

Wiltshire Council

Cabinet

14 December 2010

Subject: Salisbury - The Maltings and Central Car Park

**Cabinet member: Councillor John Brady
Economic Development, Planning and Housing**

Key Decision: Yes

Executive Summary

The Council owns the majority of the freehold interest in approximately 5 hectares (12 acres) of land comprising the Maltings and Central car park area (MCCP) in Salisbury.

The MCCP has been identified for a retail-led mixed use development to enhance and invigorate the economy of the city.

The Council's external consultants advise that despite the current economic climate the project will prove to be of considerable interest to developers and recommend that marketing should commence in the spring of 2011.

This report seeks Cabinet approval to the marketing of the MCCP and to some further site specific matters.

Proposals

- (i) That the Council offers the MCCP to the market via an OJEU procurement process.
- (ii) That the MCCP be taken to the market in spring 2011 with a target date of March 2011.
- (iii) To delegate authority to the Director, Economy and Enterprise, in consultation with the Cabinet Member for Economic Development, Planning and Housing and Director of Resources to approve the OJEU procurement process, the minimum project requirements (on the basis referred to in paragraph 16 of this report) and the evaluation criteria prior to marketing the MCCP.
- (iv) That Members note that the existing library may be demolished and replaced as part of the MCCP redevelopment or may be demolished and

replaced elsewhere in the city in an alternative suitable location.

- (v) To delegate authority to the Director, Economy and Enterprise, in consultation with the Cabinet Member for Economic Development, Planning and Housing and Director of Resources, for the acquisition of opportunity land interests in and around the MCCP that would enhance the likelihood of delivering a retail-led mixed use development on the site.
- (vi) That Members note that there may be a reduction in car parking income during or as a result of the carrying out of the redevelopment on the MCCP although this may be offset by a combination of capital receipt and rental income arising out of the redevelopment. The provision of Park and Ride space around Salisbury will ensure minimal impact to parking for the city.
- (vii) That Members approve the principle of proceeding with a compulsory purchase order at the successful developer's expense in the event that this is in the public interest and where the chosen scheme cannot proceed without acquiring third party interests.
- (viii) That all interests in the ownership of the Council within the area of land shown edged red on **Plan A** attached to this report (not being public open space or already held for planning purposes) be appropriated for planning purposes at the date the Council allows the successful developer to enter onto such land for the purposes of carrying out development in accordance with a planning permission granted for the development of the MCCP.

Reason for Proposals

The delivery of this project will enhance the local economy of Salisbury and address significant retail 'leakage' to competing centres, notably Southampton, Bournemouth and Basingstoke. It will help to safeguard jobs and the economic vitality and viability of the city. It is desirable that this project proceeds now, to avert significant developer pressure for retailing in edge and out of centre locations, which if developed could damage the MCCP project and the future vitality of Salisbury as a retail destination.

MARK BODEN

Corporate Director
Department of Neighbourhood and Planning

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Purpose of Report

1. This report updates Members on progress to develop the Maltings and Central Car Park (MCCP) area of Salisbury, and seeks approval on specific items which will mitigate risk to the Council whilst ensuring the opportunity is attractive to developers.

Background

2. Cabinet received an update on the Salisbury Vision projects on 23 February 2010. Amongst other matters, Cabinet approved the appointment of commercial and legal advisers to support the Vision in developing a programme for the development of this key site.
3. Commercial consultants DTZ and lawyers Wragge & Co were each appointed via a competitive tendering process during the summer of 2010.
4. The Salisbury Vision Board has been kept informed of progress and is fully supportive of the approach taken.
5. A joint report has now been received from DTZ and Wragge & Co that considers the key issues relevant to the delivery of the Council and Visions' goals, the key findings of which are being placed before Cabinet.

Main Considerations for the Council

Development opportunity

6. The delivery of this project will enhance the retail offer of Salisbury and address the key reason why the city centre is at a competitive disadvantage to its sub regional counterparts. Salisbury suffers significant retail 'leakage' to these other centres, notably Southampton, Bournemouth and Basingstoke owing to its lack of supply of larger-floorplate comparison retailing. The MCCP site can provide this in a sustainable, city centre context.

7. These proposals will help to safeguard Salisbury's economic vitality and viability.
8. It is highly desirable that this project proceeds now, since there is well documented developer pressure to provide further comparison and convenience retailing in edge and out of centre locations including Southampton Road. The parties promoting these sites erroneously claim the MCCP site is a long-term aspiration rather than a shorter term delivery prospect and as such should not prevent them from securing retail consents on less sequentially attractive sites. Were such applications to succeed, this would be very damaging to the city as it would negatively impact upon the delivery of the MCCP site and the Vision's strategy to improve its retailing in a sustainable manner.
9. The joint DTZ and Wragge & Co report was received on 5 November 2010 and the Executive Summary of that report is attached in **Appendix A (Confidential – not for publication)**.
10. DTZ advise that despite the current economic climate the MCCP opportunity will be well received in the market by developers and investors alike and recommend offering the opportunity to the market in spring 2011. They anticipate strong interest and imaginative proposals from developers.

