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| DECISION-MAKER: | CABINET |
| SUBJECT: | FACILITATING THE DEVELOPMENT OF VACANT LAND AT MAYFLOWER PLAZA, COMMERCIAL ROAD. |
| DATE OF DECISION: | 18 SEPTEMBER 2012 |
| REPORT OF: | LEADER OF THE COUNCIL |
| STATEMENT OF CONFIDENTIALITY | |
| None. | |

BRIEF SUMMARY

The recommendations in this report are to assist the redevelopment of the land for student accommodation by ensuring that the development can progress notwithstanding any third party rights affecting the property which could otherwise impede the development. This would facilitate the redevelopment of a prominent city centre site that has been vacant for over fifteen years.

RECOMMENDATIONS:

Having complied with Rule 15 of the Council's Access to Information Procedure Rules:

- (i) That subject to :-
 - a) The Senior Manager City Development being satisfied that reasonable attempts to reach appropriate agreement in respect of third party rights have failed,
 - b) The prior completion of an appropriate indemnity agreement covering payment of the Councils legal and professional fees and any compensation for the interference with third party rights under section 237 Town & Country Planning Act (TCPA.1990)

the acquisition of land by the Council known as Mayflower Plaza and shown edged red on the plan in Appendix 1 be authorised pursuant s.227 TCPA 1990 to facilitate the carrying out of redevelopment of the land in accordance with planning permission no 12/00675/FUL in order to improve the environmental, economic and social well being of the area in which the land is situated.
- (ii) That the Head of Legal, HR and Democratic Services be authorised to :-
 - a) enter into any necessary legal agreements or other legal documentation following consultation with the Senior Manager City Development, for the acquisition of the land shown edged red on the plan in Appendix 1.
 - b) to agree and enter into any legal documents to subsequently dispose of the land or grant any interest in the land pursuant to section 233 to the Town and Country Planning Act 1990 in order to secure the implementation of the planning permission no12/00675/FUL subject to having received the appropriate indemnities.

- c) subsequently dispose of the land pursuant to section 233 to the Town and Country Planning Act 1990 subject to the transferee indemnifying the Council against claims made against the Council for compensation under section 237 Town and Country Planning Act 1990 resulting from the implementation of planning permission no12/00675/FUL.

REASONS FOR REPORT RECOMMENDATIONS

1. This report is presented as a general exception item in accordance with Rule 15 of the Access to Information Procedure Rules of Part 4 of the Council's Constitution. Amendments to Regulations 5(2) and 9(2), 2012 require 28 days notice to be given to all Key Decisions comes into effect on 10th September 2012. It has not been possible to meet the requirement of 28 days notice.
2. The Council has been advised by the developer / owner that the private rights to light that are enjoyed by the owners and occupiers of premises on the north side of Commercial Road, Mayflower Theatre, BBC House and a number of flats at Wyndham Court over the site are a significant risk to stopping or impeding the redevelopment.
3. The acquisition of the land by the Council for planning purposes and its subsequent disposal will facilitate the redevelopment by enabling the rights of light in respect of the land to be converted into a claim for compensation, thus allowing the redevelopment to proceed without risk of injunction action.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. To do nothing would not assist the development of this site which has been vacant for over fifteen years.
5. It would not be possible to cut back the scheme in order to remove the risks in order that the developer could maintain confidence in the required programme. This would require the developer to wholly redesign the development and in turn would require them to reopen negotiations with the University before making a revised planning application. The timescale would prevent a start this year to meet the Universities programme that would result in less accommodation being provided.

DETAIL (Including consultation carried out)

6. The assembly of this site for development started in the late 1980's with demolition of the buildings on the site taking place throughout the 1990's and has been vacant for over fifteen years. The last building being demolished in 2003. Outline planning permission was first granted in July 1995 for offices with restaurants on the ground floor.
7. The current owners submitted a revised planning application for 1104 rooms of student accommodation which received a resolution to grant consent from the Planning and Rights of Way Panel subject to a s.106 Agreement in July 2012 which has been signed.
8. The current scheme as approved would interfere with the private rights of light enjoyed by those properties as identified in Appendix 1 edged light blue, purple, green and yellow. It is necessary to ensure that these rights are dealt

with by payment of compensation in order that the development can proceed.

