

## **POLICY AND RESOURCES COMMITTEE**

Thursday 24 September 2015 at 6.30 pm

Council Chamber, Ryedale House, Malton

### **Documents marked to follow on the Agenda**

- 8 Land at Wentworth Street, Malton including the Motion on Notice proposed by Councillor Andrews and seconded by Councillor Mrs Burr (Pages 3 - 22)**

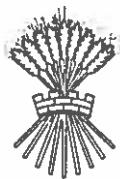
The Council is asked to resolve that as:

- Clarification is needed for the business community in Malton and Ryedale
- The Contract for the sale of WSCP to GMI is due to expire (unless renewed) on 4 May 2015; and
- The Contract cannot be completed until GMI can provide a superstore developer to build a superstore on WSCP, and to date GMI have failed to comply with this condition; and
- WSCP is, by reason inter alia of its location and absence of direct access to the A64, not a prime site for a superstore; and
- The recent collapse of the market for new superstores is a permanent change in the business environment

The Council therefore resolves not to renew the contract to sell WSCP to GMI.

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## RYEDALE DISTRICT COUNCIL



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<b>PART B:</b>	<b>RECOMMENDATION TO COUNCIL</b>
<b>REPORT TO:</b>	<b>POLICY &amp; RESOURCES COMMITTEE</b>
<b>DATE:</b>	<b>24 SEPTEMBER 2015</b>
<b>REPORT OF THE:</b>	<b>CHIEF EXECUTIVE JANET WAGGOTT</b>
<b>TITLE OF REPORT:</b>	<b>LAND AT WENTWORTH STREET, MALTON</b>
<b>WARDS AFFECTED:</b>	<b>MALTON DIRECTLY, ADJACENT WARDS INDIRECTLY</b>

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### EXEMPT INFORMATION

**Exemption Category:** Certain information in this report is considered to be exempt as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

**Reason for Exemption:** The information relates to the financial or business affairs of a particular company and the Council itself; and

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

*The public interest test has been considered and, in all the circumstances of the case, the public interest in maintaining the exemption is considered to outweigh the public interest in disclosing the information.*

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### 1.0 PURPOSE OF REPORT

- 1.1 To consider, as landowner, a request from GMI Holbeck Land (Malton) Ltd for an extension of the time limits set out in the Conditional Agreement for Lease entered into in May 2011 and to give Officers advice to Members on the implications of the Motion on Notice submitted by Councillors Burr MBE and P Andrews.

### 2.0 RECOMMENDATION

- 2.1 In order to allow the purchaser to meet its obligations set out in the Agreement and the consequent transfer by long leasehold of the land, the Council is recommended:
- (i) Maintain the agreement until the planning application is reconsidered by the planning committee.

### 3.0 BACKGROUND

- 3.1 This report concerns the transfer by long leasehold of part of Wentworth Street Car Park in Malton to a company that intends to develop the site with a medium sized food store and petrol filling station. Under the terms of the Conditional Agreement for Lease (the Agreement) the company applied for planning permission for the redevelopment. Due to the unexpectedly long time which has been taken by the planning process, outside its control, the company has been unable to progress its proposals within the timeframe provided for in the Agreement.
- 3.2 At the Judicial Review held on 11 June 2015 the planning decision for the Wentworth Street Car park site was quashed in the High Court by Mr Justice Dove. This has been reported to Planning Committee and Council 03.09.2015. It is important to recognise that the Judicial Review deals only with the process by which the planning permission was granted. It makes no findings on the decision to enter into the Conditional Agreement for Lease and redevelopment of the site or whether it is proper to extend the agreement. Nor does it consider the suitability of the site for retail use.
- 3.3 The report considers the Council's position as landowner seeking best consideration for an under utilised asset Wentworth Street Car Park. In considering this the Council should consider the matter as the landowner and it should not make a decision based on planning issues, such as the use of the site, which is considered by the Council's Planning Committee in its role as local planning authority.

