

Report of: Finance and Asset Management Business Manager**To: Executive Board****Date: 13th August 2007****Item No:****Title of Report : Albion Place Development and Abbey Place consultation****Summary and Recommendations**

Purpose of report: To seek Executive Board approval to negotiate (and if appropriate conclude) an agreement with Capital Shopping Centres ("CSC") for the construction of 14 two bedroom flats on the Council's land at Albion Place (last used as a staff car park). These flats could provide possible alternative accommodation to replace accommodation for the tenants of the Abbey Place flats if a decision is taken at a future date to proceed with the Westgate Development proposal in a manner which incorporates into the development scheme the site of the Abbey Place flats.

**Key decision:** Yes

Portfolio Holder: Councillor John Goddard
Councillor Jim Campbell
Councillor Patrick Murray

Scrutiny Responsibility: Finance and Housing**Ward(s) affected:** Carfax**Report Approved by:**

Councillor John Goddard – Leader of the Council
Councillor Jim Campbell – Finance Portfolio Holder
Councillor Patrick Murray – Housing Portfolio Holder
Michael Lawrence – Director
Ron Cosgrove - Director
Jeremy Thomas – Legal
Emily King – Legal
Andy Collett - Financial and Asset Management
Sarah Fogden - Financial and Asset Management

Policy Framework: To improve the environment in which we live and work, provide more affordable housing, creating local prosperity and sustaining full employment, improving transport and mobility, and maintaining financial stability.

Recommendations:

1. That the Executive Board agree that the Chief Executive be authorised to negotiate (and if appropriate enter into on behalf of the Council) an agreement with CSC on the construction of 14 two bedroom flats on the Council's Albion Place site on the terms set out in this report.
2. That the Executive Board agree, in principle, to include Abbey Place within the proposed Westgate Development, subject to the following preconditions:



- a) Finalising the proposed Westgate Development Agreement with CSC on terms acceptable to the Executive Board
- b) Appropriate consultation taking place with the Abbey Place tenants
- c) Obtaining Secretary of State approval for disposal of the land,
- d) Any other conditions that the Executive Board feels necessary to include in this conditional decision
- e) Compliance by the Council with all of its legal obligations towards its tenants in the Abbey Place flats

3. That officers within Oxford City Homes be authorised to proceed with the consultation process required under Schedule 2 part V of the Housing Act 1985 ("the Act") pending a potential application to the Secretary of State for approval of the proposed scheme to enable the Council, if required, to seek possession of the dwellings at Abbey Place under Ground 10A of the Act. Such an application to the Secretary of State would only be made in the event that on a future date the Executive Board were to decide to proceed with the Westgate Development in a manner which incorporates the Abbey Place flats into the development scheme.

SUMMARY

1. The purpose of this report is to ask the Executive Board to authorise the Council's entry into an appropriate Development Agreement in regard to the proposed new housing development at the Council's Albion Place site and to authorise certain matters in regard to relevant related matters.

BACKGROUND

2. On 9 October 2006 the Executive Board approved draft Heads of Terms for the Westgate development and authorised officers to negotiate terms for the possible disposal of properties at Abbey Place.

3. On 20 November 2006 the Executive Board authorised the use of the compulsory purchase process.

4. On 29 January 2007 the Executive Board approved a report granting major project approval for Westgate Development and authorising officers to discuss the possible development of Albion Place to replace such units of housing that

might be demolished as part of the Westgate redevelopment. This included the option for replacing the 6 weekly tenancies and 3 shared ownership properties potentially to be demolished at Abbey Place.

5. On 13 February 2007 the Central South and West Area Committee granted planning permission for Albion Place.

6. On 19 March 2007 the Executive Board approved the appropriation of the land required for the main Westgate scheme – NB this excluded Abbey Place.

7. On 16 May 2007 a compulsory purchase order was made by the City Council. This does not commit the Council to dispose of Abbey Place, but is a process by which Oxford City Council can secure powers to acquire interests in the land for redevelopment purposes in the future (if required).

8. Since the planning approval for the Albion Place development has been granted, s106 terms agreed, and tenders obtained and evaluated for the development, this report is also to update the Board and seek approval/guidance as to the terms offered by Capital Shopping Centres (CSC).