9. If the Council does not agree to acquire the land, the rights of light may not be extinguished and owners of the properties with the benefit of rights of light could seek injunctive relief to stop the development proceeding. This could halt and threaten the completion of the build leaving the site still undeveloped until some form of settlement of such claims could be reached. This would add delay and uncertainty to the scheme and may be a cause of concern to funders as well as delaying much needed purpose built student accommodation within the city.
10. S.237 of the TCPA allows rights of light to be interfered with in order that a scheme, with the benefit of planning consent, can be built out provided that the land has been acquired by the local planning authority in order to facilitate the redevelopment of the site in such a manner as is likely to contribute to the environmental, social or economic well being of the Councils area. This power is similar to that of compulsory purchase, only it is exercised by way of agreement and specifically exists to facilitate development. A resolution to use these powers will by itself focus negotiations with adjacent property owners.
11. The powers contained in s.237 enable redevelopment to take place, subject to the payment of compensation by the developer to the person who enjoys the right of light and additionally removes the potential for excessive compensation claims. If agreement can not be reached as to the amount of compensation the issue can be referred to the Lands Tribunal for a decision in the same way as compensation under a compulsory purchase order is determined.
12. As the Council does not own the development land it would have to acquire it for a nominal amount by agreement from the current owners. The Council agreed to such acquisition in connection with the previous unimplemented planning permission for offices and the mixed use scheme on 5 February 2007 Decision No: CAB155 – 2007FEBRUARY05.

RESOURCE IMPLICATIONS

Capital/Revenue

Capital

13. The acquisition of the land and sale back will take place for a nominal consideration.

Revenue

14. The mechanism to be used will include an indemnity in favour of the Council, in relation to any compensation payable to beneficiaries of the rights of light as well as any associated professional and other costs, including any stamp duties or land registry fees, incurred by the Council in connection with the acquisition and subsequent disposal of the land. Any revenue costs associated with these issues will be borne by the developer who elects to utilise this mechanism and therefore there will be no impact on Council resources.

Property/Other

15. It is intended that the freehold of the property will remain in the Council's ownership for a period of time but that sufficient interest in the land is demised to the owner and developer to allow them to implement the planning consent. The developer / owner will be required to enter into an indemnity agreement which will cover all costs relating to availing the developer and owner of the powers in s.237 TCPA 1990, and for any claims made against the Council for compensation for the interference with the rights of light claims or other claims during the period of ownership.
16. For the purpose of the Council register of assets, the property will be acquired and disposed of. If the Council is to insure the land then the owner and developer will be required to indemnify the Council but this it is more likely to be done by the developer who will control the land during the development.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

17. The Council will need to acquire the site for planning purposes. Section 227 of the Town and Country Planning Act 1990 Act authorises the Council to acquire land, which it is authorised to acquire compulsorily, by agreement. Following acquisition, the land can then be disposed of to the developer under section 233 of the TCPA 1990 which will allow the developer to rely upon the power in section 237 to interfere with the private third party rights. The third parties will be entitled to compensation.
18. Therefore, section 237 (1) authorises building and other works to be undertaken on land acquired or appropriated for planning purposes, even if those works interfere with rights in the land. The section is widely drafted and certainly includes rights to light.
19. In deciding whether to acquire the land by agreement under section 227 of the TCPA the Council needs to have regard to the human rights of those adjoining properties who have the benefit of rights of light and whose rights will be affected if the development is implemented.
20. The relevant rights are Article 1 of the First Protocol which provides for the peaceful enjoyment of possessions and prohibits any deprivation of those possessions unless it is in the public interest and subject to the conditions provided for by the law. In making a judgement as to whether individuals, both commercial and residential owners, should have their rights to light interfered with and converted to a right to receive compensation the Council needs to strike a fair balance between the competing interests of those individuals and the community as a whole in achieving a redevelopment of this long vacant site.
21. Further Article 8 provides that everyone has the right to respect for his private and family life and his home but this is a qualified right and an interference is allowed where it is in accordance with the law and necessary in a democratic society in the interest of the economic well being.
22. Whilst clearly the acquisition of the land using section 227 will lead to a situation where third parties cannot obtain injunctive relief to stop the development that would interfere with their rights of light, parliament

envisaged in enacting section 237 that it was appropriate to convert those rights into compensation which is to be paid on the basis of the reduction in the properties value together with any professional fees incurred.

