

HERTSMERE BOROUGH COUNCIL

Meeting name & Date	EXECUTIVE MEETING - 26 June 2019
Agenda item	7.1
Report title	Newberries Car Park Development Project
Report reference no.	EX/19/27
Wards affected	All wards
Report author, job title & email	Donald Graham, Chief Executive Donald.graham@hertsmere.gov.uk
List of Appendices	Appendix 1 - SADM Policies relating to flood risk Appendix 2 – Sequential and Exception Tests Appendix 3 - Flood Zone Map Appendix 4 – Planning Mini Review
Reason for urgency	Not applicable
Is it a Key Decision?	No
Call-in expires on	8 July 2019
Exempt from Call-in	Not applicable
Portfolio Holder	Finance and Property – Councillor John Graham Community and Economic Development - Councillor Paul Morris OBE

PUBLIC REPORT - this report is available to the public.

1 RECOMMENDATION

- 1.1 That the Executive recommends to the Full Council for its approval either:
- a) the Executive agrees to relinquish the current approved scheme then as an alternative it agrees to recommend to Full Council for its approval to place the site on the open market to explore development opportunities.
 - b) the continuation of the council's currently approved Newberries Project scheme (agenda item C/16/12), or
 - c) to change the council's decision as in a) above and notify both external parties to the scheme, that is Marks and Spencer as well as Travelodge, accordingly.
- 1.2 That a condition of any open market appraisal is to realise the value of the public funds expended to date as part of any contract.

2. EXECUTIVE SUMMARY

- 2.1 The town centre location at Radlett lends itself to a number of opportunities that would be of benefit to local business and the community. The council is seeking a development that has the potential to support the vitality and viability of the centre and its high street thereby creating jobs, increasing spend whilst supporting the local community.
- 2.2 The car park surface at Newberries continues to deteriorate due to the hiatus over an investment decision for its future. It is therefore imperative that the appraisal of any bids from the market are evaluated within the calendar year. This will then enable the council to move forward on a preferred scheme while retaining the existing number of car parking spaces to meet the demand for car parking at Newberries.

3. BACKGROUND

- 3.1 As has been reported in earlier published reports on this project it is once again worth reiterating that similar to all other local authorities this council has lost significant government funding in recent years, including loss of all of its Revenue Support Grant (RSG) from the financial year 2019/2020 . The Council approved the Financial Strategy on the 18 July 2018, which at the time showed that the council had a budgetary gap for the three-year period to 2021/22 of £1.6m. The Strategy has since been updated as part of the 2019/20 budget process and the latest funding gap for the period to 2022/23 now stands at £1.1m. In light of these financial constraints the council has explored several options to ensure a balanced budget over the medium to long term. These included significant internal cuts to resources and staffing, the development of shared service enterprises with other Local Authorities; the establishment of Hertsmere Developments Limited; ensuring debts are collected and leases and rents reflect current market rates.
- 3.2 The Newberries car park project is one that it was anticipated would provide the council with a guaranteed revenue income via rent and additional Business Rates as well as additional income from higher usage of the car park and additionally assisting towards the local economy via secondary spend and local employment. This was also recommended by Price Water House Cooper's (PWC) report commissioned by the council on "How to Generate Additional Income". The Newberries car park Business Plan forecast was anticipated to deliver a net contribution to the General Fund of at least £160k in year 2 and by year 25 this would amount to £1.2m with a rate of return of 7.5% while retaining the freehold of the site.
- 3.3 On the 14 December 2015 the Executive recommended that council approve to progress the design and development to planning application stage of a scheme for an 11,000 ft² GIA Retail/Food Store and an 80 bedroom hotel, subject to planning consent and an "Agreement to Lease" being in place.
- 3.4 The Executive further recommended these proposals be progressed with the preferred operators identified in the Part II report based on their current

financial offers as a minimum and conclude negotiation to a position for “Agreement to Lease”.