Procurement

11. Following legal advice from Wragge & Co, an OJEU procurement process must be followed unless the Council wishes to dispose of its interest in the MCCP as a pure land transaction.
12. Officers consider that disposing of the MCCP via a pure land transaction would not provide sufficient safeguards to the Council or Salisbury Vision on the quality and timing of the redevelopment.
13. In light of this, Wragge & Co is recommending that an OJEU procurement route is followed.
14. The market is aware of the need to comply with the EU procurement rules and the Council's advisers do not consider that following such a process will have a negative impact on the quality of bids received.
15. The specific technical route to be followed is the subject of on-going legal advice from Leading Counsel. The key issues being to ensure that the correct procurement procedure is followed (to mitigate the risk of a challenge that the MCCP has not been marketed in accordance with the relevant legislation) and to identify a procedure that, where appropriate, provides the Council and the Vision with flexibility within the regulatory parameters.

Vision's objectives

16. Prior to marketing the MCCP, officers will set the minimum project requirements against which bids from potential developers will be assessed.

In setting the minimum project requirements, officers will have regard to the following suggested minimum project requirements which comprise the key objectives of the Vision for the MCCP site and are set out below.

The redevelopment of the MCCP must:

- Be deliverable, and ultimately enhance Salisbury's position as a sub-regional shopping and cultural centre.
 - Comprise a mixed-use retail-led development of a comprehensive nature that is of a critical mass that provides new retail floorspace together with housing, leisure, community and employment uses that result in activity throughout the day and evening.
 - Make sufficient, high quality car parking provision and servicing solutions to support the successful operation of the scheme and take account of the Council's emerging car parking and transport strategies.
 - Enhance the City's role as a visitor/tourist destination
 - Complement (not compete) with the existing retail and city centre activities and strengthen linkages to the existing core retail area.
 - Provide attractive and high quality public spaces that utilise the River Avon and watercourses within the site.
 - Clearly demonstrate exceptional architectural quality and innovative design throughout the scheme that works with the context and grain of the City, and respects views to the Cathedral.
 - Clearly demonstrate a commitment to the use of high quality building materials whilst not precluding contemporary design.
 - Be sustainable in terms of transport choices, building construction and drainage solutions and demonstrate the delivery of renewable energy and lower carbon emissions and effective waste and water management.
 - Be supported by a robust and far-reaching Programme of Community Engagement that connects with all communities and stakeholders.
 - Deliver a revenue stream to the Council that provides the Council with the required level of income and/or capital receipt.
 - Be based upon an 'open book' relationship with the Council.
17. These suggested minimum project requirements will need a degree of fine tuning as the process evolves, but Members are requested to note the broad principles that they lay down which will form the basis of the final minimum project requirements and evaluation criteria.

Site specific

(i) Appropriation

18. The legal title to the MCCP is complex and there are a number of private rights and covenants that could potentially undermine the ability of the

successful developer to develop the site. In many cases, it is unclear who has the benefit of such rights. Accordingly it is recommended that the property is appropriated for planning purposes for the reasons set out below.

19. "Appropriation" is a term given in local government legislation to an internal process of the Council designed to allow a Council flexibility in its use of land. It allows a Council to use land that has been acquired for one purpose for a different purpose. Under local government legislation, a Council must acquire land under statutory powers
20. Under section 122 of the Local Government Act 1972, a Council can appropriate land for any statutory purpose for which they are authorised to acquire land by agreement. Section 227 of the Town and Country Planning Act 1990, authorises a Council to acquire land for planning purposes by agreement if the Council thinks that either (a) the acquisition of the land will facilitate the development, re-development or improvement of the land or (b) it is required for some other reason that is necessary to the proper planning of the area.
21. Once the Council has appropriated the land for planning purposes, it will have the power to override the private rights and covenants affecting the land under section 237 of the 1990 Act. This section applies to land which is either acquired or appropriated for planning purposes and where a development is carried out on the land in accordance with a planning permission.
22. Section 237 provides that the development is authorised even if it interferes with a person's rights over the land and that these rights can be overridden. Compensation is payable by the person carrying out the development on the basis of the reduction in value of the land which benefits from the rights.
23. Given the nature of the identified rights, it is difficult to assess whether any compensation amounts are likely to be significant. Accordingly the successful developer will be asked to indemnify the Council against any possible compensation costs.

