **10. CHANGING FACTORS**

- 10.1 Since the adoption of the Hitchin Town Centre Strategy and the Churchgate Planning Brief there have been a number of issues and changes in circumstances, which have caused challenges for the various approaches followed by the Council over the last fourteen years, including:
- meeting the aspirations of the local community;
  - the limitations imposed by the constraints of the site;

- changes in the economic climate, particularly since the banking crisis of 2008/9;
- changes in Government spending and the impact on Local Government finance;
- changes in retail demand and consumer patterns (including e-commerce); and
- changes in the planning system.

## 10.2 *Meeting the aspirations of the local community*

10.2.1 The local community, including the market traders, business sector and residents have been involved in and commented on the preparation of the Hitchin town centre strategy, the Churchgate Planning Brief, on two rounds of consultation on Simons' ideas and as part of the Churchgate Liaison Forum during the contract with Simons Developments. The Council is aware of and has listened to the concerns raised by the local community over the years in terms of development on the Churchgate site and its potential impact on the market, car parking, the town centre economy and the historic character of the town, including St. Mary's Church. The different views expressed will be one of the many factors that will need to be taken into consideration as part of the Council's decision on the approach to take.

## 10.3 *Limitations imposed by the constraints of the site*

10.3.1 The Churchgate site area has a number of limitations which have meant a series of developers who have looked at the site over a number of years have all typically proposed something very similar. The constraints include:

- The historic grade I listed St Mary's Church, the grade II listed Biggin House and other sensitive sites
- The site's location within a conservation area
- The River Hiz
- The design and layout of the existing Churchgate Centre
- For any third party developer the need to purchase the Churchgate Centre from its existing owner who has consistently indicated an unwillingness to sell
- The change of level in land from Queen Street to the river
- The height of surrounding buildings
- The need to locate the market within the site (as relocation to Market Place was not popular when the public were consulted on Simons' initial ideas)
- The Council's requirement that there not be a reduction in car parking spaces

10.3.2 These constraints make it hard for any scheme to achieve financial viability with a scale of development that is likely to be acceptable to the Council (as landowner or Local Planning Authority) or the community.

## 10.4 *Changes in the economic climate and Government spending.*

10.4.1 Since the 2010 recession the Council has been working within an uncertain economic climate where the economy has been weak, the interest rates low and developers have been taking a far more cautious and risk averse approach to investment. Alongside this have been changes in central Government spending resulting in significant reductions in local government revenue which are set to continue for a number of years. The Government has confirmed that, in fact, public sector spending cuts are only half complete at best. This means that local authorities have to find other ways in which to balance their budget, via efficiencies and income generation, in order to continue

delivering services that will meet the aspirations of their communities. The Council therefore needs to be prudent in terms of its budget setting process and consider alternative sources of income. The economy is now showing clear signs of improvement and this may also help explain the more recent interest shown in the Churchgate and surrounding area by other developers.

10.4.2 Seeking to deliver the Council's aspirations for the Churchgate area has led to the Council incurring external costs of almost £1million in total over the past ten years or so (commencing with the Town Centre Strategy and Planning Brief and concluding with the Development Agreement), with no tangible outcomes as a result. As explained above, Council finances are stretched following a number of years of savings and efficiencies and this challenging financial environment is forecast to continue to 2018 at least. The Council needs to be clear in its approach with regard to the Churchgate site/project as this will have an impact on its current revenue stream. Revenue income from areas such as car parking and commercial leases are particularly important in terms of the Council's overall funding position.

#### 10.5 *Changes within the planning system and retail patterns*

10.5.1 The report to Full Council in July 2013 set out the changes in the planning system and the need to meet the requirements in the National Planning Policy Framework (NPPF). The report made reference to the process of plan making and the requirement for Local Authorities to be allocating land for housing, retail and other commercial uses to meet their growth strategy over the next 10 to 15 years. The Council has now prepared its Preferred Options Local Plan for consultation which sets out its housing numbers to 2031 and its economic strategy, including its approach to town centres. This is a separate report under consideration by Full Council on 27 November 2014.

10.5.2 The retail environment has been through a period of particular volatility in recent years. This is as a result of the economic recession and changes in consumer shopping patterns and practices, including the growth of on-line shopping. North Hertfordshire is no exception with the number of vacancies and change of uses within its town centres over the last 5 to 10 years. Town centres form an important part of Council's economic strategy and the Council needs to be flexible in its approach to ensure that its town centres retain their market share and the best vibrancy and vitality possible going forward.

10.5.3 The NPPF says that local authorities should allocate a range of suitable sites to meet the scale and type of town centre uses needed in town centres and that it is important that need for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. It goes on to say that local authorities should undertake an assessment of the need to expand town centres to ensure sufficient supply of land. The Council has undertaken such an assessment in preparing its preferred options and has undertaken a series of updates to its 2009 Retail and Town Centre Study (Nathaniel Litchfield and Partners (NLP), 2013 and 2014).

10.5.4 The NLP Town Centre and Retail Study Update (2014), which is a background paper to the preferred options, forecasts a need for an additional 6,360m<sup>2</sup> of town centre floorspace up to 2021 and 28,440m<sup>2</sup> up to 2031 across the district and identifies that a larger proportion of retail need will be required towards the latter part of the plan period. In light of this assessment, the retail strategy outlined in the preferred options is one of filling existing vacant units in the short term, i.e. up to 2021 and then to start reviewing the previously adopted town centre strategies in order to meet the long term retail need. .



Further work will be required through the town centre strategies in terms of apportioning the retail floorspace across the four towns. The retail need upon which the current Hitchin Town Centre strategy and Churchgate Planning Brief were based has therefore significantly reduced.

- 10.5.5 The new town centre strategies will seek to satisfy the NPPF requirement in identifying potential development sites taking into consideration further changes in retail demand, retail patterns and the economic climate at the time. The Council will need to work together with potential developers and key stakeholders to ensure that such sites are viable and deliverable within the plan period.
- 10.5.6 Although no retail development sites are identified in the Local Plan Preferred Options, it does not preclude the LPA giving consideration to development proposals coming forward provided they meet the policy guidelines of the NPPF and the emerging policies in the Local Plan. However given that there is a requirement to plan for the longer term retail needs, it is important to ensure that whatever approach the Council chooses to follow in regard to Churchgate, be it as landowner or as LPA when considering a planning application, it does not preclude the possibility of the site coming forward for development in the future to meet the Council's growth strategy. This site is one of the few sites within the town centre that could contribute towards meeting the Council's growth strategy and ensuring that Hitchin retains its market share within the retail hierarchy. It is proposed that all town centre strategies will be reviewed following adoption of the Local Plan (currently anticipated for spring 2017).
- 10.5.7 It is to be noted that the retail strategy as set out in the Local Plan Preferred Options could change in light of representations made prior to the proposed submission draft of the Plan later in 2015. This Strategy would be tested at Examination by an appointed Government inspector prior to the Local Plan being adopted. This therefore does make it difficult for the Council to make any planning policy decisions on the future of the Churchgate area until the Local Plan is adopted and work on the Town centre strategies can commence.
- 10.6 As stated at paragraph 8.2 above, at this stage the Council needs to decide what it wants, not who it wants. The above factors should be considered in determining the Council's current aspiration for the Churchgate site.

## **11. CONCLUDING COMMENTS**

- 11.1 The approach followed by the Council over the last fourteen years has been met with challenges and with external factors changes beyond its control.
- 11.2 In light of the factors outlined in Section 9 above, it is entirely reasonable for the Council to reconsider its approach to the Churchgate Project, including whether the current approach remains the correct one. Once the Council has confirmed its aspiration further work will need to be done to explore that option, taking into consideration the Council's financial duties and ensuring that it achieves best consideration and compliance with State Aid rules. Other factors to consider would include the market, the operation and management of the car parks, the extent the Council wanted to specify its requirements, how to dispose of the land and the impact on further aspirations for the wider site in the long term (if a smaller scheme was taken forward in the short to medium term).

