



REPORT TO: COUNCIL

DATE: 29 JULY 2010

REPORT OF THE: HEAD OF ECONOMY AND HOUSING
JULIAN RUDD

TITLE OF REPORT: WENTWORTH STREET CAR PARK, MALTON

WARDS AFFECTED: MALTON DIRECTLY, ADJACENT WARDS INDIRECTLY

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 This report is supplemental to my report regarding Wentworth Street Car Park that was considered by the Policy and Resources (P&R) Committee on 24 June 2010. A copy of my report to the 24 June P&R Committee also forms part of the agenda for this 29 July 2010 meeting of Council.
- 1.2 This additional report is intended to provide further information to aid consideration of the recommendation from Policy and Resources Committee to invite informal tenders for purchase and development of land comprising the Wentworth Street Car Park in Malton. This report suggests an amendment to the recommendation from the Policy and Resources Committee in terms of the extent of the area of land to be disposed of. This is shown on the plan at Annex A.

2.0 RECOMMENDATION

- 2.1 That Council consider adopting the recommendations of the Policy and Resources Committee meeting on 24 June 2010 (Minute No 13 – Wentworth Street Car Park, Malton), with the following amendment:-

Replace the following text in section (i):

- (i) An invitation to a restricted list of the 7 parties who had expressed an interest in the purchase and development of Wentworth Street Car Park and adjoining land to submit informal tenders for a purchase of Wentworth Street Car Park and adjoining land (as shown at Annex C) on the following basis:

With an amended section (i), to read:

- (i) Invitation to a restricted list of 7 parties (as recommended to proceed to the next stage in Annex B of the report considered by Policy and Resources Committee on 24 June 2010) to submit informal tenders for a purchase of part only of the Wentworth Street Car Park site and adjoining land (as shown at Annex A of the

Report to Council on 29 July 2010) on the basis of the following (as detailed in the 24 June 2010 report):

Should the above amendment be agreed the full resolution would read:

‘That Council approve:

- (i) Invitation to a restricted list of 7 parties (as recommended to proceed to the next stage in Annex B of the report considered by Policy and Resources Committee on 24 June 2010) to submit informal tenders for a purchase of part only of the Wentworth Street Car Park site and adjoining land (as shown at Annex A of the Report to Council on 29 July 2010) on the basis of the following (as detailed in the 24 June 2010 P&R report):
 - a) A 250 year leasehold interest will be offered;
 - b) The timetable detailed in the Policy and Resources Committee report will be adopted for the process;
 - c) The overarching criteria against which the tenders will be judged will be as detailed in the Policy and Resources Committee report;
 - d) The Head of Economy and Housing be given delegated authority to draw up the detailed Invitation to Tender document based on the terms outlined in the reports to Policy and Resources on 24 June 2010 and to Council on 29 July 2010.
- (ii) Submission of a further report to a Special meeting of Council, following receipt and appraisal of the tenders by an officer panel, recommending a preferred tender and seeking final authority to proceed to sale.’

3.0 REASON FOR RECOMMENDATION

- 3.1 At its meeting on 24 June 2010 the Policy and Resources Committee considered a report which indicated the outcomes of market testing into prospective sale for redevelopment of Wentworth Street Car Park, Malton. This resulted in a decision to recommend to the Council the disposal of the land through an informal tender process. A number of representations have been received regarding this matter and letters from Malton Town Council, Norton on Derwent Town Council and the Fitzwilliam Estate are appended to this report at Annex B. Having considered these representations your officers now recommend an amendment be considered to the proposal by excluding part of the proposed land area from the invitation to tender and retaining that land for public parking. Officers believe this course of action would address the main concern raised in the representations.

4.0 SIGNIFICANT RISKS

- 4.1 Paragraph 4 of the June Report sought to explain to Members the choice which the Council faces if it decides to proceed with the possible disposal of this site between the relatively straightforward land sale route or disposing of the land by way of a competition run under the Public Procurement Regulations. That paragraph identified briefly the key characteristics of both land sale and procurement. Paragraph 5 of the June Report identified the risks of proceeding with a land sale but seeking to achieve more extensive control over any development which might be interpreted as a procurement if challenged.
- 4.2 The most significant issue raised in the representations concerns possible loss of car parking provision as a result of the sale of this site, or at least loss of control over the future car parking provision on the site (NB planning controls would require appropriate on site parking provision as part of a redevelopment of the site).