23. Technical reports have been provided by the developer / owner produced by their technical rights of light surveyor. These reports identify that the proposed development would likely result in a loss of light to properties within four buildings. In each case, the loss of light in question is relative to that which is presently enjoyed and is not considered to result in a level below the standards recognised as appropriate in government policy and/or be materially prejudicial generally.
24. For comparison purposes surveyors define the area of the room that has light of more than one lumen as a percentage of the room area, and the percentages expressed relate to this area, rather than the amount of light. A reduction, expressed in percentage terms, reflects the extent of the room over which there is a change.
25. In relation to each property specifically:-
26. **BBC Building, Blechynden Terrace**
The potential loss of light to this building is considered to be minor. In particular, the loss occurs to a plant room which is not considered to have any impact on the beneficial use of the space. After completion of the development the plant room will have light to 48% of the room area.
27. **Mayflower Theatre**
There will be potential losses of light to flank wall windows to 4 floors to areas which are believed to be predominant utility space such as stairs, lobbies and toilets. The extent of the loss covers the range of 25% to 70% of the area of the rooms considered. Currently the rooms are lit to around 95% to 98% of the accommodation which is substantially more light than is required for normal use and occupancy so the loss of light is not considered to be adverse to amenity.
28. **Commercial Road properties**
These properties have commercial uses on the ground floor with residential on the upper floors. The range of the loss is from 3% of the area of the rooms affected up to 70% with a varying degree within that range. It is understood that the developer has agreed compensation with all of the relevant owners and that this is presently being legally documented.
29. **Wyndham Court**
A loss of light will occur to kitchens at first and second floor levels. At first floor one kitchen will lose light to 5.7% of the area of the kitchen and the other, 23%. At second floor the range falls from 6.8% to 38%. Again, the level of light loss over these ranges varies.
30. Officers consider that given the statutory compensation regime referred to previously; the need to regenerate a site that has been vacant for fifteen years in one of the most prominent parts of the city; the need to provide purpose built accommodation for students in the city thereby relieving some of the pressure to convert the city's housing stock to HMO's and the economic benefits that the redevelopment of the site will bring, that it is appropriate to

acquire the land so allowing interference with the third party rights of light if the development is implemented. In this matter the public interest in facilitating the redevelopment of the land is greater than the need to protect third parties rights of light.

Other Legal Implications:

31. None.

POLICY FRAMEWORK IMPLICATIONS

32. The development has been granted planning consent for student accommodation and meets two of the four key challenges for the Council as set out in the Southampton City Plan 2011-14 relating to Economic Development and Well Being by encouraging higher levels of employment and economic activity, creating jobs for local people and stimulating additional inward investment.

33. The previous consented scheme was not implemented and the site could remain vacant indefinitely, with no certainty that office uses would ever come forward, which would continue to harm the City's vision.

34. The city's Housing Strategy 2011-15 states the council's commitment to supporting the continued success of the city's universities and the opportunities that this brings for local people and employers as well as inward investment. It also sets a key priority to deliver more homes for the city, in particular family homes. The provision of purpose build student housing may assist in releasing homes in the private sector for use by families.

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KEY DECISION? Yes

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| WARDS/COMMUNITIES AFFECTED: | Bargate |
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SUPPORTING DOCUMENTATION

Appendices

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| 1. | Plan showing development site and premises with private rights of light. |
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Documents In Members' Rooms

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| 1. | None |
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Integrated Impact Assessment

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| Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out. | Yes |
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Other Background Documents

Integrated Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

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| 1. | Integrated Impact Assessment | |
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Name: