

**APPROVAL TO THE DISPOSAL OF THE COUNCIL CAR PARK AT THE AGORA SHOPPING CENTRE WOLVERTON**

Responsible Cabinet Member: Councillor Gifford (Cabinet member – Place)

Report Sponsor: Duncan Sharkey (Corporate Director – Place)

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**Executive Summary:**

To consider approving the freehold disposal of the Council's Agora Shopping Centre Car Park in Wolverton, so as to secure the redevelopment and regeneration of the Agora Shopping Centre with the Car Park in accordance with planning consent, subject to the terms set out in paragraphs 1.2 and 1.3, the purpose of which is to ensure that if financing is not available or if the development (as planned) does not proceed to a substantial extent within the next 12 months, the Council can buy back its landholding.

Tackling homelessness is the headline priority within the Council Plan 2016-2020. The Plan states that, to successfully tackle homelessness, an approach to include improved housing availability is needed. The regeneration proposed to result from the disposal, will achieve improved housing availability (both private and affordable).

Regeneration of the Agora is also mentioned directly in the Council Plan 2016-2020 as a priority.

**1. Recommendations**

- 1.1 That the Council dispose of its freehold interest in the Council Car Park (0.60 Ha) (shown edged red on the Annexed plan) to Brickhill Estates (MK) Limited (the Purchaser), who it is understood benefits from the option to buy the Agora shopping centre, subject to the terms and conditions outlined, so as to facilitate redevelopment of the Agora Shopping Centre and the Council Car Park in accordance with planning consent.
- 1.2 That the Council dispose of the Car Park to the Purchaser by entering into a freehold sale and leaseback, including granting a building lease, with the freehold being disposed of in the following way:
  - (a) The Council transfers its freehold interest to the Purchaser for £100,000, at the same time as the Purchaser takes an assignment of the 99-year Car Park lease from the current owner of the lease.

- (b) The Purchaser simultaneously grants a leaseback (the headlease) to the Council for 71 years, which is the residue of the current lease.
- (c) The Council grants to the Purchaser a licence or sublease (building lease) out of the leaseback, for one week less than the 71-year lease referred to in 1.2(b) above, which licence or sublease provides for the Purchaser to build out the planning consented scheme, restricting the use of the Council Car Park to car parking as currently, or in accordance with the planning consented scheme.
- (d) The Council's 71-year lease referred to in 1.2(b) above, ends when the Council is satisfied that the planning consented scheme has been practically completed.
- (e) The Purchaser covenants not to seek any other planning consent, or any material variation to the planning consented scheme.
- (f) The Purchaser also covenants not to alter the site, other than so as to implement the planning consented scheme, and not to assign the headlease.

1.3 That the following conditions be applied to the disposal:

- (a) That the Purchaser will, within 12 months of this decision, substantially and diligently commence construction in accordance with said planning consent, and complete the scheme within 48 months after commencement, in accordance with the planning consent;
- (b) That if the Purchaser has not commenced construction within the 12-month period specified in 1.3(a) above, or if the Purchaser does not complete the scheme within 48 months after commencement, the Council has the option to buy back the freehold interest in the Car Park for the consideration paid to it, less reasonable costs incurred in the disposal and buyback (in which case the headlease and building lease end);
- (c) That the Purchaser is to show proof of ownership, or binding option, and proof of commitment to funding for the total development costs, including payment of the s.106 contributions, **before** the Council enters into a contract to dispose of the Car Park to the Purchaser. This will demonstrate, to the Council's satisfaction, that the Purchaser has an unconditional finance agreement in place with a reputable funder to cover all development costs of the consented scheme, and that the Purchaser's funder has based its decision to fund the development scheme under that finance agreement, on a financial appraisal acceptable to the Council.
- (d) That the Purchaser can certify it has not within its group of companies received State aid under the de minimis rules in this or the two previous financial years which in combination with amount of the discount provided by this disposal exceeds the €200,000 limit.

- 1.4 That the Acting Head of Property may agree variations to the terms of disposal outlined in this report in consultation with the Corporate Director - Place, as reasonably necessary in order to secure the Council's objectives of disposing of the Car Park so as to facilitate regeneration of the Agora Shopping Centre and Council Car Park, whilst also complying with the Council's statutory duties.
- 1.5 That, within the planning consented scheme, the area of car parking is to be made available as a public car park without restrictions on use and times, and with zero charging, unless (in any such case) otherwise agreed by the Council.

