

**Brighton & Hove  
City Council**

**CABINET  
SUPPLEMENTARY AGENDA ITEM**

**4.00PM, MONDAY, 28 FEBRUARY 2011**

**COUNCIL CHAMBER, HOVE TOWN HALL**

## **SUPPLEMENTARY AGENDA ITEM**

The following agenda item although provided for on the agenda front sheet was not available at the time of despatch. The Deputy Leader of the Council has agreed to accept this report as a matter of urgency for the reasons set out in the report.

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<b>Subject:</b>	<b>Open Market Development Proposal</b>		
<b>Date of Meeting:</b>	<b>28 February 2011</b>		
<b>Report of:</b>	<b>Strategic Director, Place</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Richard Davies</b>	<b>Tel:</b> 29-6825
	<b>E-mail:</b>	<b>richard.davies@brighton-hove.gov.uk</b>	
<b>Key Decision:</b>	<b>Yes</b>	<b>Forward Plan No: CAB20106</b>	
<b>Wards Affected:</b>	<b>All</b>		

*Note: The special circumstances for non-compliance with Council Procedure Rule 7, Access to Information Rule 5 and Section 100B (4) of the Local Government Act as amended (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that Cabinet deferred the original decision for the reasons, set out at paragraph 1.3 of this report, and called a special meeting, which could not be arranged within the requisite timescales, and that It was not possible to finalise the report until the outcome of the Planning Committee held on 23 February 2011 was known.*

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 In December 2008, Cabinet granted land owner consent to the Hyde Martlet/Open Market Traders Association proposal for the comprehensive redevelopment of the Open Market, and approved delegated powers to grant approval of the scheme at RIBA Stage D and the Development Agreement.
- 1.2 The scheme proposal at RIBA Stage D submitted by Hyde/Open Market Traders Association to the council in September 2009 was approved under delegated authority by the Director of Culture & Enterprise, in consultation with the Cabinet Member for Enterprise, Employment & Major Projects, in February 2010. Hyde Martlet submitted a planning application for the redevelopment scheme in December 2010.
- 1.3 At Cabinet on 17 February 2011, Members resolved to defer a report on appropriation of the Open Market land for planning purposes. This was to allow Planning Committee on 23 February to first consider the merits of the scheme and to provide time for new concerns relating to the final design of the scheme and its impact on market trading viability to be discussed with the applicant. Planning Committee resolved to approve planning permission for the scheme, subject to the signing of a Section 106 Planning Agreement, and developers of the scheme have been able to allay concerns regarding the trading viability of the market. This report provides a project up-date and seeks Cabinet approval to appropriate the council land at the Open Market site for planning purposes, and in line with the Development Agreement for the Open Market scheme proposal.

## **2. RECOMMENDATIONS:**

- 2.1 That Cabinet notes the project progress described in sections 3 and 7 of this report made since Cabinet approved landowner consent for the project to continue in December 2008.
- 2.2 That Cabinet resolves to exercise the City Council's powers of appropriation under section 122 of the Local Government Act 1972 so that the land at the Open Market redevelopment site as identified on the plan at Appendix 1 is appropriated for planning purposes.

## **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The council agreed to support the work of the Open Market Traders Association ("the Association") in April 2006. At that point, the aims of the proposal were to provide a new covered market on the site of the existing Open Market, maintain rents at a similar level and provide a temporary market during redevelopment.
- 3.2 The Association and its advisers invited Hyde Housing to join the project as development partner and since that time, Hyde has worked to bring forward a viable scheme that delivers a new market. Partnership working has progressed the scheme through an iterative process where the Association and Hyde have submitted to the council a proposal in three stages. Each staged submission has been assessed by the council's project officer team and considered by the council's Open Market Project Board (first meeting January 2007), where Hyde and the Association have attended to present the scheme. Project Board recommendations at each stage have then been presented to Members at Committee and more recently Cabinet for approval to continue council support for the project.
- 3.3 Cabinet confirmed its support for the project by granting landowner consent for the outline proposal in December 2008.
- 3.4 Hyde and the Association submitted a redevelopment proposal to RIBA Stage D in September 2009, which was given landowner consent under delegated authority in February 2010. This proposal continues to fulfil the original project aims.
- 3.5 In accordance with December 2008 Cabinet approval, a Community Interest Company (CIC) is being formed to take ownership of the new market and be responsible for all aspects of its operation, management and maintenance. The CIC Members will be the council, the market traders, the Hyde Group and the Ethical Property Company (EPC). The latter will take a long-term lease on the workshops.
- 3.6 Following the completion of the pre-application discussions with the Planning Team, Hyde submitted a planning application in December 2010. Planning Committee on 23 February 2011 was minded to grant planning permission for the scheme subject to completing a Section 106 Planning Agreement.