The Board will note that at this time Heads of Terms have not been agreed and so no commitments of any type have been offered or given by the Council.

CURRENT SITUATION

9. Discussions with the Abbey Place tenants in regard to their individual requirements (should the Abbey Place flats be incorporated within the Westgate Development) have now taken place, with the exception of 1 tenant who has thus far not engaged in the process. As many of their potential requirements as possible, together with those suggested by the area committee, have been incorporated into the design of the final Albion Place scheme.

10. Tenders for the Albion Place building contract were received on the 20th March 2007 and following interviews with the top 2, held at the end of March, the contractor put on standby to proceed with the contract was Linford Group Limited.

11. Following extensive and detailed examination of the Linford Group tender together with negotiations to remove risk from the project, attached as Exempt from publication Appendix 1 is the current estimate of construction and consultancy costs to build the entire scheme.

PROPOSAL

12. The 29 Jan 2007 report assumed that with favourable tender terms we would be able to conclude negotiations with CSC for them to construct the Albion Place development and “hand the keys” of the completed Albion Place

scheme to us in exchange for the value of the Council's interests in Abbey Place as agreed in the main Westgate Heads of Terms approved by EB in October 2006. This would satisfy the Heads of Terms agreement with CSC that the Council would be compensated for acquiring/adapting 6 flats for the weekly tenancies plus the value of the Council's share of the 3 shared ownerships required to replace those potentially to be demolished at Abbey Place.

13. CSC have very recently accepted that the full cost of construction to be borne by them as estimated in Appendix 1.

14. The Board will note that Appendix 1 previously contained a contingency sum of £300,000 for archaeological investigations and remedial works. Having carried out most of the investigations that contingency has been reduced to £250,000 (of which approx £100,000 has been expended on the investigation itself). Whilst currently there does not appear to be any archaeology which would increase costs significantly by the date of the Board meeting a more accurate position in respect of this contingency will be available.

15. Independent valuations of the Abbey Place and Albion Place sites have been undertaken and are shown in exempt from publication Appendix 2. It is noted that there is a differential between the land values of £425,000 between Abbey and Albion place.

16. The Board is also asked to decide in principle whether Abbey Place should be included within the proposed Westgate Development. The inclusion of Abbey Place arises from the need to construct a multi-storey car park of sufficient size to accommodate 1335 vehicles to satisfy the planning consent granted for this comprehensive development scheme. Without the inclusion of Abbey Place this is not possible. The Board is advised that if a decision to include Abbey Place in the scheme is considered acceptable, this would be subject to the following preconditions being satisfied:

- a) Finalising terms of the Development Agreement with CSC on terms acceptable to the Council;
- b) Appropriate consultation having taken place with the Abbey Place tenants;
- c) Obtaining Secretary of State approval for disposal of the land,
- d) Any other conditions that the Executive Board feels necessary to include;
- e) Compliance by the Council with all of its legal obligations towards its tenants in the Abbey Place flats.

RELOCATION OF THE ABBEY PLACE TENANTS

17. In the event the Executive Board authorises the inclusion of Abbey Place in the Westgate Development it would ultimately require the current tenants and leaseholders to vacate their homes.

There are 6 secure tenants 3 shared ownership properties and 4 commercial landlords who have sublet to private tenants in Abbey Place. Many of the council tenants have lived in the property since it was built and some are disabled to varying degrees (with properties having been adapted for their individual needs).

Any future decision to evict the tenants and leaseholders in Abbey Place would ultimately cause them to lose their current home so the matter would have to be considered carefully. The Board might feel that this upheaval is justified by the wider benefit to the city and the fact that suitable alternative accommodation would be provided to displaced tenants. In the event that the Westgate Development proceeds, and the Abbey Place flats are included in the development, the Board must consider the following matters:

a) Human Rights of tenants/leaseholders.

In particular, Article 8 of the Human Rights Act 1998 provides that “everyone has the right to respect for his private and family life, his home and his correspondence”.

