

To: City Executive Board

Date: 8th February 2012

Report of: Head of Corporate Assets

Title of Report: **WESTGATE REDEVELOPMENT - REVISED COMMERCIAL TERMS**

Summary and Recommendations

Purpose of report: To seek approval to revised commercial terms with the Westgate Oxford Alliance to enable the entering into of a revised Development Agreement and Agreement to Lease in relation to the proposed redevelopment of the above. The Report will also seek to advise Members of outstanding issues and detail that remains to be negotiated in due course, and embryonic project delivery timetable.

Key decision? Yes

Executive lead members: Councillor Ed Turner

Report approved by: David Edwards, Executive Director, Housing and Regeneration

Finance: David Watt, Finance Business Partner
Legal: Lindsay Cane, Legal Services Manager

Policy Framework:

- West End Area Action Plan
- Regeneration Strategy

Recommendation:

The City Executive Board is recommended to:

1. Note the contents of this Report and progress in discussions with the Westgate Oxford Alliance.
2. Grant delegated authority to the Executive Director, Regeneration & Housing to authorise the Council's entry into required legal documentation with the Westgate Oxford Alliance to give effect to this matter, the terms to be consistent with the contents of the Not For Publication Appendix.

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| <ol style="list-style-type: none">3. Agree the placing of any voluntary notice in regard to this matter as is considered appropriate to give adequate notice of the Council's intention to enter into development documentation as detailed herein. |
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Appendices

1. Plan
2. Regenerative Benefits Summary
3. Risk Register
- 4 & 5. Not for Publication Confidential Appendix

Background

1. Members will recall that at the meeting of the City Executive Board held on 25th May 2011 approval was given that neither side (the Council and the Crown Estate) would seek to terminate the existing Development Agreement in relation to the Westgate Redevelopment Project prior to 31st December 2011. This agreement was subsequently entered into by way of an exchange of letters (and was in fact the second such agreed extension).
2. This action was pursuant to a novation of the existing Development Agreement to the Crown Estate being completed on 30th April 2010, and subsequent to that the Crown Estate entering into a 50:50 Joint Venture with Land Securities, to establish a development vehicle now being known as the Westgate Oxford Alliance (WOA).
3. Since that time the Alliance has been engaged in the undertaking of essential due diligence to inform their view as to whether or not a potentially viable scheme of redevelopment for the Westgate Shopping Centre existed. Your officers representing the Council as landowner have been involved in continuing dialogue with the WOA inputting into that process to the extent necessary. There has been an initial limited dialogue with Planning Officers on planning and transport principles. WOA have also been having active dialogue with the John Lewis Partnership (JLP) who have confirmed their continued interest in the project.
4. To date, and to the extent required, the outcome of that further due diligence has proved positive and the respective Boards of WOA, the Crown Estate, and Land Securities have continued to endorse further investment required on the basis that there is a reasonable prospect of the scheme meeting their requisite hurdle rates of return.
5. Substantive investment will need to be committed at the point that WOA commits to full scheme design and with a view to the submission of a new detailed planning application. They have made it very clear that before they are prepared to do that, comfort was needed that there was going to be an ability to agree satisfactory revised commercial terms with the Council (as landowner) and the JLP as the principal anchor tenant. For the last few months both JLP and the Council have been involved in those respective commercial negotiations and the

principal purpose of this Report is now to report the outcome of the Councils negotiations to Members for consideration and to enable the project to move forward to the next substantive stage. As agreed by CEB on 25th May 2011 the Council has been assisted in those discussions by property consultants CBRE. The Council's externally appointed solicitors, Lawrence Graham will be advising on the key legal issues associated with the proposed transaction and procurement compliance.