- 3.5 There have been a number of proposals for the development of Newberries Car Park. The most recent of these included the possibility of developing a retail store with a hotel premises above, and discussions have been ongoing with the various interested parties. The car park itself represents a substantial asset of the council. It covers an area of approximately 5,000 m² and has spaces for 216 cars. The spaces have an occupancy level in the region of 60% and delivers an average car parking income of £75,000 per annum. The retention of the current car parking capacity and redevelopment can be achieved through a podium style building within the current site.
- 3.6 At the Executive meeting of 14/12/15 (EX/15/50) it was agreed to recommend to Council “approval to progress the design and development of an 11,000 sq.ft. GIA retail and food store and an 80 bedroom hotel based on the initial design”. In order to maximise the return on investment it was recommended that the Council act as the developer. The Council would receive three main income streams from this venture/development: rental from the hotel and supermarket, additional business rate income and enhanced car parking income from greater usage. The projected net cash flow shows, based on loan repayment on a 25 year annuity basis, that the Council would receive a contribution of at least £160k in year 2, equating to 2.5% of the Council Tax levies and by year 25 it will amount to £1.2 million per annum. This proposal was put to the Council on 20/01/16 (C/16/12) where it was approved unanimously.
- 3.7 The Councils professional consultants Brazier Freeth went to the market seeking operators expressions of interest to develop the site. Two potential providers were selected via a competitive process. One of the companies expressing interest were Travelodge who estimated that for an 80 bed hotel with an average occupancy rate of 80% the number of customers using the hotel would be 40,800 per year. They estimated that the potential spend per customer on local goods and services would be between £20 - £36. Their model therefore indicated a potential additional expenditure of £817k to £1.47m to be captured by local providers of goods and services. They advised the estimated jobs for both schemes would be 85 full and part time posts. Another was Marks and Spencer who proposed a small food outlet to be incorporated into the larger design. This retail and hotel hub were seen as helping to develop a day time, evening and night economy thereby benefiting the local micro economy in travel to work and spend areas.
- 3.8 Both reports EX/15/50 and C/16/12 identified the issue of the Flood Zone and negotiations to mitigate this with the Environment Agency (EA) as a key risk. The full Council resolved to establish a Working Group to explore the Council’s preferred option and any viable alternative option that may emerge from the Working Group (12.07.17). On the 28/02/18 the Executive resolved to receive a further report on the development of the Newberries Car Park scheme as EX/18/21.

4. REASONS FOR RECOMMENDATION

- 4.1 The Newberries Car Park project was anticipated to be one of the major projects both in financial and non-financial terms that the Council would be embarking upon.
- 4.2 In the absence of any progress on the scheme the council needs to decide whether to go forward with the original scheme or adopt a different approach.
- 4.3 With the passage of time capital costs have increased and there have been significant changes in the retail market. However the location of Radlett with its proximity to London and public transport networks makes it a key location for town centre development.
- 4.4 Following the Council's approval of the project significant preparatory work was carried out including initial design, geographical survey, traffic impact studies etc, thus incurring the preliminary cost of £566K. This cost cannot be simply treated as a sunk cost, hence by putting the site on the open market the Council would aim to recoup these sums as part of any contract entered into for the potential development.

5. DESIGN AND MASTER PLANNING FRAMEWORK

- 5.1 The council has spent approximately £155k (*architectural/design element*) in developing a Masterplan for the site based on a hotel and retail option. The design represented a significant improvement to the site. However any proposals for development within this site which sits in a Flood zone 3a area must pass a sequential test and where "more vulnerable" uses are proposed the exception test. These steps and testing procedures are outlined at Appendix 1 and 2.
- 5.2 Officers commissioned AECOM and the Environment Agency, as part of the Local Plan Review, to produce an updated Strategic Flood Risk Assessment and Zonal Map for the Borough. In so doing this provided an updated picture for the Newberries car park area providing an agreed potential development area. A copy of the Flood Zone map for this site is attached as Appendix 3 along with comments providing the context for planning policy. The conclusions confirm that a small part of the Newberries Car Park should be safeguarded from development. However, the integrity of the current Master Plan for the site can be retained with some marginal alterations to the current design.
- 5.3 Given the time lapse it would be advisable for any developer to affirm that the views of the Environment Agency remain unchanged.
- 5.4 In February 2019 the Head of Planning reviewed the planning status of the site. As a town centre location the site is subject to the National Planning Policy Framework which encourages town centre development. This is summarised below as material considerations for any developer.
- 5.5 Main town centre uses that would be appropriate in principle include retail, leisure (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities). Community facilities such as GP surgeries, dentists etc. would also be appropriate and it should be recognised that residential

development should be encouraged on appropriate sites where it contributes to vitality. Reflecting the site's location in a town centre close to bus and train services, it is also a location where the council's Parking Standards SPD seeks to promote a reduction in parking spaces in any new residential development.

