

BROMSGROVE DISTRICT COUNCIL

CABINET

10th April 2019

MARKET HALL SITE REDEVELOPMENT – PHASE 2

Relevant Portfolio Holder	Councillor Karen May, Deputy Leader and Portfolio Holder for Economic Regeneration, Town Centres and Partnerships
Portfolio Holder Consulted	Yes
Relevant Head of Service	Ostap Paperega, Head of NWedR
Ward(s) Affected	Sanders Park
Ward Councillor(s) Consulted	Yes
Key Decision / Non-Key Decision	Non-Key

1. SUMMARY OF PROPOSALS

- 1.1 The report provides an update on the legal agreement with the Hinton Group, outlines the key site constraints and delivery options and the next steps for the Market Hall Phase 2 site.

2. RECOMMENDATIONS

Cabinet are asked to RESOLVE the following:

- 2.1 Notes the update with regards to the Market Hall Phase 2.
- 2.2 Notes that a termination notice has been served to end the legal agreement with the Hinton Group, in accordance with the agreement's termination clause.
- 2.3 Notes the submission of an Expression of Interest to the Future High Streets Fund that has the Market Hall Phase 2 site as its development focus.
- 2.4 Agrees for the Council to undertake soft market testing to assess developer and end occupier interest to inform a viable delivery route for the site.

3. KEY ISSUES

Background

- 3.1 The Former Market Hall / Hanover Street Car Park site has been a long standing regeneration opportunity for Bromsgrove Town Centre.
- 3.2 In 2012, Bromsgrove District Council ran a site disposal process to secure a developer to bring forward the redevelopment of this important gateway site. The site sale exercise resulted in Opus being successful with their offer. The proposal from Opus was to deliver a new development comprising a cinema with high quality retail and restaurant units. Unfortunately, the scheme suffered setbacks as Opus failed to conclude negotiations with the original anchor tenant and the detailed planning application that was expected to be submitted in 2013

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failed to materialise. In 2014, Opus eventually pulled out of the sale, leaving the Council to re-consider its options.

- 3.3 Following the termination of the Opus deal, the Council went back out to the market to offer the site for sale again. The revised disposal exercise was successful and at its meeting on 3rd June 2015, Bromsgrove District Council's Cabinet agreed to the conditional sale of the former Market Hall Site and Car Park to locally based Hinton Group. The agreement to sell the site to Hinton Group was made following a presentation by the potential purchasers which allowed the Council to consider such issues as deliverability and wider economic benefits in its assessment of the "best value" consideration.
- 3.4 Hinton Group (HG) were successful in their bid for the site and they proposed to deliver a retail led redevelopment. The site sale involved HG signing up to a legal agreement with Bromsgrove District Council which included a number of conditions and milestones, as identified below.

Financial Implications

- 3.5 As the legal agreement has expired and the site returns to council ownership, there will be no capital receipt at this time. Members are advised that as this receipt has not been built into the Medium Term Financial Plan there will be no adverse financial impact to take account of at this time. There will be costs associated with site management and security. These costs will be quantified by the council's property team and will be funded by the retained deposit.

Legal Implications

- 3.6 Hinton Group (HG) have paid a deposit, as stipulated in the legal agreement, which is not repayable given Hinton Group's failure to meet the agreement's conditions.
- 3.7 There are restrictive covenants – 'Waitrose protection' – in favour of Waitrose that limit the type of end occupiers the Council will be allowed to sign up leases with for site occupation. These covenants will expire in February 2021.
- 3.8 Following the decision to dispose of the site to HG, Bromsgrove District Council entered in to a legal agreement with HG to develop the entire site. The agreement was subsequently amended on 12/02/2016 to allow a phased approach to development to take place. This was due to the fact that there was a clear occupier interest for part of the site (Waitrose) whilst the remaining part of the site did not have the occupiers secured. Therefore, in order to allow part of the development to proceed and be developed, it was agreed between the parties that a phased approach to development could occur.
- 3.9 This approach has been successful, in part, as the new Waitrose Store and associated Car Park opened on 11th May 2017. The store has been trading well since its opening and the development has been well received. The sale of this first phase resulted in a capital receipt for the Council of £550,000.