6. The City Council has initiated meetings with the County Council to seek to develop a shared position on the main planning principles. WOA have also proposed a strategic highways and bus review. They have set out a workshop based approach, which City and County officers are agreeable to, and an initial meeting has been held.
7. Whilst it is not intended to rehearse fully the terms of the existing Development Agreement, it may be helpful to remind Members of the principal terms. These are as set out in the attached Not for Publication Confidential Appendix 4. The existing terms are relevant to the currently ongoing commercial negotiations being conducted with the Crown Estate/Land Securities, and those existing terms are therefore contained in a confidential appendix so as to ensure that the current negotiations are in no way prejudiced.

Market Overview

8. The global economic environment continues to present significant new challenges and an uncertain outlook. Whilst there was a degree of stability in the first half of 2011, the concerns of Greek and Italian default and consequential knock-on effects to other European economies is sending the markets into further turmoil.
9. The heavy restrictions on lending, as well as the overwhelming sense of caution, continues to constrain market and consumer confidence. Notwithstanding the above, demand for quality retail space and the investment market for prime retail property has remained resilient over the past year. Successful retailers are growing market share and with relatively few quality investment assets coming to the market there continues to be strong demand from a wide range of investors for what are regarded as prime shopping centres.
10. Shopping centre construction activity continues to contract and has fallen to less than 25% of levels reached in 2007. The rate of construction activity decline over the last 4-5 years has proved similar to that seen during the early 1990s recession. For a range of reasons the industry focus has shifted back in favour of large dominant centres and extensions to centres with a proven trading track record (as it did following the 1990s recession).
11. In addition, the development market is adapting to the developers' increased needs for committed income before starting on site. There is greater evidence of retailers being prepared to agree pre-lettings as they play their part in unblocking the pipeline to deliver the space that they need. As a result, notwithstanding the current economic difficulties, particularly in the prime centres, it is anticipated that

there will be a flow of new schemes being delivered to the market from 2015/16 onwards.

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12. The economic drivers to support such a project have, and continue to change substantially and if the project is to have any prospect of deliverability, then all the principal parties involved in the key arrangements must accept that the previous transaction parameters agreed with Capital Shopping Centres were undeliverable and that very different circumstances now apply.
13. The WOA have been in dialogue with the City Council regarding the key commercial terms which could be applicable to any new arrangements between the Alliance and the Council associated with the redevelopment of the Westgate Centre. Good progress has been made.
14. At the same time, the WOA have been in similar commercial dialogue with the John Lewis Partnership who retain a very strong interest in being represented within Oxford as part of the development. We are further advised that those key commercial terms between WOA and the John Lewis Partnership have now been agreed to an extent that neither party believes that there is any material issue that should stop final agreement being reached. We understand that related discussions regarding fit out specifications, internal store design and logistics, capital contributions required etc are currently ongoing.
15. On the basis that commercial terms between the City Council and WOA are finalised and documented, and a similar position reached between WOA and JLP then that should signal, subject to final Board approvals, the developer committing to full scheme design.
16. The key commercial terms that have now been agreed between the City Council and WOA relate to:
 - The minimum level of ground rent that will be paid.
 - The level of the City Council's gearing in the new scheme income, subject to the minimum ground rent provisions.
 - The ability for the Council to share in profit generated from the scheme and to consolidate elements of that within the geared ground rent up to agreed limits.
17. Full details in this respect are provided within the Not for Publication confidential appendix.

Temporary Car Parking Provision

18. As detailed herein the existing arrangements obligate the developer to provide temporary car parking during the period between the decommissioning of the existing multi-storey and surface car parks and provision of new. That provision was split between the Oxpens site and Redbridge Park and Ride. Given the passage of time, and as part of these fresh negotiations Land Securities are reviewing possible arrangements in respect of that temporary car parking

provision, including such aspects as reviewing City Centre capacity, the net costs associated with that required temporary provision etc. The outcome of that work is expected to be available in the very near future. Additionally, there has to be had regard to potentially competing demands and opportunities of development in the interim period at both Redbridge and Oxpens respectively. The default position of the Council is that adequate temporary car parking provision has to be made.