- 5.6 The majority of the site is located within Flood Zone 3a with a proportion also being designated as within Flood Zone 3b. Flood zone 3b is the active flood plain and should be safeguarded from any development, although opportunities for any development to further mitigate the risk of flooding elsewhere or increase the capacity of the area should be explored. Flood Zone 3a is an area where less vulnerable development is acceptable in principle and more vulnerable development can be allowed if it passes the sequential and exception tests. The exception test essentially requires it to be demonstrated that a) the development must provide wider sustainability benefits to outweigh flood risk and b) it is demonstrated that the development will be safe for its lifetime taking account the vulnerability of its users, without increasing flood risk elsewhere and where possible reducing flood risk overall.
- 5.7 The planning position is that this site is constrained due the location to the rear of Newberries Parade, this restricts access, sets key drivers for height and dominance of future development opportunities. Any redevelopment of the site will be subject to compliance with other relevant local and national planning policies, and any environmental or other improvements that may be required by statutory bodies especially as the site sits within flood zone 3. The full assessment is attached at Appendix 4.

6. CONSULTATION

- 6.1 The council has been considering redevelopment of the Newberries Car Park since 2014. Vincent and Gorbng provided the initial feasibility drawings and estimated build costs. The project designs were presented at a public consultation on 10th and 13 October 2016 to which 421 members of the public attended. Their views ranged from support to opposition to the scheme.
- 6.2 In March 2017 the Leader of the Council announced that he "intended to place the approved development scheme on hold" in order to move the focus from opposition by the single issue "TRACKS" campaign to the council's proposals to how the council, local residents and businesses could work together to explore alternative options for the development of the Car Park. It was noted that any alternative option would have to generate a constant revenue stream to be considered for further community consultation along with the council's approved development scheme. In order to take this work forward, it was suggested that a Working Group be established charged with examining the options and consulting with local residents on the choices before the council made any final decisions (Council minutes 12.07.2017). A Working Party was accordingly established led by Cllr P Morris OBE. The campaign group TRACKS were invited to participate but declined. The terms of reference for the Group were agreed by full Council (C/17/25).
- 6.3 The outcomes from this exercise were reported to the Executive on 28/02/2018 EX/18/21.

- 6.4 As reported earlier (EX/18/21) the ideas listed in the Newberries Report options would in the main appear to be very unlikely to meet the EA sequential test. However it has been open to the market to undertake that risk assessment and seek to demonstrate any proposal could meet this test by going through a pre-application dialogue with Planning. To date no other viable business proposals have been received by the council that meet the councils requirements. These were set out in the Working Groups terms of reference as a Return on Investment of not less than 7%.
- 6.5 The six Focus Groups established by Cllr Morris OBE captured the views of approximately 40 individuals from Radlett. Their ideas included:
- Office space
 - Food retailers
 - Pop up shops
 - A street market
 - Restaurants
 - Public space
- 6.6 A group called 'TRACKS' established itself to oppose any development of the site. It claims to have 1,000 members whose views TRACKS reflect. The Portfolio Holder for Asset Management recently met with representatives from TRACKS. He advises that at this meeting TRACKS representatives indicated that they will be willing to consider development of the site providing their views and those of the residents of Radlett are taken into account.

7.0 COMMUNITY ENGAGEMENT

- 7.1 EX/18/21 reported on the processes undertaken to date including public meetings, focus groups and those opposed to a scheme including a hotel and food retailer.
- 7.2 Since the report to the Executive (28/02/18) the council has not received any further details or business plans on alternative options nor have overtures been received from the market place.
- 7.3 Any potential developer would carry out a public consultation in accordance with planning requirements.