- 11.3 It is important to note that any approach taken would not be without risk and potential further cost to the Council in the event of challenge. In addition, further funding would need to be sought for investigatory work required to assess any proposal.
- 11.4 The Council will continue with the progression of the Local Plan for which funding has been agreed. Once the Plan has been through examination and adopted, it will have set the Council's overall retail strategy. This would then enable the Council to start reviewing its town centre strategies and identifying potential sites for development that it considers to be deliverable within the plan period. The strategies may also set a series of guiding principles for potential sites that would be taken into consideration by the LPA when assessing any future planning application. As previously advised in earlier reports to Full Council, the Council could wait the adoption of the Local Plan and then instruct officers to commence work on reviewing the town centre strategies. This would be in two to three years time, i.e. 2017/18. This would also ensure that the options for the site would remain unrestricted for future considerations.

## **12. LEGAL IMPLICATIONS**

- 12.1 Full Council made the original decision to award the contract to Simons on 25 February 2010. The reason Council was asked to make the decision as to whether to award the contract or not was that the likely land values of the Council land being used for the project fell within Council's terms of reference.
- 12.2 Full Council adopted the Hitchin Town Centre Strategy on 18 November 2004 and the Churchgate Development Area Planning Brief on 3 November 2005.
- 12.3 As Full Council has made these previous strategic decisions, Full Council should make the decision as to the future strategy for the Churchgate Area.
- 12.4 If the Council chose not to await the outcome of the Local Plan work, but instead sought to move forward with an alternative strategy in the interim, the legal implications of that strategy would need to be considered. The legal implications would likely include procurement, contract, governance and property considerations. The considerations at the current time are set out within the Eversheds advice attached at Appendix A.
- 12.5 In accordance with previous reports to Full Council, Members are advised that taking part in Council decisions on the strategy to adopt for the Churchgate Area was unlikely to create a valid perception of predetermination in relation to a Member of the Planning Committee who takes part in the decision relating to any future planning application.

## **13. FINANCIAL IMPLICATIONS**

- 13.1 Under Section 123 of the Local Government Act 1972, the Council is required to get best consideration reasonably obtainable for all of its assets, and with regard to 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).
- 13.2 In this period of ongoing Government funding reductions the Council's alternative (i.e. non Government) sources of income are particularly important. Gross direct annual

income in total from the Churchgate car parks amounts to over £500k, and the Council also receives an annual rental income for the Churchgate Centre that is reviewed every 14 years, as well as income from the market operation. Therefore any proposal that adversely impacts on these income streams would at least need to provide sufficient return to the Council from other sources to compensate fully for this impact.

- 13.3 The Council has incurred external costs of almost £1 million in total over the past ten years in respect of pursuing development opportunities for Churchgate. The Churchgate area does not currently feature in the Council's capital programme for major investment, although funding for some works to the car parks and related areas for resurfacing, replacement and repairs has been allocated.
- 13.4 The contract previously signed with Simons Developments 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. Enquiries subsequently made by Simons in 2012 regarding the possibility to vary the terms of the Development Agreement, including whether the Council could consider making further financial contributions to the scheme, were declined. It remains the position that Council financial resources should not be required to contribute to a development scheme and a Full Council decision would be required if this position was to change, taking full account of whether this was permissible in State Aid terms.
- 13.5 It is clear that in order to progress any scheme as landowner, be it with Hammersmatch, or any other interested party, will require further investment by the Council in seeking the necessary property, legal and financial advice.
- 13.6 If the Council were minded to instruct officers to proceed with the necessary investigatory work required to assess any proposal, officers would require authority to incur external expert advice, and a Full Council decision to release additional funding for this work would therefore also be required.