- 4.3 One way of meeting these concerns would be to decide that procuring a new car park that could be controlled by the Council should be an essential requirement of any sale of this site and accordingly to proceed by way of EU Procurement Competition. However such a competition has certain clear disadvantages particularly in the context of a scheme of this sort in current market circumstances. At Annex C Members will find a brief paper explaining the procedures and outlining some of the pros and cons of procurement competition versus land sale.
- 4.4 Officers have considered whether there is an alternative solution and have reached the conclusion that the best way of meeting the concerns expressed in the representations whilst also achieving the overriding objectives of the Council is to proceed by way of land sale but to reserve out of the proposed disposal the upper tier of the site. This would be retained by the Council for the provision of car parking within Council control for so long as this is appropriate. This would thus reduce one of the most significant areas of potential risk for this proposal. This should not prejudice a retail development in the remaining part of the site which has the potential to revitalise the town centre and draw back retail spend which is presently leaking to other destinations, particularly York.
- 4.5 This approach ties in with recommendations made by the Office for Government Commerce which has issued further guidance on development contracts in the period since the P&R Committee on 24 June 2010. The contents of that guidance have been taken into consideration in making the recommendations of this report.
- 4.6 In current market conditions there are very few significant retail developments starting. This is because finance for these developments is extremely hard to find, especially where a significant proportion of the retail space in the scheme is not pre-let prior to development commencing. For this reason a number of competitive dialogue procurement processes have stalled or failed through lack of interest in towns and cities around the country.
- 4.7 As a generalisation the retail developments around the country which are starting even in these present market conditions are those which are largely driven by a single identified occupier or a group of occupiers. These considerations tend to work against the prospects of a more ambitious works procurement competition succeeding in Malton.

5.0 BACKGROUND AND INTRODUCTION

- 5.1 The background and introduction to this report are set out in paragraph 5 of the June Report.

6.0 POLICY CONTEXT

- 6.1 To create the conditions for economic success is one of the five priority aims of this Council, and this aim includes objectives of creating opportunities for people and for economic activity and infrastructure. The Service Aims for Economy and Housing include 'Enable economic activity and support transformational projects', under which are a range of projects to enhance economic activity and service provision at Malton and Norton and the other market towns. These include currently unfunded Projects such as a Heart of Malton project to include a major improvement of the Milton and Assembly Rooms, major public realm improvements and town centre business space provision. Although this was supported in principle by Yorkshire Forward there is now no realistic chance of getting Yorkshire Forward funding for this as the Regional Development Agencies are to be abolished. Similarly the partnership with Yorkshire Forward to provide managed workspace in Malton or Pickering to support new and better paid jobs is now without a funder other than the District Council. North Yorkshire County Council is currently considering which

transport projects will be affected by the recent decision to make a £4.5m reduction in the regional transport funding that was distributed throughout the region. This funding source is currently allocated towards the Brambling Fields, Norton, and Vivis Lane, Pickering, junction improvements, together with other projects elsewhere in the County. Against this background the Council must explore every opportunity to make more effective use of public assets, particularly where a significant sum can be raised to help fund beneficial projects. Any capital receipt obtained from this site has the potential to support projects that deliver each of the Council's priorities, including meeting housing needs and a maintaining a high quality sustainable environment.

- 6.2 The Council also has responsibilities as a local authority landowner to ensure best utilisation of its assets. Government guidance to local authorities on asset management advises local authorities to "ensure that they secure better value for money whilst making more effective use of their asset base as the foundation for delivering high performing public services" (Building on Strong Foundations – A Framework for Local Authority Asset Management - DCLG - Feb 08). The Framework also makes clear that "Effective asset management plays a major role in delivering better outcomes for citizens, creating a sense of place and generating efficiency gains. Asset management should underpin, and contribute to, delivery of the local vision and priorities as set out in the Sustainable Community Strategy, the Local Area Agreement and the Local Development Framework." Furthermore, "Not only are local authorities expected to achieve sustainable communities, but they must do so in the most efficient way possible. Local authorities are encouraged to rethink the mechanisms by which services are delivered and release inefficiently used capital and revenue, which can then be reinvested in public services" (Local Authority Asset Management Best Practise, RICS 2009). The Audit Commission (Room for Improvement, 2009) warns that, in the current economic climate, councils will need to do far better in managing their assets, if they are to achieve expected savings and maintain services in the coming years.
- 6.3 Whilst the planning assessment of any application or LDF submission for the Wentworth Street site is an entirely separate process to the sale of Council owned land, that process will take into account decisions made regarding the emerging Ryedale LDF at Full Council on 15 December 2009. These include that Malton and Norton should be the district's principal town and first in the hierarchy for housing, employment and retail development. Consultation on the LDF will take place on the basis of Malton and Norton accommodating at least 50% of housing development in the LDF period, plus 80% of Ryedale's employment development and 70% of retail development.