## 2. **Background**

- 2.1 For many years the Agora Shopping Centre (edged blue on the Annexed) has been considered for redevelopment. In August 2012, Cabinet agreed in principle to the use of Compulsory Purchase powers with a view to implementing a redevelopment process in conjunction with a development partner. Cabinet further agreed to commence a programme of work for redevelopment of the Agora Shopping Centre, which in turn would assist in delivering the (then) emerging Wolverton Town Centre Neighbourhood Plan.
- 2.2 As part of this programme, it was agreed to prepare and adopt a Development Brief for the site. This resulted in the adoption, in September 2013, of a Development Brief and Supplementary Planning Document.
- 2.3 The Council's adopted Core Strategy supports the regeneration of Wolverton town centre, and the Wolverton Town Centre Neighbourhood Plan identifies the Agora site and the adjacent Council-owned car park as a priority redevelopment opportunity.
- 2.4 The Council car park is subject to a 99-year lease from 5 May 1988 in favour of Leyland Holding Company Limited, who also own the Agora Shopping Centre. It is understood from the Purchaser that it has contracted to purchase the Agora Shopping Centre, including the lease on the Council's Car Park from Leyland Holdings, for £2.15m.
- 2.5 In 2016, the Council included the regeneration of the Agora as an objective in the Council Plan 2016-2020.
- 2.6 As the Council understands the Agora is under option to the Purchaser after an open market process by the current owners, and the Purchaser holds the benefit of the planning consent, there is no purpose in going to open market to dispose of this site because in these circumstances, in order to secure the Council's priority of delivery of regeneration in Wolverton, the Council must negotiate with the Purchaser. This is the basis of the recommendation, however the Council should request evidence of the option in the Purchaser's favour, to ensure the Purchaser has sufficient control of/ability to acquire the Property.

## 3. **Planning Consent**

- 3.1 In April 2015, the Purchaser submitted a planning application seeking full planning permission for demolition of the existing Agora Shopping Centre building, and redevelopment of the entire site (amounting to approximately 1.17 ha including the Council Car Park) to provide 100 residential units (98 x 2 beds,

1x 3 bed and 1x1bed), 8 retail units, reinstatement of Radcliffe Street, as well as car parking, and associated landscaping. Planning consent for this, was granted on 11 March 2016. The development will deliver regeneration in the town centre; including new housing and the reopening of the road formerly known as Radcliffe Street, which had previously fragmented and divided the historical grid road pattern, separating the two traditional parts of the shopping area.

- 3.2 The section 106 agreement dated 11 March 2016 associated with the planning consent, provides for 25% affordable housing, as well as section 106 contributions amounting to £1,150,000.

#### 4. **Determining Land Value**

- 4.1 The Council has a legal requirement to ensure best consideration (Section 123 Local Government Act 1972) for its land sales. In order to ensure that this requirement is met in this case, the Council obtained the reports of two external valuation advisers (Lambert Smith Hampton [LSH] and Kirkby Diamond [KD]), to enable the Council to assess each relevant site's market value. The valuation is complex, as the Purchaser is a special purchaser (because the Purchaser has said it already has rights over the other half of the land needed for the development). This therefore involves assessment of the proposed development.
- 4.2 LSH's advice is that the development (the consented scheme) proposed with the current purchase price for the Agora, as agreed by the Purchaser, is not viable (profitable) and is therefore not deliverable. LSH also advised that the Purchaser's projected sales values are too low, and that their adopted development costs are insufficient. Making corrections for both of the above, LSH concluded that the Purchaser's development still makes a loss. LSH assessed the Car Park's market value as the existing use value, namely the reversionary value of the freehold Car Park as an investment, which is £22,950.
- 4.3 KD's valuation advice also said that the development is not viable if the Purchaser pays the agreed price for the Agora, as this means profit levels are insufficient to deliver the scheme. KD assessed the Agora and Car Park's combined value as £900,000, and on the basis that the Car Park comprises about 50% of the total site and is needed for the development, the value attributable to the Car Park is therefore considered to be £450,000. KD also commented that the Purchaser's costs projections in its appraisal, were too low.
- 4.4 From the assessment of the valuation advice, it is clear that the Purchaser is overpaying for the Agora. The Purchaser has not made any allowance for purchase of the Car Park from the Council, in its development appraisal. The best offer from the Purchaser to purchase the Car Park is £100,000; however, this is below the market value of £450,000 assessed by KD, ie. a £350,000 undervalue.
- 4.5 The Council can lawfully dispose of estates or interests it holds in land at an undervalue of no more than £2m, if it can rely on the General Consent Order made under s.123 Local Government Act (LGA) 1972 (see 5.1 and 7.4 below).