19. In coming to their conclusions as to scheme viability, and their recommendations on commercial terms CBRE has undertaken a high level viability review of the current situation of the new Westgate scheme based on the following documents:
 - Base financial appraisal.
 - Base scheme rent schedule.
 - Estimated rental value take-up calculator.
 - Cost plan (base scheme – low risk programme) prepared by consultants Davis Langdon.
 - Vacant possession cost estimate.
20. It has to be appreciated that it is probable that the financial information provided will be further refined and updated before the scheme goes ahead.
21. The broad intention is that, subject to detailed legal advice, and to the extent that it is appropriate, new documentation will mirror the terms and conditions of the existing. There has already been a high level review of that documentation and some conclusions drawn as to which aspects can be saved, those aspects that through the passage of time and through other circumstances are no longer appropriate, and other areas where further discussion and legal input is required. The significant difference this time around is that previous documentation was being agreed at a point where the form and detail of the scheme was substantially known and agreed. This time, that format and detail is at this stage largely unknown and any documentation will need to have regard for the need for appropriate safeguards for approval by the Council as landlord moving forward.

Project Programme

22. The current Project Programme is in the course of being thoroughly reviewed by Land Securities. On that basis the timetable, as detailed below, is heavily caveated and should not in any way be regarded as fixed, but is given as an indication of the possible timing of the key milestones involved. The programme is predicated on a number of assumptions eg that no further Compulsory Purchase Order is required.

Draft Milestones	
Design Team Selection	Feb 2012
Agree form of Planning Application	Mar 2012
Complete Legals (Council and JLP)	Mar 2012
Design team Mobilisation for Planning Application	Apr 2012

Stakeholder Consultation	Ongoing – Oct 2012
Hybrid Planning Application submitted	Jan 2013
S.106 Negotiations	Aug 2012 – May 2013
Resolution to grant Planning Permission	Jun 2013
S.237 Agreement	Jun 2013
Road Closure Order, S.278 Agreement	Jun 2013 – Nov 2013
Detailed Design and Procurement – enabling works	Nov 2013 – Apr 2014
Enabling Works Start	Jul 2014
Detailed Design and Procurement – main contract	Jun 2013 – Dec 2014
Main Contract Start	Jan 2015
Target Centre Opening Date	Apr 2017

Regeneration Benefits

23. An exercise has been undertaken with Land Securities to try and capture and set out the key economic and regeneration benefits that are likely to accrue from these proposals. These are as set out in the table at Appendix 3. It is not intended to be an exhaustive list.
24. The Westgate redevelopment offers very significant benefits in terms of economic growth, investment, employment and training, and further essential regeneration of the city centre. This is at a time of major challenges in the wider economy and reductions in growth and expenditure nationally. Further, we are seeing a revolution in retail formats and internet retailing which are leading to major changes.
25. Retail led mixed use development is clearly uniquely positioned to create successful businesses whilst supporting local communities, generating jobs, encouraging economic growth, and building a sense of place that benefits whole towns and cities alike. Additionally Land Securities have said that they will incorporate into the building contract with the main contractor an obligation to offer apprenticeships, training and development of the workforce, potentially through a named provider, and a best endeavours obligation to employ local labour and offer SME's as suppliers and sub-contractors.

Financial Implications

26. The current net income to the Council from the Westgate multi-storey and Abbey Place surface car parks is circa £2.103m. Details of the proposed financial transaction are as set out in the attached Not for Publication Confidential Appendix.
27. The existing terms of the Development Agreement/Agreement to Lease, as detailed herein, provide for the Council to make, under certain circumstances, capital contributions towards future value enhancing works and/or to mitigate reducing rental income. This is on the basis that the Council has to all intents and purposes acquired an equity interest in any development (through the ability to share profits) and it is therefore appropriate for the Council to contribute

proportionately where the tenant is proposing refurbishment or other value enhancing works at a point in the future that will result in either increases in rental income being achieved and/or existing levels of income being sustained. The Council is able to make this contribution in a number of ways or indeed to abstain from doing so if it so wishes, under that latter circumstance there would then be a consequential reduction in the Council's percentage rental income share.