7.0 CONSULTATION

- 7.1 The entirely separate process of assessing any planning application and / or LDF submission regarding this site will take account of consultation previously undertaken regarding Malton town centre, including the extensive consultation regarding the Malton Town Centre Strategy and the Ryedale Retail Capacity Study. Any planning application that followed acceptance of a tender for this site would require a pre-application consultation by the applicant and additional consultation as part of the application consideration. Similarly, any LDF proposals for this site would require public consultation and offer the potential for consideration at a Public Examination.

8.0 REPORT DETAILS

- 8.1 Policy and Resources Committee considered a comprehensive report upon the outcome of a market testing exercise and which concluded that a successful tender exercise could be undertaken that should result in a substantial capital receipt. Further, the likely consequence of such a sale would be a redevelopment which, subject to planning consent,

accords with the aspirations of the emerging Ryedale LDF and the Malton Town Centre Strategy. It was also concluded from the indicative development proposals put forward by the interested parties that public parking could be retained in the development at least at the same level as is currently provided, i.e. 380 spaces. The Committee consequently resolved to recommend Council to proceed with an informal tender exercise.

- 8.2 The report, as part of its consideration of significant risk, detailed the need to ensure that the process accords with the appropriate criteria for land disposals, otherwise it would be necessary to undertake a procurement exercise which satisfies the criteria established by the EU and would have important consequences.
- 8.3 Some concerns were expressed by members, both from the Committee and the wider membership, about certain aspects of the proposals. Similar representations have since been received from a number of organisations and individuals. In particular strong representations have been received from Malton Town Council, Norton on Derwent Town Council and the Fitzwilliam Estate . These representations can be categorised into key areas of concern: the principle of a development, parking, the Council's title, and impact upon the town centre.

The principle of a development

- 8.4 It is almost inevitable that some parties will be opposed to any development taking place on any piece of land for a large variety of reasons. So long as the Council has carefully considered all relevant matters and taken appropriate advice there is no over-riding reason why it should not promote the sale of its land holdings and, as can be seen from paragraph 6.2 above, the Council has a positive obligation to make best use of its assets. It will be an entirely separate exercise for the local planning authority to determine any planning applications that might follow. It is important that these two roles are considered entirely separately as each has its special requirements and responsibilities.

Parking

- 8.5 Concern for potential loss of parking (for the public visiting the town centre, long stay parking and parking of trader's vehicles who are attending the livestock market) appears to be the greatest concern for most of the parties who have submitted representations. The indicative development proposals that the Council received as part of its market testing exercise all contain substantial public parking and the majority of these indicative schemes propose an increase in the number of parking spaces at the site. Members were also previously advised about the currently low average levels of usage of the car park. However, assuming that the Council accepts the recommendation to proceed by way of land sale, the precise extent of the facility and its management regime (such as costs and periods of availability) will not be certain until final proposals have been received from the tendering parties and a final selection completed. Even then the planning decision could change the proposals and there would not be certainty about the full details of the provision for some time. It is not possible in a land sale to include provisions in the lease documentation to guarantee the precise extent of car parking provision or its management regime. It would be the role of the planning process to require parking to be provided on the site in accordance with the car parking standards set by North Yorkshire County Council (which reflect national planning policy), having regard to the nature and extent of the development that is proposed.
- 8.6 Members might conclude that there needs to be more certainty about the provision of parking in this part of the town. It is not possible without undertaking a procurement exercise to require the developers to include public parking at a specified level in excess of that which the planning process will require for the development. Should Members require

this certainty officers believe that a practical way to achieve this would be to withdraw part of the site from the tender process so that it can be reserved for parking which is fully controlled by the Council. There are some consequences which would follow: the consideration received from the sale would be less, ownership costs for the Council would continue, and the capacity of the retained area is only in the order of 163 spaces. However, these would be supplemented by the parking that will be required (through the planning process) on the redeveloped portion of the site (in accordance with the NYCC Parking Standards).

The Council's Title

8.7 The following allegations have been made in letters to the Gazette & Herald and the representations in relation to land comprising Wentworth Street Car Park:

- (i) That the land was "gifted" by the Earl Fitzwilliam Estate to Malton Urban District Council;
- (ii) That the land was "transferred" to the Malton Urban District Council for a "nominal sum";
- (iii) That Ryedale District Council has a responsibility to act as the "custodian" of the land and keep it in public ownership for use as a car park for private vehicles by business people, shoppers and particularly the users of the livestock market, with the implication that the District Council has a moral obligation to respect that intention.