- 4.6 The terms and conditions attached to the disposal (see 1.2 and 1.3 above) are designed:
- (a) To **minimise** risks to the Council (as opposed to remove risk) by committing the Purchaser to deliver the consented scheme and the desired regeneration, which as a result will help to secure promotion or improvement of the social, economic or environmental well-being of the Council's area; and
  - (b) To allow the Council to rely on the General Consent Order for a disposal of the Car Park for less than Best Consideration (ie. Market Value) under s.123 of the LGA 1972, by securing the promotion or improvement of the social, economic or environmental well-being of the Council's area (see 5.1 and Legal comments in 7.4, below).
- 4.7 The key point in the terms is to ensure that the Council has the opportunity to buy back the site at the price received by the Council, if the development has not been substantially implemented in line with the planning consent within the next 12 months, or does not complete in full within 5 years. So effectively, if the regeneration benefits are not being delivered, the Council's buyback right would mean that the undervalue sale would be terminated, and the Council could then consider other options for achieving the required outcomes of regeneration and redevelopment.

## 5. **Regeneration Benefits**

- 5.1 The regeneration adheres to both the Neighbourhood Plan and Development Brief for the site, and will provide the following benefits, which will help to secure the area's social, economic and environmental well-being:
- (a) Social:
    - Provision of 100 residential units with parking, of which 25% will be Social Housing.
    - Housing in walkable neighbourhood which is accessible by public transport and near to day-to-day facilities.
    - Retention of free public car park spaces.
  - (b) Economic:
    - Introduction of active frontage retail units (which are future-flexible) along Church Street to develop the town centre and promote Wolverton's wider regeneration.
    - Larger-scale retail, to draw in new retailers, which will in turn lead to an improved retail offer.
    - Receipt of £1.15m of S106 monies for wider public benefit.
  - (c) Environmental:
    - Reinstatement of historic Radcliffe Street link road to The Square, which is one of the key principles of the Wolverton Neighbourhood

Plan. This road would be for adoption by the Council with full public access. If construction of the road were to be undertaken as a standalone project by the Council, this would cost an estimated £238,000.

- The carrying out of development which is more in keeping with the character of the conservation area and listed buildings, compared to the existing Agora Centre development.
- Design which includes positive frontages and improvements to public realm, including improved crime prevention design.

5.2 The disposal by the Council of the freehold interest now (as opposed to the initial grant of a building lease, followed by freehold transfer) is necessary as this is a requirement of the section 106 agreement. The Council would usually grant a building lease and then transfer the freehold on practical completion of the development. By transferring the freehold initially, the Council cannot easily enforce the requirement for the Purchaser to deliver the regeneration and the benefits needed to enable the Council to rely on the General Consent Order (which allows the Council to sell at an undervalue – see 5.1 and 7.4 below). The recommended method of disposal requires the Council to take a leaseback, which in turn enables the Council to grant to the Purchaser a building lease, which building lease will provide for the Purchaser to deliver the planning consented scheme and the well-being benefits. See 1.3, 4.6 and 5.1 above).

5.3 As well as the regeneration benefits, the planning consent will bring forward a road which delivers a wide public benefit to the area of Wolverton. The road will reinstate the Radcliffe Street link, reconnecting Radcliffe Street to the Square and restoring the historic grid pattern. This will in effect link the (currently-severed) shopping area of the Square, with the retail and leisure offer in place on Church Street. Further, within the planning consent, the new road has been designed to a two-way standard to retain future flexibility. Both the Neighbourhood Plan and Supplementary Planning Document seek that development of this site should result in reinstatement of the Radcliffe Street link. This is not required for the purpose of the proposed development, and reflects the Council's need for improved public infrastructure in the area.

## 6. Options

6.1 Not to dispose. This Option would not facilitate regeneration, and is therefore not recommended.

6.2 To dispose of the Council Car Park for £100,000 on a leaseback/building lease basis, with conditions to facilitate a redevelopment of the Agora (see 1.2 and 1.3 1.3 above) which is the final amount offered by the Purchaser. This is the recommended option, as it will help to secure the social, economic and environmental well-being of the Council's area.

6.3 To agree to dispose of the Council Car Park for £450,000 as assessed by Kirkby Diamond. As the Purchaser has refused this option on grounds of viability, this option is not achievable (other than, possibly, to a third party not in control of the Agora Shopping Centre, and therefore unable to deliver the

development) and therefore is considerably less certain to result in the regeneration of the site. This option is therefore not recommended.

## 7. Implications

### 7.1 Policy

The regeneration of the Agora and wider Wolverton Town Centre is a specific outcome identified in the Council Plan 2016-2020.

Policy CS21 of the Council's adopted Core Strategy and Objective T of the Wolverton Neighbourhood Plan provide that new development will only be permitted when the necessary on-site and off-site site infrastructure to mitigate the impacts of the development, can be provided. The applicant's viability submission proposes £1.15M of section 106 contributions, which was considered acceptable by the Development Control Committee.