28. Given the change in circumstances the current proposals are regarded as being unduly complicated and it is intended that more simplified arrangements will be introduced. This remains one of the detailed issues to be resolved as the preparation of legal documentation moves forward.
29. The disposal of the multi-storey and surface car parks will of course absolve the Council from any future maintenance and repair liability in that respect.
30. The effect of this transaction will be to exchange the current geared ground rent received from the Westgate (Shopping) Centre and net revenue operating income from the Multi-Storey and Surface car parks for a rental income/profit share arrangement for the entire development (retail and parking) as detailed in the Not for Publication Confidential Appendix.

Legal Implications

31. The legal power to dispose of land is contained within Section 123 of the Local Government Act 1972 for best consideration. CBRE will provide the Council with formal certification under Section 123 prior to entering of the Conditional Development Agreement.

Sustainability/Climate Change Implications

32. There are no direct implications arising out of the contents of this report.

Equalities Implications

33. There are no direct implications arising out of this report at the present time. Any development of the site in due course will accord with current regulations.

Risk Implications

34. A risk assessment has been undertaken and the risk register is attached as Appendix 4 to this report.

Planning

35. The Council is pressing Land Securities for an early engagement on planning, design and transport issues. Preliminary scoping work has begun on transport issues. On the basis that the instruction is given by CEB to proceed to legal documentation we will require that there is put in place a programme to begin a dialogue on planning, design and transport issues. The Council, as landowner,

will also wish to agree the process for agreeing design team appointments with Land Securities. Both aspects will need to be in place before concluding the legal agreement.

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List of background papers:

CEB Report 25th May 2011 –

Westgate Redevelopment – Agreement to Non Determination of Development Agreement

CEB Report 22nd July 2010 –

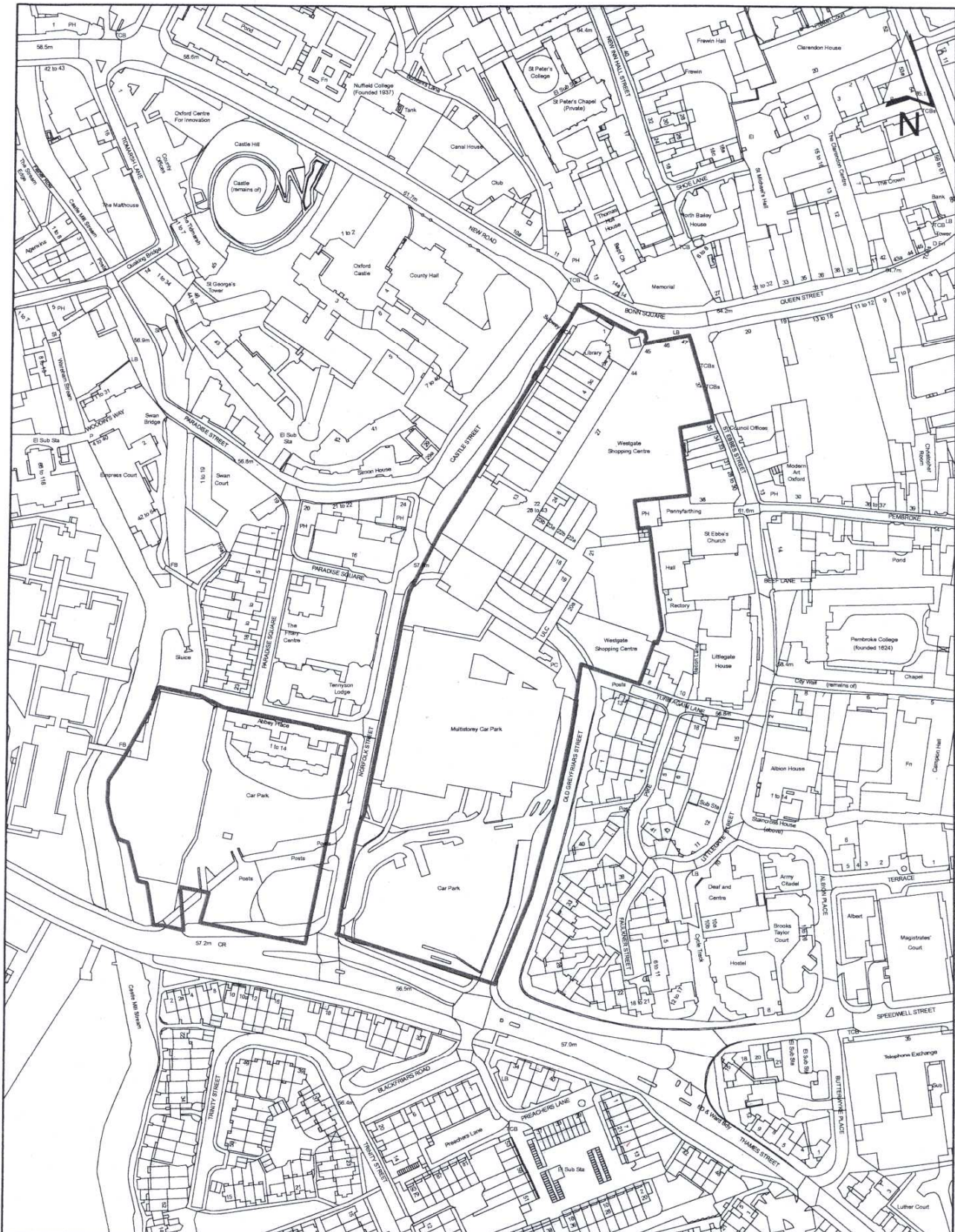
Westgate Redevelopment – Agreement to Non Determination of Development Agreement