## **4. CONSULTATION**

- 4.1 The redevelopment proposal has, at each stage, been assessed by the project officer group and during the project lifetime been reported to the Project Board, Major Projects Sub Committee, Policy & Resources Committee and most recently to Cabinet in December 2008. The submission of the RIBA Stage D proposal included a presentation by the Market Traders development team to the project officer group. There have also been helpful pre-application discussions between the project architects and the City Planning Team over the past two years to address areas of concern, which have resulted in positive amendments to the scheme design.
- 4.2 The Project Board guided the proposal from the start of the project up to Cabinet granting conditional landowner consent. This contributed to improving and refining the proposal so that it reached a point where it was broadly acceptable to the Project Board.
- 4.3 Representatives of the Market Traders Steering Group attended the Project Board meetings that have considered the scheme at each stage of its preparation.
- 4.4 The preparation of a Health Impact Assessment for the scheme included meetings in August 2008 with market traders, local businesses and local residents.
- 4.5 The council's Research and Consultation Team carried out two Open Market customer surveys, in November 2006 and August 2007. These have informed the scheme's development.
- 4.6 Hyde carried out a public exhibition of the scheme proposals in the former Cooperative department store on London Road on 16<sup>th</sup> and 17<sup>th</sup> April 2010. Of those 69 people who submitted written comments, 90% supported the present scheme. The proposals have also been on general display in the Open Market.
- 4.7 In April and May 2010, Hyde and the council's project manager presented the scheme to the City Council's Planning Chair's meeting, the City Sustainability Partnership and the South East Regional Design Panel.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 The council has worked with both Hyde Housing and the CIC partners to ensure that the business case for the redevelopment has been thoroughly tested and is financially viable. Hyde has been working closely with its preferred contractor to market test and bring down build costs. This work has resulted in sufficient savings being made to reduce the funding gap to an affordable and manageable level. Triodos Bank has confirmed it will lend to the project by way of a bond to Hyde for the construction phase and a mortgage on practical completion of the scheme to the new CIC.

- 5.2 The Council will continue to provide officer support and has made provision for a contribution toward the cost of a temporary market to ensure the project is successfully delivered. Funding has been identified within the major projects existing budget. The rights of third parties whose private interests may be affected by the development may be entitled to a right of compensation against the local authority. The council, however, will be indemnified against any such claims by the developer of the site.

*Finance Officer Consulted:*

*Rob Allen*

*Date: 20/01/11*

Legal Implications:

- 5.3 The council acquires and holds land and property for various statutory purposes. "Appropriation" is the term used in legislation to define the process under which councils can indicate the purposes for which their land is held. The council is authorised by section 122 Local Government Act 1972 to appropriate land in its ownership for any purpose for which it is authorised to hold land by agreement.
- 5.4 The legal implications of appropriating the land for planning purposes are set out in sections 7.1 to 7.3 of this report. Section 233 of the Town and Country Planning Act 1990 authorises the disposal of land held for planning purposes, subject to the Secretary of State's consent being necessary where the best consideration reasonably obtainable is not achieved. Following the appropriation and the entering into of the Development Agreement the necessary consent for the proposed disposal will be sought.

*Lawyer Consulted:*

*Bob Bruce*

*Date: 15/12/10*

Equalities Implications:

- 5.5 The Major Projects & Regeneration division is developing a bespoke Equalities Impact Assessment process that fits within the agreed corporate process but which better reflects the nature and decision making arrangements of major projects managed by the city council. Development of this process has involved the Corporate Equalities Team and their involvement will continue. An Equalities Impact Assessment for the scheme has been carried out.
- 5.6 The proposed scheme has fully considered the requirements of the Disability Discrimination Act (DDA) and addresses these through appropriate design. The proposed covered market will provide a new destination that benefits from excellent public transport links. Two customer surveys carried out by the council found that a quarter of users of the existing market are over 65 years of age and that almost half of all customers walk to the market.

Sustainability Implications:

- 5.7 Sustainability considerations have been a significant part of the overall assessment of the Open Market redevelopment proposal throughout its preparation and have influenced the evolution of the design. This has been the case for both the construction of a mixed use scheme and the operation of the new market. Sustainability implications will form part of the normal planning

process and be considered by the Local Planning Authority, as for any development, to ensure it is acceptable in planning terms.