(ii) Extent of site

24. The land shown edged red on **plan B**, is part registered and part unregistered. It is not known who owns the unregistered land. The registered land is comprised in twelve titles which are owned by the Council (eight titles), Tesco Stores (two titles), Salisbury City Council (one title) and Mineflow Investments (one title).
25. The land is subject to numerous leasehold interests including the 125 year lease (granted by the Council) of the Maltings Shopping Centre which is currently vested in Harvest Nominee and the 35 year underlease (granted by Harvest) of the Sainsbury's Store which is vested in Sainsbury's Supermarkets Limited.
26. As Members will note, the red line area includes the library. It is anticipated that to secure the enhanced links to the City centre (see item 5 of the

suggested minimum project requirements) that improvements may need to be made to the mall adjoining the library. This may mean that the library will need to be replaced either within the scheme or elsewhere in a suitable location within the city. The Salisbury Vision Director will be working closely with colleagues in the Department for Community Services to work up a specification for the replacement library.

27. It is possible that one or more properties adjoining the MCCP may be offered for sale on the open market. Where it can be demonstrated that these would enhance the ability to achieve a retail-led redevelopment of the MCCP and can be acquired at a cost that would be recovered through the eventual capital receipt, officers consider that it would be prudent for the Council to take advantage of such an opportunity. Accordingly it is recommended that authority for such acquisitions should be delegated to the Director, Economy and Enterprise, in consultation with the Cabinet Member for Neighbourhood and Planning and Director of Resources.
28. Given the third party interests which affect the MCCP (for example, the Harvest lease) officers recommend that Members approve the principle of proceeding with a compulsory purchase order at the successful developer's expense in the event that this is in the public interest to do so and where the chosen scheme cannot proceed without acquiring third party interests. At this stage, Members are not being asked to make a formal decision to make a compulsory purchase order as it is too early in the process to know whether this will be necessary. However, potential bidders will want to know whether the Council would have the 'appetite' for acquiring property through this mechanism.

Environmental and climate change considerations

29. Whilst there are no environmental or climate change implications arising from this report, there will be an impact arising from the eventual development. Members will recall that item 9 of the suggested minimum project requirements obliges bidders to provide details on mitigation of these and other sustainability aspects.

Equalities Impact of the Proposal

30. None.

Risk Assessment

31. The principal risks to this project are outlined as follows:
32. *Challenge on procurement* – this risk relates to the potential for a legal challenge relating to the procurement process and arising from an aggrieved third party. The team has mitigated its exposure through appointing specialist legal and commercial advice and through obtaining Counsel's opinion on the procurement process where required. The team will be very careful to comply with procurement rules throughout the marketing process.

33. *Market conditions deteriorate* – the commercial property market is currently subdued. However our advice is that this project is a unique opportunity and should be attractive to the market. The lead-times for this project should allow for its delivery in improving market conditions. The risk mitigation should include monitoring market conditions and bringing the opportunity to the market as soon as possible.
34. *Capacity* – there is capacity to deliver this project – the Council’s team is supported by experienced professional advisers.
35. *No acceptable bids* – DTZ has advised that they consider there will be interest from developers experienced in city centre mixed-use development.
36. *Preferred bidder insolvency* – the evaluation criteria will ensure that the successful bidder is financially robust.

Financial Implications

37. There may be revenue implications in respect of the existing car park income. The commercial arrangements between the developer partner and Council in respect of the car park and other revenue (rent) to the Council from the scheme will be critical to the viability of the scheme. In order to ensure a commercially viable project is delivered, there may need to be a balance between the financial and regeneration benefits of bidders’ proposals and as such will need to be capable of negotiation between the parties.
38. It is anticipated that the Council will receive a capital receipt from the disposal of this asset, but for the reasons outlined above it is not possible to assess or predict what this may be at this stage.
39. A budget will be required for pre marketing and marketing fees.

Legal Implications

40. There are no human rights or ethical considerations arising from the report.
41. There are issues arising out of EU procurement law but our approach is informed by legal advice from Wragge & Co, supplemented where necessary by advice from leading Counsel.
42. Appropriation under S237 will resolve the title uncertainties relating to private rights and covenants.

Options Considered

43. *Do nothing* – Loss of opportunity to stimulate the City financially, welfare, regeneration etc. Leave open competition from landowners outside city centre

to develop retail in locations that are sequentially un-preferable, which would have a negative impact on the city's long-term economic vitality and viability.

44. *Sell without obligation to meet Vision's objectives* – this would substantially compromise the ability of the Council to deliver the objectives of the Salisbury Vision, would be most likely to lead to the development of a retail warehouse led 'edge of centre' scheme in this location, which would be likely to have a significant negative impact upon the city's long-term economic vitality and viability. It would also be a very substantial wasted opportunity to deliver high-impact place-making regeneration in a key city-centre site.

Conclusions

45. A programme of action is in place to proceed to secure a development partner to deliver a high-quality retail-led mixed use development on the Maltings and Central Car Park site. To deliver the Council's objectives, and those of Salisbury Vision, it is necessary to proceed by way of an OJEU procurement route. The internal and external structures are in place to move to the next stage of delivery and the resources required in the short term have been identified.

MARK BODEN

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Date of report: November 2010

Background Papers

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices

Appendix A- Report marketing procurement advice (**CONFIDENTIAL – not for publication**)