In addition, Article 1 of the First protocol provides that “every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided by the law”

The eviction of a tenant, who might refuse to move, could be seen as an infringement of that individual’s human rights. However, the legal team have advised that such an infringement can be justified if carried out in accordance with the domestic law on housing possessions.

The Human Rights of those tenants at Abbey Place would be protected by the statutory possession procedure that must be followed if the occupier does not agree to vacate. For leaseholders the Compulsory Purchase Process also has built in safeguards and compensation requirements.

b) Statutory Housing Rights

The tenants in Abbey Place would be entitled to the statutory protection provided by the Housing Act 1985. This provides that Oxford City Council would only be awarded a court order for possession of their property if :

- (I) The Secretary of State has given approval to the redevelopment scheme which includes the dwellings in question
- (II) Suitable alternative accommodation is available for the displaced tenants and
- (III) The landlord intends within a reasonable time of obtaining possession to dispose of the dwelling in accordance with the scheme.

The court would also consider the tenant's human rights.

In order to obtain the Secretary of States approval for the redevelopment scheme, it will be necessary to consult the tenants under Schedule 2 part V of the Housing Act 1985 by undertaking the following steps:

- a) serve a notice in writing on all secure tenants whose dwellings are affected by the scheme, stating: the main features of the scheme (or the scheme as it will be after a proposed variation of it); that the Secretary of State's approval is to be sought; and the effect of such approval in relation to proceedings for possession of the premises;
- b) inform the tenants that they have a specified period (which must be at least 28 days) in which to make representations to the Council; and
- c) consider any representations received during that period.

It is envisaged that Albion Place would be built and adapted to a high standard that could meet the needs of all the tenants who would need to transfer from Abbey Place.

However, it may be that Albion Place might not be suitable for each and every tenant. In this case, they could be found suitable alternative accommodation elsewhere in Oxford. This may require properties to be purchased on the open market and adapted (if there is no purpose built accommodation available that meets their needs).

In addition to having all their removal and relocation expenses paid the tenants would be entitled to Home Loss compensation payments of £4000.

Only if a tenant refuses to move into suitable alternative accommodation would possession proceedings be considered (as a last resort).

The legal team advises that the homelessness strategy adopted by Council does not prevent the eviction of a tenant (in such cases) if all other options have been considered. It is further noted that the homelessness strategy states that the Council aims to secure more social housing, which the proposed development would achieve.

c) Disability Rights

- (i) The Disability Discrimination Act 2005 (s.22) provides that it is unlawful for a person (including a Local Authority) to discriminate against a disabled person when evicting them or subjecting them to any detriment.

The legal team advises that disabled tenants would not be discriminated against because should this occur they would not be evicted because they are disabled, but for wider development needs that would benefit the community as a whole. This is demonstrated by the need to also obtain possession of other properties in Abbey Place, which are not occupied by disabled persons.

(ii) The DDA s.49A also provides that a local authority, when carrying out its functions, must have due regard to the need to take steps to take account of disabled persons' disabilities, even where this involves treating a disabled person more favourably than other persons.

The legal team advises that disabled tenants would (if anything) be treated more favourably because any alternative accommodation they are offered would need to be fully adapted and suitable to their needs. This would meet needs relating to: location, size, disabled parking, adaptations, wheelchair, baths, carers, etc.

d) Legitimate Expectation

In the view of the legal team, there is no evidence to substantiate a claim that any tenant of Abbey Place was told that they could live at Abbey Place for the rest of their lives. When tenants moved in (and signed a tenancy agreement) there was no legitimate expectation that tenants would never face possession proceedings in the future or be asked to move to suitable alternative accommodation in certain circumstances. Even had there been such a legitimate expectation, the legal team have advised that such an expectation can be over-ridden by a development deemed to be in the public interest.

FINANCIALS

18. As noted above, it is planned that the Albion Place scheme will be incorporated into the HRA housing stock at no cost to the Council except for the use of the Albion Place site. If however the Westgate scheme does not proceed CSC will require re-imbusement of their costs. Given that on the open market the flats as constructed will be valued in excess of £300,000 each, it would be possible, (if the funds to enable retention within the housing stock could not be found elsewhere) to sell sufficient of the units on the open market to meet the construction costs and still retain say 4/5 units for social rent – dependant upon the final construction cost and securing the necessary planning consent for a change in status of 50% of the units (to comply with the affordable housing policy) units from social to private housing. By using this approach the majority of the construction costs could be generated from the private flats and the balance from the shared ownership units. CSC have agreed that if the Westgate Development does not proceed, the Council would be allowed 12 months in which to decide the appropriate method at that time to raise the necessary finance.