- 5.8 Through providing a new market on London Road, the scheme offers considerable social and economic benefits that will promote a sustainable community. These benefits include; providing an outlet for affordable fresh produce that is well served by public transport; the opportunity to promote local produce; a social meeting place to promote interaction and community cohesion; opportunities for local employment and small business start ups; and the market's role in promoting and supporting the future of London Road as a town centre and shopping destination.

Crime & Disorder Implications:

- 5.9 The redevelopment of the Open Market including residential units on Francis Street will lead to more activity and increase passive surveillance. This is likely to have a positive influence on people's perception of personal safety. The project architects have stated that the design will be developed in accordance with the design principles set out in "Secured By Design" and have carried out consultation in this regard. The new market will be gated and locked at night.

Risk and Opportunity Management Implications:

- 5.10 The project manager keeps a Risk & Opportunity register for the project, which is reviewed on a regular basis with the project team. The project Quantity Surveyor engaged by Hyde also keeps a risk register for the development.
- 5.11 There is uncertainty over the level of affordable housing that can be provided. While the aspiration remains that it is 100% affordable, this will be influenced by the amount of Social Housing Grant awarded to the scheme by the Homes & Communities Agency following a planning decision.

Corporate / Citywide Implications:

- 5.12 The redevelopment of the Open Market will support the overall regeneration of the London Road town centre and contribute to achieving the aims of the London Road Central Masterplan SPD and the London Road/ Lewes Road Regeneration Strategy.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 The Hyde/Market Traders development team has progressed the design to achieve a viable project that delivers a new covered market, workshops and affordable housing. This has been an iterative process with staged submissions to the council resulting in the approval of landowner consent for the RIBA Stage D proposal. At each stage, the project has been assessed by the council, which has resulted in an improved scheme that is considered deliverable.

## **7. REASONS FOR REPORT RECOMMENDATIONS**

### **Powers of Appropriation**

- 7.1 The council's power to appropriate land under section 122 of the Local Government Act 1972 is exercisable upon a determination that the Site "is no longer required for the purpose for which it is held immediately before the appropriation". By virtue of the current planning application for the site and the entering into of a Development Agreement, the council has clearly signalled that it is of the view that the sites are no longer only required for their previous purposes [retail market, disused education building, tyre fitting and retail unit and off-street parking] and that redevelopment is necessary.
- 7.2 Section 237 of the Town and Country Planning Act 1990 provides that where land is held for planning purposes and work is done in accordance with planning permission, third party rights are overridden. Thus an effect of appropriation for planning purposes is to protect the council and developers from the risk of the development process being stopped once it has started. The rights of third parties whose private interests may be affected by development are protected to the extent that they have a right to compensation against the local authority. The council however, will be indemnified against any such claims by the developer of the site.
- 7.3 Appropriating the land for planning purposes is a requirement of the council in the Open Market Development Agreement. The Development Agreement specifies that the council will use its reasonable endeavours to agree that it shall appropriate the council land for planning purposes if planning permission for the proposed scheme is granted. It is therefore recommended that in order to facilitate the early start of the development, Cabinet agrees that, subject to the planning decision, the site is appropriated immediately following such a decision.

### **The Proposed Scheme**

- 7.4 The Open Market planning application to the Local Planning Authority includes the following elements:
- a new covered market with 44 permanent market stalls (including three retail units facing on to Ditchling Road);
  - a covered central market area for temporary stalls, visiting markets and a variety of activities normally associated with a public square;
  - 12 arts/crafts workshops;
  - 87 affordable housing units, subject to the level of housing grant received by Hyde from the Housing & Communities Agency.
  - New public toilets to replace those existing in Marshalls Row, which will be maintained and operated by the council through contract.
  - Francis Street integrated as a new street with a shared surface that allows for pedestrian priority and the requirements for servicing the new market.
- 7.5 The redevelopment offers the potential to deliver a range of other wider benefits for the area including:
- A significant contribution to the regeneration of London Road Town Centre;
  - The establishment of a Community Interest Company to operate the market as a social enterprise for local benefit.