### 4.0 HISTORY

- 4.1 This matter was originally considered by Council in 2009. In order to assist newly Elected Members of the Council reference to the reports, and decisions which have previously been made in relation to this matter, are summarised below.
- 4.2 The Council has a duty and responsibility as a local authority landowner to ensure the best utilisation of its assets. Government guidance to local authorities on asset management advised 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" 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.
- 4.3 Following consideration of a report by Policy and Resources Committee on 25 June 2009 and a recommendation to Council 9 July 2009, Full Council resolved "That expressions of interest be invited for the purchase and redevelopment of either the whole or part of the Wentworth Street Car park site (as shown on the plan at Annex A to the report) for future use, and that following the receipt of such expressions, the matter be referred back for consideration". The report considered by Members proposed that "developers are advised that the Council's consideration, as landowner, of submitted proposals will include reference to the following factors, in addition to the value that would be raised through the land asset:
- The amount and type of parking to be provided, including during construction – proposals should support the vitality of the wider town centre and encourage linked trips to retailers and services in Malton and Norton;
  - The wider regeneration benefits for Malton town centre

- A major new investment in Malton
  - The integration of the scheme with the town centre and urban design and transport impacts
  - The extents to which the proposals can help achieve benefits for the local economy and community.
  - A capital receipt to fund other projects
- 4.4 A market testing exercise was approved by Council on 9 July 2009 and showed that there was a healthy market interest in the purchase of Wentworth Street Car Park and adjoining District Council owned land for redevelopment, in tandem with provision of a sizable car park to serve both the development and the wider town centre.
- 4.5 The sale would lead to a significant capital receipt. This could be used by the Authority to fund capital projects, including regeneration and community projects in Malton and Norton and across Ryedale. This approach was consistent with the efficient use of Council assets and was in line with asset management good practice.
- 4.6 The expressions of interest received suggested that the site could accommodate forms of development that would strengthen Malton's role as the rural capital of Ryedale, however these and other planning issues would be assessed through an entirely separate planning analysis of any application submitted for this site.
- 4.7 At its meeting on 17<sup>th</sup> November 2010 the Council considered and approved a recommendation to accept an offer to purchase land at Wentworth Street Car Park in Malton on a Long Leasehold basis. This decision was subsequently implemented through the completion of a Conditional Agreement for Lease (the Agreement) with GMI Holbeck Land (Malton) Ltd (GMIHL) which was completed in May 2011.
- 4.8 The Conditional Agreement for lease with GMIHL includes a timeframe to undertake various actions needed to bring forward and secure a development. This timeframe was considered to be reasonable for the actions to be undertaken in normal circumstances.
- 4.9 The arrangement includes a number of conditions in the form of performance milestones and timeframes for the various steps needed before transfer of a leasehold interest in the land from the Council to the company and the undertaking of development of their proposals for a supermarket on the site. These milestones were set to allow a reasonable yet demanding timetable for the company to meet the challenges for converting a site with potential into a deliverable proposition.
- 4.10 A period of 4 years was provided for satisfaction of the conditions and included a requirement to secure a planning consent for the company's proposals.

## **5.0 POLICY CONTEXT AND CONSULTATION**

- 5.1 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.

- 5.2 Any planning application submitted as part of the contractual arrangement would be considered by the Local Planning Authority against the provisions of the Development plan and all other material considerations.

## 6.0 REPORT

- 6.1 The issues which need to be taken into account when considering the request from GMIHL to be given more time to meet its obligations under the terms of its agreement with the Council are:

- Have there been any significant changes to the original reasons for a sale of the land?
- Is the additional time likely to result in completing the sale?
- Do the revised agreement terms still provide best value?
- Is it likely that there will be a claim against the Council if it refuses the request and terminates the contract?

- 6.2 Have there been any significant changes to the original reasons for a sale of the land?