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- 3.10 The second land parcel within the site has a value within the agreement of £2,151,000 and the pre-conditions to HG completing the Phase 2 site are as follows:
1. Completion and sale of Phase 1;
 2. The Phase 2 unconditional date occurring prior to the Phase 2 termination date
- 3.11 The Phase 2 unconditional date is reached when the Phase 2 conditions are satisfied; the termination date was the 11th February 2019 i.e. 3 years from the date of when the contract was signed. The Phase 2 conditions are:
- a) Completion of Phase 1;
 - b) Phase 2 occupier condition – i.e. Phase 2 units signed up as pre-lets;
 - c) Phase 1 tenant approval – i.e. Waitrose approved the identity of the Phase 2 tenants
- 3.12 The above conditions mean that the development would not occur on Phase 2 until occupiers had been secured on a pre-let and that these occupiers were accepted by Waitrose. However, it is worth noting that the purchaser (HG) has the right to waive any or all of the conditions, so can effectively call for the transfer of the land at any time (until the February 2019 end date). If HG were of the opinion that the transfer of the land at the agreed price was advantageous to them they could waive any outstanding conditions and require its transfer under the existing agreement (with no obligation to build out the scheme that they proposed). However, HG decided not to follow this approach and the reasons for this are outlined in the following section.

Phase 2 - Latest Situation

- 3.13 The current situation in relation to Phase 2 is set out as follows:
- 3.13.1 Since completing Phase 1, Hinton Group (HG) have been working to deliver a viable scheme for Phase 2 of the site speaking to a number of prospective occupiers;
- 3.13.2 Initial progress was made with the Phase 2 site with the demolition of George House and the erection of hoardings around the perimeter of the Phase 2 area – although this work was undertaken as part of the Phase 1 of the site when Waitrose was developed;
- 3.13.3 HG subsequently submitted a planning application to Bromsgrove District Council for the proposed development of the Phase 2 site in February 2016 (Planning Reference 16/0152). Since the submission of the original application, there have been a number of protracted discussions in relation to the design of the building with Bromsgrove Planning Officers and the Conservation Officer in order to try and reach agreement of the built form of the development.
- 3.13.4 However, notwithstanding the issues in relation to the proposed design of the development, HG have struggled to secure a suitable ‘anchor tenant’ for the Phase 2 site although there has been a reasonable level of interest from

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- occupiers for the food and beverage units; however without an anchor tenant, the site development cannot move forward, as it is unviable;
- 3.13.5 The progress in securing an anchor tenant has been impacted on by other retail developments that have occurred, or are in progress, within the town. Since HG signed up to the original agreement, developments such as the refurbishment of Bromsgrove Retail Park, the development of the Aldi Store on Birmingham Road and other town centre proposals have diluted the potential retailer interest in Phase 2 of the Market Hall Site;
- 3.13.6 In addition to Point 3.13.6, it is also worth noting that the retail market has changed considerably since the site was first offered for sale and this has impacted on the developers' ability to conclude deals with occupiers;
- 3.13.7 In order to try and progress the site, HG has considered a number of different options and potential occupiers. This has included the potential to consider a cinema at the site. However, all these options were likely to require a variation to the terms of the contract, would require the Council to remarket the site and would have probably resulted in a lower capital receipt being provided to the Council;
- 3.13.8 HG has indicated that they would be able to deliver a development on the site but on different terms to those currently set out within the legal agreement. Indeed, HG has indicated in informal correspondence that they would welcome the opportunity to re-bid for the site, if it were to be re-offered to the market. The reason that HG think that they could make the site work, if the Council were to offer the site for disposal again, is that they now know the site conditions and the current market for development.
- 3.13.9 HG has had the option to purchase the site and waive all the conditions associated with the contract, but has decided not to pursue that option.
- 3.14 It is clear from the above narrative that the redevelopment of Phase 2 has been a challenge for the developer to deliver. Despite protracted negotiations and attempts to secure various occupiers and amendments to schemes, it has not been possible to deliver a viable scheme based on the terms of the agreement signed with the council.
- 3.15 It was anticipated that the opening of the Waitrose store on Phase 1 would help to attract further occupiers to Phase 2 but, with the increased competition for sites in the town and the rapidly changing retail market, this has not materialised as all parties had hoped.
- 3.16 Whilst Phase 1 of the development has been a success, Phase 2 has remained boarded up before the long stop date outlined in the legal agreement of February 2019 was reached and triggered the issuing of the termination notice.

Site Context

- 3.17 From a development point of view, the site faces key constraints in terms of layout, access, vicinity to existing buildings and proximity to the conservation area, with potential implications to uses, cost and therefore viability.

