

The four items following this page were previously Part Two Items. They were bought into the public domain either at Overview and Scrutiny Commission Meeting 3rd March or afterwards by agreement of the Chairman.

APPENDIX 5

Additional information from the Director of Finance & Resources

Introduction

The site of 0.2 acres (0.08 Hectares) comprises the former indoor Ice Rink which has been vacant for over 5 years and an adjoining office building which will be vacated shortly. The tenants of the office building at 11 Queen Square will be relocated to nearby Council premises. Following marketing of the site and disposal recommendations by the council's appointed local agents, a preferred bidder was selected to redevelop the site and approval was sought for the property disposal at the 12th February Cabinet meeting.

a) Failure to Consult

The report to Cabinet of 12th February is seeking approval to a property transaction and recommending the disposal of a site on a long lease.

Standard Consultation Procedures on a Property Disposal

Consultations are undertaken at three separate levels for a property disposal;

Level 1. Property & Design

The Property Team consult other internal departments, the client, the agents and relevant parties prior to Cabinet approving a decision to sell. As part of this procedure, Ward Councillors are informed of the proposed property transaction and invited to query or obtain any further information and seek clarification by Property & Design. This is standard property procedure that was undertaken regarding this disposal.

Level 2. Developer

Once Cabinet have approved the disposal (and terms have been settled, a process which inevitably takes some time) the selected developer and his team would then be in a position to progress their design against the background of the planning and pre-application process. It is the developer's role to consult with the local community and other interested parties on their particular scheme as the design develops and evolves. Schemes are almost invariably refined or amended in the light of those consultations.

Level 3. Local Planning Authority

When the developer has concluded consultation with the local community, other interested parties and the Local Authority planning team and amended or refined the design scheme it would then be in a position to make a formal planning application. There are statutory procedures for the Local Authority planning team to consult with neighbours and local communities. At this stage planning officers can take account of the local community's comments and objections in a more meaningful way in relation to the specific scheme which is presented to them.

Level 1

Consultations undertaken by Property & Design in respect of the 12 February 09 Cabinet decision

It is standard procedure with potential property transactions and property related matters, for Property & Design to inform the relevant Councillor/s and Ward Councillors of the specific issues. These briefings may be of a commercially and financially sensitive nature and need to be undertaken in an appropriate manner and time. It is also standard practice for developers to not want certain confidential information to be released into the public arena. For commercial confidentiality reasons officers do not consult with local interest groups on standard property transactions.

Specific Consultations with Ward Councillors

Property & Design did consult with Ward Councillors prior to the 12th February Cabinet meeting. A chronological list of information and consultations with Ward Councillors is attached at Annexe 1. E-mails are attached at Annexe 2.

In summary:-

Prior to the Cabinet meeting Ward Councillors were sent information by email, had telephone conversations and in one instance a meeting on the property disposal and the following information exchange occurred.

- The Assistant Director for Property & Design was contacted by email on 13 January and outlined in a response by email on the same day the improvements proposed to St Nicolas churchyard by incorporating a pedestrian/cycle route linking it with Queen's Square as highlighted in the Informal Planning Guidance Note.
- This was followed up in an email to all 3 Ward Councillors by the Case Officer on 16 January. This email provided further information and a briefing on the proposals and attached the agent's marketing brochure and a site plan. The brochure referred to the Informal Planning Guidance Note and the Councillors were invited to contact the Case Officer if they had any further queries.
- The part one report was forwarded to all 3 Ward Councillors by the Case Officer on 4 February, the earliest date on which it could be released to the public.
- The Assistant Director for Property & Design spoke over the telephone and corresponded by email on 6 February with the Ward Councillor Pete West (copied to the other 2 Ward Councillors on 6 February). This confirmed that the recommendation was for a property disposal and that specific matters he raised, related to planning issues and consultation which would be addressed through the planning process by the developer. The Assistant Director offered to take the Ward Councillor through the property evaluation model and proposed

scheme and confirmed that the case officer or manager of the section would contact him to arrange a meeting in the week commencing 9 February in her absence.

- A meeting was arranged between the Case Officer and the same Ward Councillor on 11 February where further information was provided on the proposed development, including a copy of the Informal Planning Guidance Note. However as the name of the developer and the financial details were confidential information contained within part two of the report it could not be revealed. The Councillor advised at that meeting that he had not been consulted and requested that the Report be amended to this effect. The case officer had sent the briefing to the Councillor on 16 January as set out above.

The Case Officer further reviewed the amount of information, correspondence and contact with Ward Councillors prior to the Cabinet decision and verified that this is the normal level of information and briefings that constitute a consultation for the property transaction stage of such a project (level 1).

Consultations with interested parties and community Groups

Although Property & Design would not usually undertake consultations with external parties and community groups at level 1, the queries raised following the release of the Report to the public were addressed as follows:-

St Nicholas Green Spaces Association

In this case Property & Design had a dialogue with interested parties and community group representatives prior to the 12th February Cabinet meeting. A chronological list of information and discussions is below and correspondence is attached at Annexe 3.