8. ALTERNATIVE OPTIONS

- 8.1 The council could decide not to continue with its agreed scheme and thereby forego any return on its investment to date of £566k and the opportunity to create local employment and training opportunities within Hertsmere.
- 8.2 The council could dispose of the site on a long lease or freehold basis with planning consent. The council could also enter into a joint venture. All of these options were previously considered and discounted by the Executive due to the relatively poor return compared to that which would be achieved when developing the site in its own right. These were presented and accepted by the Executive EX/15/50 in 2015. However as almost four years

have elapsed since the council decided to proceed with this project the council may now decide to go to the market and offer the site on an open basis for development.

- 8.3 The alternative ideas that appear in EX/18/21 have not generated any market interest or are likely to be unable to meet the planning constraints outlined. Another option would therefore be to test the open market to see if any viable development opportunities present themselves.

9. FINANCIAL AND BUDGET FRAMEWORK IMPLICATIONS

- 9.1 In January 2016 (C/16/12) the Council approved capital spend towards financing the Newberries Car Park Development Scheme. At the time the gross development costs were estimated to be £10.3m including estimated costs to Planning Application Stage of £400k. The build costs due to the passage of time and inflation are now estimated to be in the region of £13m.
- 9.2 The projected net cash flow, which was based on 25 year borrowing, showed that the council would receive a net contribution of at least £160k in year 2, rising to £1.2m per annum by year 25.
- 9.3 Subsequently costs incurred to date amount to £566k, no costs have been incurred since the project was put on hold in July 2017, save any contractual commitments.
- 9.4 With any major project, such as this development, costs relating to feasibility and design works are at risk until the development is undertaken, as these costs cannot be capitalised until the project proceeds. The council's agreed scheme is at risk as this expenditure will need to be funded from revenue resources for which there will be no prospect of a return. By going to the market on an open basis the council may secure a return on this investment over time.
- 9.5 The need to generate additional revenue to fund the delivery of services are reflected in the Councils Financial Strategy EX/17/93. A funding gap of £1,078k is shown for the next four years. This reflects the ongoing reduction in government grant and complete loss of Revenue Support Grant from 2019/20 and other pressure that impact on the Medium Term Financial Strategy.
- 9.6 A failure to realise the council's investment or unwillingness to proceed will lead to criticism by external audit and a potential public interest report.

10. LEGAL POWERS RELIED ON AND ANY LEGAL IMPLICATIONS

- 10.1 As asset management is an executive function, it is the responsibility of the Executive in development procurement to review and approve the strategic options, test development appraisals for viability, approve works, services and supplies specifications, approve the award criteria and evaluation methodology and where more than one procurement procedure is available,

choose the preferred procedure. Thereon, for a combination of technical, compliance, probity and insurance cover reasons, officers must conduct the relevant procurement exercises, be responsible for tender evaluation and recommend the award of a contract to the Executive, unless the officers have delegated authority to award it.

10.2 Subject to very limited exceptions, the council is under a legal and fiduciary duty to local taxpayers to ensure that land is disposed of for 'the best consideration reasonably obtainable', i.e. at market value, and this remains the case whether or not the disposal is by way of the sale of a freehold or long leasehold interest intended to generate a capital receipt, or by way of a leasehold disposal structured to generate ongoing revenue returns to the Council.

10.3 The scheme for the development for Newberries Car park approved by the Council on 20 January 2016, namely the development of an 11,000 ft² GIA Retail/Food Store and 80 bedroom hotel, projected a return on investment of 7% which would satisfy the council's legal and fiduciary duty to obtain the best consideration reasonably obtainable. Indeed, it was for this reason that one of the objectives of the Newberries Car Park Development Consultative Group was to:

'conduct community consultations on the Approved Scheme and any alternative option the business case for which predicts a Return on Investment of not less than 7%.' *

* Objective 3 Terms of Reference - Newberries Car Park Development Consultative Group

10.4 Although the report of the Newberries Car Park Development Consultative Group did identify a number of potential alternative development schemes to the council's approved scheme, no information was given about predicted financial returns and therefore the council cannot be satisfied that the implementation of any of them would satisfy the legal and fiduciary duty owed to the taxpayer to obtain the best price reasonably obtainable.