## **14. RISK IMPLICATIONS**

- 14.1 The Council has identified Churchgate and Surrounding Area as a Cabinet Risk. This risk is monitored and updated regularly as part of the Council's risk management procedures.
- 14.2 The Top Risk currently has the following description:  
"The risks arising from continuing to work with any interested developers during production of the new Local Plan includes:
- impact on available resources in continuing a dialogue
  - public perception that developers proposals in terms of planning permission are at a more advanced stage than is the case
  - proposals that are developed may not be in adherence to the final Local Plan
  - proposals are developed that fail to make the best use of Council assets
  - proposals that are developed might not meet the expectation of all stakeholders
  - possible challenge from other parties"

- 14.3 The Council's Risk and Opportunities Management Strategy refers to Contractors and Partners as follows: *"Contractors and Partners are included in the Risk & Opportunities Management Strategy for NHDC. The risk appetite for both contractors and partners should be considered prior to engaging into contracts or partnerships. Ideally a joint Risk Register should be in place for significant contracts and partnerships. In order to achieve the Council's priorities, Client Officers/relationship managers should implement an ongoing review of risks jointly with appropriate contractors/partners. Contractors and Partners should be able to demonstrate that they have resilient business continuity plans in place."*
- 14.4 In accordance with this Strategy the Churchgate Development Project with Simons Developments had its own Risk Register. Such a document would also be considered should the Council decide to proceed with a development of any size on this overall site in the future.
- 14.5 In addition, throughout this report, various risks have been described. The Council has identified and included the preparation of the Local Plan and Sustainable Development of the District as Top Cabinet Risks. The Local Plan risk identifies a number of risks but one that is key here is failure to recognise long term needs for Town Centres. The Sustainable Development risk identifies both failure to protect the environment for our communities and failure to provide the right mix of residential/commercial development to meet local needs. An adopted Local Plan in place will provide the strategic planning policy objectives for the district to 2031 and will also strengthen the Council's position against hostile planning applications.

## **15. EQUALITIES IMPLICATIONS**

- 15.1 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.
- 15.2 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.
- 15.3 Depending on what may be considered, any future development proposals for the site, detailed proposals surrounding thoroughfares, access, surface treatments etc. and needs of any users for any resulting development will be considered under separate equality analysis at the time of consideration.

## **16. SOCIAL VALUE IMPLICATIONS**

- 16.1 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, although potential equalities implications and opportunities are identified in the relevant section at paragraphs 14. However, any decision Council may make with regard to Churchgate which could, either in whole or

part, constitute a public service contract would need to report on the social value implications at the time of consideration. This would, in brief, consider how every £1 spent could best be spent to benefit the local community, which may include award of some aspects of redevelopment or management of the centre etc. by local social enterprises.

## **17. HUMAN RESOURCE IMPLICATIONS**

- 17.1 In terms of human resource implications the preparation of the Local Plan and the delivery of the other identified corporate priorities and key projects have been factored into work plans. If the Council sought to pursue a strategy for the Churchgate Area in the interim this would impact on the Council's current staff and financial resources and would result in the need to review existing work plans and objectives and/or the need for employing external expertise.

## **18. APPENDIX**

- 18.1 Appendix A – Eversheds Legal Advice on North Hertfordshire District Council, Development at Churchgate, Hitchin 7<sup>th</sup> November 2014.

## **19. CONTACT OFFICERS**

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## **20. BACKGROUND PAPERS**

- 20.1 Full Council Report 31<sup>st</sup> January 2013 – Churchgate and surrounding area redevelopment project, Hitchin.
- 20.2 Report to Finance, Audit and Risk Committee 13<sup>th</sup> June 2013 – External costs incurred by NHDC during the Churchgate Report.
- 20.3 Full Council Report 18<sup>th</sup> July 2013 – Options for the future of Churchgate and Surrounding Area, Hitchin.
- 20.4 Full Council addendum Report 18<sup>th</sup> July 2013 – Options for the future of Churchgate and Surrounding Area, Hitchin.
- 20.5 Full Council Report 24<sup>th</sup> July 2014 – Update on Churchgate and Surrounding Area, Hitchin.