CEB Report 31st March 2010 –

Westgate Redevelopment – Novation of Development Agreement

Version number: 5

Appendix 1



Title;

Scale: 1:2,500

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Ordnance Survey 100019348.

Corporate Assets

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Appendix 2

Benefits	Scheme Delivered	No Scheme
New jobs created (est)	2,650	None
Jobs created during construction phase	1,550 + local labour and SME initiatives	None
Private sector investment (including tenant investment)	£375m	£5 – 10m
Apprenticeships as part of phase	Apprenticeships delivered	None
Affordable Housing Units (subject to viability)	c. 30	None
Training and Development regimes to support access for local people	Yes	No
New legible, accessible and secure car park	Yes	No
New homes to achieve Code 4	Yes	No
Target environmental target for new Centre	BREEAM Very Good aspiring to Excellent – Workshops to agree objectives	n/a
Improved linkages within City Centre reinforcing accessibility to key areas including Oxpens and Castle	Yes	No
Delivery of key West End strategic site	Yes	No
Substantially enhanced public realm	Yes	No
New Riverside Environment	Yes	No
Flood Mitigation Measures	Yes	No

Appendix 3 - Risk Register

Westgate Redevelopment Revised Commercial Terms

Risk ID	Risk						Corporate Objective	Gross Risk		Residual Risk		Current Risk		Owner	Date For Review
Category-000-Service Area Code	Risk Title	Opportunity/Threat	Risk Description	Risk Cause	Consequence	Date raised	1 to 5	I	P	I	P	I	P		
CEB-001-CA	Contracts	Threat	Conditional contracts are not exchanged	Inability to agree detailed provision	Non completion	Jan	1	4	3	4	3			S Sprason	
CEB-002-CA	Planning	Threat	Developer failure to obtain satisfactory planning consent	Inability to agree viable scheme within planning parameters	Failure to obtain planning consent	Jan	1	4	3	4	3			S Sprason	
CEB-003-CA	Pre conditions	Threat	Failure to satisfy required contractual pre condition	One or more pre conditions cannot be satisfied on viability/ economic etc grounds	Contracts do not go unconditional	Jan	1	4	3	4	3			S Sprason	

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