RISKS AND MITIGATION APPROACH

18. The remaining risks and approach to mitigating these are as follows

a) Risk - That the Westgate development does not obtain all necessary approvals, and thus the Albion Place scheme would not be required to

accommodate displaced Abbey Place tenants and so CSC will require a refund of their construction costs.

Mitigation approach – A valuation of the completed development shows that the value of the completed development exceeds the total of the construction costs by over £450k. Given this situation the risk is very low.

b) Risk – That there is a delay in obtaining agreement from the tenants to their re-location. This is considered a low to medium risk

Mitigation approach – Housing Officers and the architects have visited the tenants and agreed details of the proposed purpose built accommodation designed in the light of their individual requirements - to ensure the accommodation could meet their individual and personal needs. Given the mitigation approach being undertaken and a structured timetable, the risk is considered low. NB Officers are working on a draft timetable on this aspect of the process. It is with this very lengthy process in mind that CSC have been prepared to proceed with the design planning and exploratory archaeological works on Albion Place at financial risk to themselves.

c) Risk – That the adjoining Magistrates Court objects to the loss of Right of Light and seeks to prevent the development proceeding

Mitigation Approach - The Board approved on the 19th March 2007 an appropriation report which in the main excluded Rights of Light objections and substituted the right to full financial compensation which is currently being negotiated by our agents.

d) Risk – That central government will object to the City Council's claim to ownership of the strip of land on the western boundary with the Magistrates Court. The risk is thought to be very low.

Mitigation Approach – Negotiations are ongoing with the County Council to rectify the Land Registry errors, which occurred when this land was divided between the City and County in 1974. Both the County and Magistrates Court have recognised the error and acknowledged the City's exclusive occupation of the land since before 1974. A joint application is planned to the Land Registry to rectify the title plan errors.

BENEFITS

19. The benefits, which will accrue from successful completion of the scheme, are, that

- a) The Westgate development is able to proceed on the current timetable.
- b) The Council should be able to re-house the 6 weekly and 3 shared ownership tenants within the City Centre
- c) An additional 5 units of social accommodation will be created.
- d) All of the above achieved at no direct capital outlay to the Council.

- e) The completed scheme will be of a standard high quality design meeting Eco Homes excellent standards compared with the alternative of purchasing 9 individual units throughout the City Centre to meet the needs of the Abbey Place tenants. This will enable OCH to offer a much more efficient management and maintenance service to our tenants.

RECOMMENDATION

20. As a result of the foregoing, it is recommended:

A. That the Executive Board agree that the Chief Executive be authorised to negotiate (and if appropriate enter into on behalf of the Council) an agreement with the CSC on the construction of 14 two bedroom flats on the Council's Albion Place site on the terms set out in this report.

B. That the Executive Board agree, in principle, to include Abbey Place within the proposed Westgate Development subject to the following preconditions

- a) Finalising the proposed Development Agreement with CSC on terms acceptable to the Executive Board ;
- b) Appropriate consultation taking place with the Abbey Place tenants;
- c) Obtaining Secretary of State approval for disposal of the land;
- d) Any other conditions that the Executive Board feels necessary to include in this conditional decision;
- e) Compliance by the Council with all of its legal obligations towards its tenants in the Abbey Place flats

C. That officers within Oxford City Homes be authorised to proceed with the consultation process required under Schedule 2 part V of the Housing Act 1985 ("the Act") pending a potential application to the Secretary of State for approval of the proposed scheme to enable the Council, if required, to seek possession of the dwellings at Abbey Place under Ground 10A of the Act. Such an application to the Secretary of State would only be made in the even that on a future date the Executive Board were to decide to proceed with the Westgate Development in a manner which incorporates the Abbey Place flats into the development scheme.

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Background papers : None