- Increased economic activity in London Road Town Centre;
  - Safeguarding existing and creating new employment opportunities by way of an expanded new market and workshops;
  - A new market to promote fresh, healthy produce while providing an outlet for local and regional producers.
  - A new covered outdoor market space, providing a social meeting place that will promote community cohesion and contribute to achieving a sustainable community.
  - Improving permeability and connections between London Road and The Level through the market and along Francis Street.
- 7.6 On 23 February 2011, Planning Committee was minded to grant planning permission for the submitted scheme, subject to completing a Section 106 Planning Agreement.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Plan of Open Market

### **Documents In Members' Rooms**

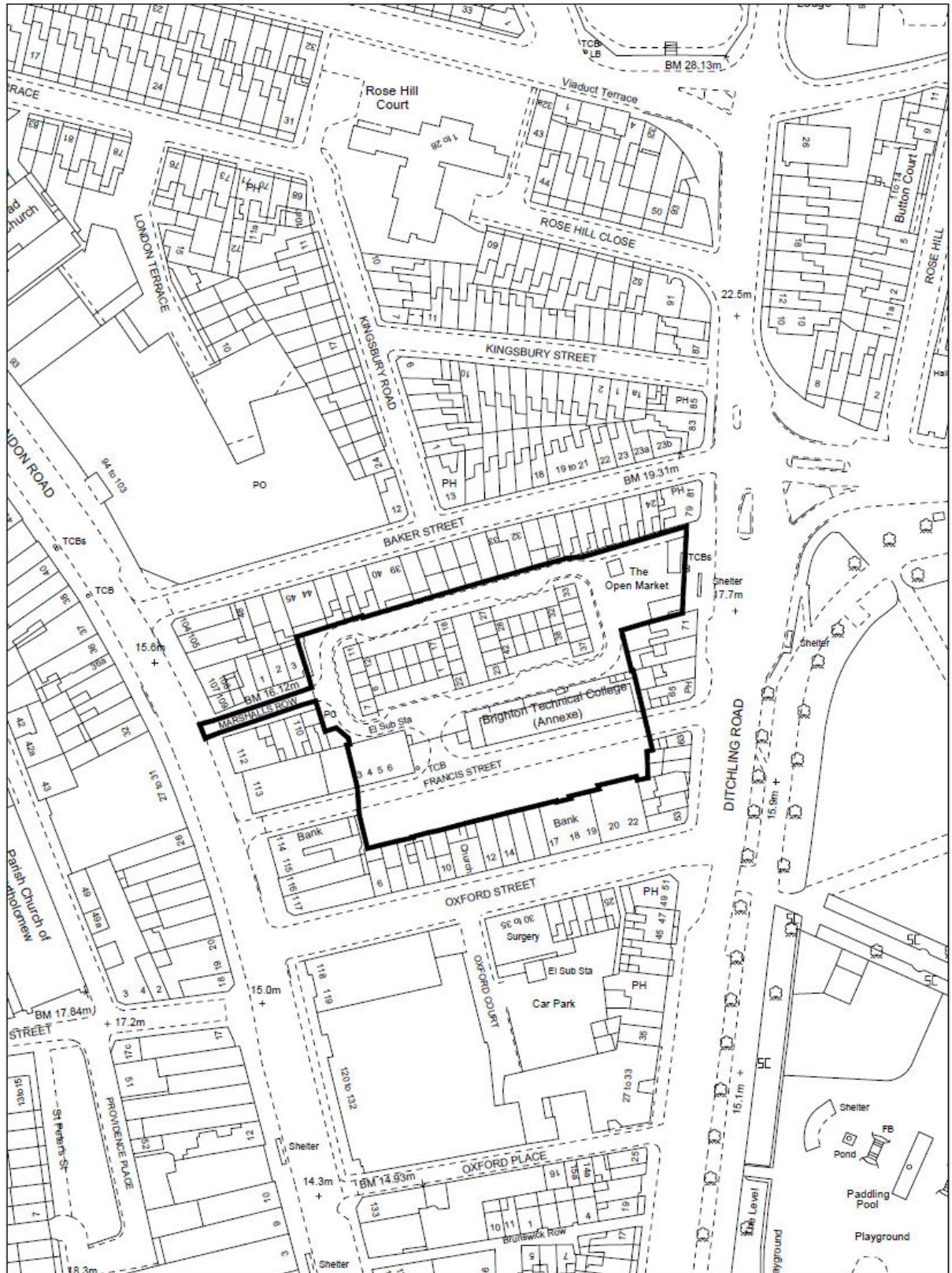
None

### **Background Documents**

1. Cabinet Report, 18 December 2008, *Open Market Development Proposal*
2. Director Delegated Powers Approval, 1 February 2010, *Open Market: Consideration of RIBA Stage D Proposal*



# Open Market Proposed Development Site

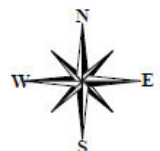


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Open Market Proposed Development Site



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