8.8 The facts are that the Malton Urban District Council bought the following two parcels of land that now comprise the Car Park from the Earl Fitzwilliam Estate Company:

- (i) In a conveyance dated 6 December 1962 the Earl Fitzwilliam Estate Company conveyed the Western part of Wentworth Street Car Park (roughly approximate to the lower level of the current Car Park) to Malton Urban District Council for £500. There are no restrictions on use;
- (ii) In a conveyance dated 30 December 1950 the Earl Fitzwilliam Estate Company conveyed the Eastern part of Wentworth Street Car Park (roughly approximate to the current upper level of the Car Park) to Malton Urban District Council for £350. This conveyance included restrictive covenants one of which restricted the use to that of private residences. The valuation of the land will have been made on that basis.

Ryedale District Council is the successor to Malton Urban District Council.

8.9 The legal position with regard to the three allegations is as follows:-

- (i) The definition of the word "given" includes to confer gratuitously the ownership of (some possession) on another person without payment. Since both the conveyances of land referred to above were made for monetary consideration the land was not given to Malton Urban District Council but bought for monetary consideration
- (ii) The definition of "nominal" includes not substantial; very small in relation to an expected or required amount; token. The conveyances show that, in terms of land values at the time of the transactions, valuable monetary consideration was paid by Malton Urban District Council for the land and that the monetary consideration in both conveyances was not nominal.
- (iii) The conveyances contain no declaration that the land is to be held on trust for the public as a car park only. Accordingly the District Council has no legal obligation to keep Wentworth Street Car Park in public ownership for car park use.

Impact upon the Town Centre

- 8.10 Your officers believe that this issue is a matter for the planning process and will be subject to much consideration and debate as and when any planning application and / or LDF submission for the site is submitted. The planning examination of proposals will look closely at the likely impact on the town centre, including the measures proposed to encourage visitors to the development to also use the other shops and services of the town centre (this is known as linked trips). Issues such as the scale, nature and design of the proposals will also be key factors. It is however of interest to councillors in their role as land owner and vendor as they would not wish to promote sale and development of an asset which would have an adverse impact upon the local economy and town centre. If at all possible the Council will wish to facilitate a development which overall has beneficial effects for Malton and Ryedale. To aid members as the land owner there are a number of national and local planning policies (in particular the recent PPS4) as well as the Malton Town Centre Strategy (finalised in 2009) which involved a comprehensive public consultation exercise that engaged all sectors of the local community and secured views, both positive and negative. [A slight majority of 47% supported a new mid to high range supermarket at Wentworth Street Car Park during consultation on the Malton Town Centre Strategy, with 45% opposed. 88% supported free car parking for shoppers at the site] From these sources it can be concluded that the “right” development, subject to appropriate use of planning powers, can have a significant net benefit to the town centre and local economy as retail spend “leakage” is plugged, there will be a greater draw for the town, linkages with the town centre can be improved (with local authority input) and the town’s reputation as an investment opportunity can be enhanced.
- 8.11 It is concluded that most of the concerns expressed are matters which are best discussed and determined as part of the consideration of a planning application / submission that is expected to follow the tender process. However the Council as landowner and vendor is able to provide additional certainty about the continuing provision of parking to serve the town centre and livestock market without destroying the principles and objectives of sale of the site. This can be achieved by removing part of the area from the tender exercise and its retention by the council for use as parking within a management regime it determines.

9.0 IMPLICATIONS

- 9.1 The financial and other implications from disposal of the land are fully set out in the Policy and Resources Committee report. The only additional implication arising from this amended proposal is that the consideration received is likely to be less, the Council will retain ongoing costs of ownership from the retained part and the tenderers will need to adjust their proposals before submitting their tenders.

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Background Papers:

- ‘Wentworth St Car Park’ report and minutes, 24 June 2010 P&R Committee.
- ‘Wentworth St Car Park’ report and minutes, 25 June 2009 P&R Committee and Full

Council 9 July 2009.

- 'Malton Town Centre Strategy & Accompanying Development Briefs' report, P&R Committee, 2 April 2009 (Minute 397 & Minute 10a of Full Council 21 May 2009 refers).
- Building on Strong Foundations - A Framework for Local Authority Asset Management - DCLG - Feb 08.
- Local Authority Asset Management Best Practise, RICS 2009.
- Room for Improvement, Audit Commission, 2009
- Procurement Policy Note – Public Procurement Rules, Development Agreements and s106 “Planning Agreements”; Updated and Additional Guidance published by the Office for Government Commerce. Information Note 12/10 30 June 2010

Background Papers are available for inspection at:

<http://democracy.ryedale.gov.uk/uuCoverPage.aspx?bcr=1>