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- 3.18 From a location point of view, the site has the potential to play a key role in increasing High Street footfall and strengthen Bromsgrove town centre's vibrancy and viability. These economic benefits can be achieved by certain uses, such as a leisure led development anchored by a multiplex cinema. Such an occupier would attract complementary uses in the food & beverage (F&B) sector, which would increase and diversify the town centre's offer and increase its attractiveness as a destination. Indeed, there are vacant properties on the High Street (former restaurants) that could possibly accommodate F&B uses.

Delivery Options

- 3.19 Given the failure of the private sector developer to deliver a viable scheme, several delivery options have been appraised. They are outlined below and the advantages and disadvantages of each option summarised in Appendix 1.

Option A - Direct delivery of a redevelopment scheme by the Council

With this option, the Council would take direct control of the project and manage the process, right through from soft market testing (developers and end occupiers), designing the scheme, procuring contractors, gaining a planning consent and securing occupiers, ideally on a pre-let basis. The Council would be required to fund the development, utilising its prudential borrowing capacity and could potentially benefit from revenue generated from lettings or sale of the completed development. Whilst the Council is currently exploring the potential to invest in commercial opportunities, it does not have any direct experience of delivering major mixed use development projects and would also be taking all the risk associated with the development.

Option B – Development agreement

This option would involve the Council re-marketing Phase 2 to prospective developers through a conditional site sale process (conditional on granting of planning permission) under a simple marketing process. This is the route that was previously followed when Hinton Group were appointed.

The Council could seek to exert some control over the process by imposing restrictions or covenants with the aim to control the type of development that is built on the land but what can be achieved is extremely limited. The Council could also exert influence over the form of development in its role as the planning authority, but again, this is restricted as, provided an application is Local Plan policy compliant and technical requirements are met, refusal would be difficult, even if it did not deliver the Council's development aspirations.

Theoretically, this option could be the quickest way of securing a developer, as it is estimated that it could take between 8 and 12 weeks from placing the initial advert through to appointing a developer. However, this option does not provide the Council with the ability to specify what it wants to see developed on its land and exert influence on factors such as design and pace of delivery.

In effect, this option is a straight forward land disposal conditional only on planning permission. However, it is worth noting that this route was the route

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previously undertaken when selecting the Hinton Group and has not resulted in the development coming forward as originally hoped.

Option C – Joint Venture

This option would involve the Council selecting and appointing a delivery partner through a competitive procurement process to deliver the scheme. In such a Joint Venture arrangement, the Council and the private developer would ‘pool’ resources and collaborate to deliver a shared vision and shared profit. Also the risk would be shared, reducing the Council’s exposure to potential abortive costs.

Option C provides the most flexibility for the Council to deliver against its aspirations for the site, as it would retain some form of control whilst sharing development risk and development costs. In addition, by re-tendering the development opportunity, it allows the Council to re-consider what it wants to achieve from the development of this land with the knowledge it now has in relation to the site and the current market trends and with a view to re-aligning the development with the current aspirations of the Council i.e. to potentially seek a revenue stream rather than a capital receipt for the land.

Option D – Do nothing

This option would see the site kept in its current condition, empty and surrounded by hoardings. Although some ‘meanwhile’ uses / activities could be delivered on a temporary basis, an empty site would have a negative impact in terms of its appearance. Also, not developing the site would deprive the town centre from a development that could have positive impacts in terms of its attractiveness, viability and vitality.

Future High Streets Fund

- 3.28 In December 2018, the government launched the Future High Streets Fund, a £675m grant funding programme aimed at funding interventions that strengthen the vibrancy, vitality and attractiveness of the country’s town centres. Grants will be allocated following a two-stage competitive bidding process. Expressions of Interest (stage 1) must be submitted by 22 March 2019 with the assessment results announced in the Summer 2019. The purpose of the Expressions of Interest is to understand the key challenges facing the town centre and vision proposed to address these challenges. Scheme details and costs are not required at this stage; they will be detailed in the full business case at Stage 2.
- 3.29 Successful applicants will be invited to submit a full business case by the end of the financial year and will benefit from revenue support to prepare it.
- 3.30 The government is looking to allocate between £5m-£10m per successful bid. Notwithstanding the competitive nature of the bidding process, this presents a significant opportunity to secure gap funding that would address potential viability issues and enable the scheme to be commercially viable.

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Next Steps

- 3.31 Given that the site has reverted to Council ownership in February 2019, its constraints, challenging market conditions and the Council aspirations to strengthen the town centre's socio-economic role, the following next steps are recommended to be taken:
- a) It is clear that the original proposal to seek a retail based redevelopment of this site has proved to be challenging. Therefore, the Council needs to assess what uses may be more appropriate to be delivered on this site. Whilst there are a number of potential options that could be considered, including smaller scale retail, offices, residential etc, further consideration of the potential demand and how these uses could be delivered is required.
 - b) Once a decision on the preferred uses for the site is made, then a decision on what procurement process would be best placed to deliver this will need to be taken. The type of use being sought will ultimately shape the procurement process to be followed.
 - c) It is also worth noting that, despite which route is followed, Waitrose has control over the occupiers that can be delivered on Phase 2 of the site. This was protected by covenants in the Transfer of Phase 1. The Waitrose approval of tenants remains in place for five years from the Phase 1 transfer date (February 2016) regardless of whether Phase 2 is progressed under the Hinton's sale agreement or otherwise. Termination of the Hinton's sale agreement has no impact on these covenants and would potentially impact on the ability to deliver a redevelopment of the Phase 2 site. Therefore, it will be essential to open a dialogue with Waitrose once a firmer view of what the Council wishes to achieve on the site is formulated.

Meanwhile Uses

- 3.32 The current hoardings are in need of either improvement or replacement and it is felt that the site could provide some active 'meanwhile' uses that would be brought forward through the Centres Manager's work.
- 3.33 In order to progress this, work has been commissioned to understand the potential 'meanwhile' options for the site which could be delivered to provide an active use of the area whilst the longer term redevelopment of the site is considered. As part of this process, discussions would be held with Planning Officers to understand what could and couldn't be delivered on the site on a temporary basis.

Conclusion

- 3.34 This report has outlined why the site has not come forward through the agreement with the Hinton Group and the potential options in terms of what happens next.
- 3.35 In order to move forward the deliberations for the site, the following actions are recommended:

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- Seek external funding from programmes including the Future High Street Funds, Heritage High Streets and the Stronger Towns Fund to help unlock the site for development
- Undertake soft market testing to assess developer and end occupier interest to inform a viable delivery route for the site
- Select a preferred delivery mechanism / vehicle e.g. direct delivery or Joint Venture
- Decide the appropriate procurement route(s) based on end use(s) chosen for the site and the delivery mechanism

Service / Operational Implications

- 3.36 The Council will have responsibilities in terms of site management, security and public safety, including during delivery of activities through 'meanwhile' uses.

Customer / Equalities and Diversity Implications

- 3.37 None

4. RISK MANAGEMENT

- 4.1 A risk log will be opened to identify and manage any financial, operational and other risks associated with the delivery of this project in accordance with the council's risk management procedures.

5. APPENDICES

Appendix 1 – Options Table

6. BACKGROUND PAPERS

AUTHOR OF REPORT

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Appendix 1 Options Table

Option	Pros	Cons
Option A – Direct delivery	<p>Council retains control in terms of design, uses and lease options.</p> <p>Council retains 100% of any return, whether capital or revenue</p> <p>Possibility to improve the scheme's financial viability as:</p> <ul style="list-style-type: none"> - land cost nil (Council owns the land) - Council can set a lower level of return than a private developer <p>Ability to bid for external funding</p>	<p>Lack of development expertise</p> <p>Council is sole funder</p> <p>Council takes all the risk</p>
Option B – development agreement	<p>Private sector development partner</p> <p>Development expertise</p> <p>Developer takes all the risk</p>	<p>Development costs, land costs, market conditions and council restrictive covenants – difficulty to identify uses capable of generating the level of return sought by developer, as proven by the failed attempt of the Hinton Group to develop the site</p>
Option C – Joint Venture	<p>Private developer brings development expertise and knowledge / contacts of end occupiers</p> <p>Co-investment Council / private developer</p> <p>Shared risk</p> <p>Ability to bid for external funding</p>	<p>Shared decision making / control over scheme, which may lead to disagreements over uses, design, occupiers</p> <p>Shared return – the council will have to share the revenues generated with its partner.</p>
Option D – Do nothing	<p>Site could be made available for meanwhile uses / pop-up activities on an occasional basis</p>	<p>Empty site in the town centre surrounded by hoardings</p> <p>Missed opportunity to deliver interventions that would strengthen the town centre's viability and vibrancy.</p>