11. RISK MANAGEMENT IMPLICATIONS

11.1 The potential risks of not taking forward the council's previously approved scheme are discussed throughout this report.

11.2 The approved scheme was expected to achieve an overall financial return of 7% over 25 years and provide an ongoing source of funding for the council's general fund revenue budget thereby reducing the council's reliance on Government Grant and reserve funding.

11.3 In light of lessons learnt from Northamptonshire County Council's Section 114 Notice it is of paramount importance that the council has a planned approach to achieve a balanced budget rather than simply relying upon utilisation of reserves and/or resourcing ongoing revenue budget via unsustainable funding sources.

11.4 The council's medium term financial strategy is therefore undermined by not achieving progress to realise a return on its investment to date of £566k. Even if

the council decides to proceed with its existing approved scheme, as explained in the body of the report, due to the changes in both the construction industry and retail market the original rate of return of 7% may not be achieved. The construction cost has significantly increased from the original estimate. The retail market in terms of food outlets relevant to the scheme are undergoing review by all the major retailers.

- 11.5 The passage of time exposes the council to the risk of failing to secure a return on its investment.
- 11.6 The costs of development are likely to increase as time passes and borrowing costs are also set to rise increasing the cost of funding.
- 11.7 It is important to bear in mind the preliminary expenditure of £566K for the feasibility study and other ancillary work may not be fully recoverable via a market procurement exercise due to differing aspirations and ideas from the interested parties. This means that the council could be challenged by any of its stakeholders, especially External Auditors who are the watchdog body and may challenge the council's overall approach on this project as well as possible failure to achieve 'value for money' for its taxpayers.

12. EFFICIENCY GAINS AND VALUE FOR MONEY

- 12.1 The council's preferred scheme proposed improving an under-utilised site by increasing the return from £75k from its existing use as a car park to an estimated return of at least £1.2m when fully operational on the current scheme agreed by the council.
- 12.2 The potential gains from any development proposal received would have to be evaluated at that time.

13. PERSONNEL IMPLICATIONS

- 13.1 None directly arising from this report.

14 EQUALITIES IMPLICATIONS

- 14.1 The council's preferred scheme promotes employment and training opportunities for the low paid and with good public transport links makes the jobs accessible to those where private transport is a barrier to work.
- 14.2 An alternative scheme may achieve similar outcomes.

15 CORPORATE PLAN and POLICY FRAMEWORK IMPLICATIONS

- 15.1 The proposal accords with the Councils 2020 Vision and the priority of being an enterprising council to
 - Maintain financial resilience and work towards self sufficiency

- Optimise use of our assets: land, property, staff and finance
- Promote employment opportunities and sustain local business in Hertsmere

16 ASSET MANAGEMENT IMPLICATIONS

16.1 As explained in the body of the report.

17 HEALTH AND SAFETY IMPLICATIONS

17.1 None directly arising from this report.

18 BACKGROUND DOCUMENTS USED TO PREPARE THIS REPORT

Document Title:	Filed at:
Newberries Car Park Development Scheme	14.12.15 EX/15/50
Newberries Car Par Development Scheme	14.12.15 EX/15/76
Newberries Car Park Development Scheme	20.1.16 C/16/12
Newberries Car Park Development Consultative Group	12.7.17 C/17/25
Newberries Car Park Development Scheme	19.7.17 EX/17/68
Newberries Car Park Development Scheme	28.2.18 EX/18/21

19 CONSULTATION ON DRAFT REPORT

19.1 A draft of this report was sent to the following on the following dates:

Consultee	Report sent	Comments rcvd
Chief Executive & Corporate Director (COB)	[insert date]	[insert date]
Head of Finance	[insert date]	[insert date]
Head of Legal & Democratic Services	[insert date]	[insert date]
Head of HR & Customer Services	[insert date]	[insert date]
Portfolio holder [insert post title]	[insert date]	[insert date]
Head of Planning	14 July 2018	
Insert details of any other persons you consulted whose work area may be impacted by your report. Remember to give consultees sufficient time to respond ie at least two days.	[insert date]	[insert date]