In summary:-

- The Assistant Director emailed the Chair of St Nicholas Green Spaces Association on 21 January advising that the Case Officer will contact him at the relevant point in the process prior to planning submission to talk through the proposals as they evolve.
- The Chair contacted the Assistant Director on 6 February to express concern on planning matters and was advised that the Case Officer would contact him to talk through the issues. The Case Officer did speak over the telephone with the Chair and explained that the Recommendation to Cabinet was for a property disposal and that the planning issues would be fully addressed during the planning process when the developer had worked up the scheme.

Wykeham Terrace Residents Association

- The Case Officer emailed the Chair of the Wykeham Terrace Residents Association Ltd on 9 February advising that the

Recommendation to Cabinet is a property decision and that points raised in his letter of 8 February relate to the planning process that will need to be undertaken by the developer and team.

- The Case Officer emailed the Chair of the Wykeham Terrace Residents Association Ltd on 10 February confirming that the disposal does not pre-judge the outcome of the planning process nor does it fetter the planning officers in making their recommendation to the planning committee.

Parish Church of St Nicholas of Myra

- The Case Officer emailed the Reverend Chavner at the Parish Church of St Nicholas of Myra on 9 February advising that the Recommendation to Cabinet is a property decision and that points raised in his letter of 6 February relate to the planning process that will need to be undertaken by the developer and team.

b) Failure to be open

The Ice Rink disposal update report to Cabinet of 12th February relates to a property recommendation seeking approval to the disposal of a site on a long lease. The financial aspects of the transaction are commercially sensitive and confidential. Care has to be taken to ensure that such information does not leak to possibly nullify the bidding process or create dispute between bidders. All of the relevant information relating to the property transaction was available in both part one and two of the report.

Status of Informal Planning Guidance Note

The purpose of the Informal Planning Guidance Note (attached here as Annexe 4) is set out in the first paragraph of that Note. It is informal and does not constitute formal planning policy. It refers to existing policies and provides some suggestions to prospective developers but does not formally commit the Local Planning Authority to accept any of these suggestions. Notes of this nature have been prepared on a non prejudicial basis on other development sites. The wording of the Informal Planning Guidance Note is heavily caveated and phrased in a way that makes clear its informal status. It is not a Planning Policy Document with the status of a Supplementary Planning Document which would have entailed widespread consultation.

The Informal Planning Guidance Note was prepared at the request of Property & Design to assist the marketing process and to enable developers to make their bids on the same information. It essentially replaces the individual discussions that developers would have had with individual planning officers and ensures that consistent advice and guidance is given.

Prior consultations with residents informed the Note but it did not constitute formal Council policy. The Note advises that four storeys would probably be

the maximum acceptable height and for the avoidance of doubt this would be from ground level in Queen Square.

Points relating to the decision making process

As the Report was not about a planning decision the Informal Planning Guidance Note was not appended to the Report and it is standard practice not to include notes of this nature in a report dealing with property transactions. However the Informal Planning Guidance Note was freely available with the marketing pack sent out by agents and given to the Ward Councillor at the meeting with the Case Officer on 11 February.

It should be noted that the planning aspects were a small part of the evaluation of the bidder's property proposals. They accounted for 15% of the evaluation model, the other criteria as set out clearly in the report were track record 10%; deliverability 15%; price 15%; funding 15%; quality 10%; added value 10% and timing 10%. A key part of the assessment at the property stage is to ensure that bids are realistic and the bidder is capable of delivering their scheme, subject to planning. The report set out information on the background history and key events, planning, marketing, the bidding process, evaluation model and agents recommendations aiming to present a rounded picture of the proposal to inform the decision. The Cabinet decision was therefore based on the full rounded knowledge of the relevant information which put the property transaction into context and perspective.

The summary of the Informal Planning Guidance Note was accurately reflected in the report. The main reason for the failure of the previous application was, as outlined in the report and as the Informal Planning Guidance Note states, due to a lack of success in finding a user for the D2 Assembly and Leisure use. Other reasons related to a problem of discrepancy of levels on the site in the developers proposals where windows at the rear of the site faced the churchyard wall. The developers at that time would therefore have had to raise the building for the windows to overlook the churchyard. These issues have been taken into account by the prospective developers in their current proposals as a level survey was provided as part of the marketing information pack.

All of the 3 short listed developers in the latest marketing exercise made their own interpretation of the informal planning guidance, taking into consideration the large slopes in the site and the height of the neighbouring buildings. They all proposed initial feasibility schemes with massing proposals of 5 storeys above ground. Some used the slopes of the site, others used set back features at roof levels. However these are merely speculative sketch proposals for the purposes of the property bid evaluation. All of these initial feasibility schemes would need to be worked up in more detail by the developer and team. This would happen once the Cabinet decision and approval had been made to select the successful developer and then it is up to the developer and his design team to enter into dialogue and consultation with the local community, interested parties and Local Authority planning

teams to work up his scheme and submit a formal planning application. It is in the developer's interests to modify their plans in the light of those consultations in order to obtain a successful planning consent which could mean a scheme of probably 4 storeys maximum. However this would be resolved through the planning consultation process by the developer and his team.

As set out above it can be seen that officers undertook the normal and established procedures at the relevant stage of the transaction (Level 1).