### 7.2 Resources and Risk

N	Capital	Y	Revenue	Y	Accommodation
N	IT	Y	Medium Term Plan	Y	Asset Management

If delivered, this scheme meets the Council's objective of regeneration, will subsequently lead indirectly to increase in revenue through business rates and Council tax, and much-needed residential accommodation (of which 25% would be affordable). The disposal will generate a capital receipt for the Council of £100,000, avoid direct costs of an estimated £238,000 (as the Council would not need to build the new link road, which would be delivered by the Developer), and would mean that the Council will not need to apply substantial resources to a Compulsory Purchase in order to bring forward the required regeneration.

The risks to the Council are summarised as follows:

- The Council having a duty to act reasonably, might be acting unreasonably by selling the Car Park at undervalue for regeneration, in circumstances where the valuation advice received by the Council from LSH and KD is that the consented scheme is not viable or deliverable.
- As well as this, in order for the Council to lawfully dispose of the Car Park at the undervalue of £350,000, it needs to be satisfied that the disposal will generate benefits which will help to secure the social, economic or environmental well-being of the Council's area (General Consent Order, s.123 LGA 1972). The structure and conditions of the disposal reduce, rather than remove the risk of the Purchaser not delivering regeneration (and therefore the well-being benefits). This might leave the Council exposed to questions, given that, at the time of the decision to dispose of the property at undervalue, there was a risk that the Council could not reasonably expect to see delivery of the well-being, notwithstanding the structure and conditions attached to the disposal. However, this risk is mitigated by the conditions set

out in 1.3 and 4.7 above (ie. the Council's ability to buy back the site if the planning consent is not implemented or the development is not completed).

- That the disposal may be the subject of a challenge on State aid grounds. The Council has taken advice on the potential State aid implications of the disposal, which advice indicates that the proposed sale value can be regarded as **£338,000**, on the basis that the developer is undertaking a public task of building the link road, and the balance of £112,000 (€124,320 approximately at today's prices) can be covered under the terms of a De minimis agreement, provided that the requirements of the EU De minimis Regulations are satisfied.
- The Purchaser fails to meet the conditions of the disposal, and the Council is forced to exercise its buyback option and the regeneration stalls.
- The Purchaser seeks to renegotiate all or part of the disposal terms/conditions and/or planning consent (notwithstanding the terms and conditions of both), and the regeneration stalls.
- The Purchaser has incorrectly assessed the development costs and does not start and/or complete the development.
- The Purchaser fails to start and/or complete the development for other reasons (although if it is properly funded, the lender is most likely to exercise step-in rights and complete the development).
- The Purchaser has failed to show that it has funding to enable it to proceed and deliver the regeneration, despite its statements to the Council that this is agreed and in place with its bankers.
- External challenge – the Council is aware of likely challenge to this decision – any such challenge, if made, could delay the disposal and the scheme, and include additional costs for the Council.

### 7.3 Carbon and Energy Management

There are no direct implications for the Council's land.

### 7.4 Legal

The Council is required under section 123 of the Local Government Act 1972 to dispose of its estate or interest in any land, for not less than the best price reasonably obtainable. However, an important exception to this is that the Council can dispose of its land for less than the best price reasonably obtainable, if it does so with the consent of the Secretary of State for Communities and Local Government. A General Consent has been issued by the Secretary of State which enables local authorities to dispose of their land at an undervalue, where the amount of the undervalue is less than £2 million, (as it is in this case), but only in circumstances where the disposal is likely to help to secure economic, social or environmental well-being of the local authority's area. Section 123 does not specify how the best price reasonably obtainable for land is to be achieved, and does not require land to be sold on the open market.



In making this decision, the Council should be aware of the risk that the scheme may not be deliverable, as there is a very large difference between the cost of the scheme as estimated by the Purchaser (on the one hand), and the cost as estimated by LSH and KD (on the other hand).

The Council has an overall duty to act reasonably; it might be seen as unreasonable to part with ownership of its land for a scheme which (according to advice) is not likely to be built, therefore not likely to achieve regeneration.

However, the above risks are mitigated to an extent by the protections in 1.3(a), (b) and (c) above.

External legal advice on the potential State aid issues has been taken, which advises that on the basis of the Council's consideration of wider public benefit of the road described in paragraph 5.3 above, it is reasonable to consider that the proposals are State aid compliant.

N	Equalities/Diversity	N	Sustainability	N	Human Rights
N	E-Government	N	Stakeholders	N	Crime and Disorder

Background Papers: *Draft Heads of Terms between the Council and the Purchaser*

External valuation advice:

- Lambert Smith Hampton
- Kirkby Diamond

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