- 6.3 The answer to this question is no as the key objectives for inviting interest in the land for an appropriate development were and still are:

- The Council still has a duty to obtain best value ,
- the asset is still underutilised
- There is still a need to generate a capital receipt;
- There is still a need to deliver an appropriate scheme to help to deliver the town centre strategy and provide economic benefits to Ryedale.

- 6.5 A summary of the chronology of events contributing to the delay in progressing the planning application is set out in Annex A.

- 6.6 Is the additional time likely to result in completion of the sale?

- 6.7 The following comments are subject to the outcome of the planning process. Advice from a company specialising in the retail sector obtained by GMIHL is that a development as envisaged is unlikely to be seen on site for up to 3 years but that their proposals, as set out in their planning application, match the direction which the sector is taking. GMIHL remains confident that, given the opportunity to hold meaningful discussions with a range of potential operators, it will still be able to deliver a suitable development which will provide the anticipated economic benefits to the area. In order to have meaningful conversations GMIHL have stated that they need to have a contract in place which is why they have asked for an extension of time. These discussions cannot go ahead until the planning permission is confirmed or otherwise.

- 6.8 Officers have also taken separate advice from retail experts CBRE. Their view was obtained in February 2015 and is:

*"... we would not anticipate significant interest as a supermarket at the present time. However, the scheme is likely to prove of more significant interest in the medium to longer term, potentially within the next 18 to 36 months."*

- 6.9 Whilst there can be no absolute certainty, it appears that when the market improves the proposals of GMIHL will be attractive to operators and lead to completion of a successful development.
- 6.10 **Do the revised agreement terms still provide best value?**
- 6.11 The CBRE report considered the market conditions in February 2015 and concludes that the current market value of the site is less than the price agreed with GMIHL. Consequently, the extension to the time limits set out in the legal agreement would continue to satisfy the Council's requirement to obtain "the best consideration that can reasonably be obtained."
- 6.12 **Is it likely that there will be a claim against the Council if it refuses the request and terminates the contract?**

## **7.0 OPTIONS AND RISKS**

- 7.1 The Council has 3 options in relation to this agreement, all carry different consequences. It could;
- Maintain
  - Extend
  - Terminate
- 7.2 **Risks of maintaining the existing Conditional Agreement for Lease, no termination, no extension**
- 7.3 The Council can continue to work with GMIHL to see if GMIHL can deliver a scheme within the existing agreement. This would be reflected in the submission by GMIHL of a planning application. If this can be delivered it means that the Council gets the benefits of the scheme without having to incur the expense of going back to test the market. If this is not possible within 6 months then the Council should take steps to terminate the agreement. The Council would have to start the disposal or procurement process again to ensure that it receives the best consideration for WSCP.
- 7.4 **Risks of extending the Conditional Agreement for Lease**
- 7.5 If both parties agree the Agreement can be extended for an agreed period of time under the same terms and conditions.
- 7.6 The information from GMIHL's consultants points to active demand for a proposed store and petrol filling station returning in 9-18 months time. GMIHL are confident when assessing a further period for negotiation that the terms of the Agreement can

be delivered within an additional 3 year period. In addition, officers have obtained independent advice from CBRE which supports this view subject to achieving an implementable planning permission. This option would avoid the associated costs of remarketing the site and drawing up a new legal agreement, both of which would be required, to ensure the Council obtains best value, best consideration, for the site.

- 7.9 It should be noted that it is suggested by FWME that the "threat of a development" on this site at WSCP will deter their stated operator (Booths) from investing in Malton. This information reported by Booths is that they are not entering new markets for at least 2 years.

#### **7.10 Risks of terminating the Conditional Agreement for lease**

- 7.11 Either side can terminate the Agreement but one or other party must terminate the Agreement for it to be terminated, if neither party terminates, the Agreement remains in place. There are no additional risks for the Council if this option is taken. The developer may proceed with the planning application 'at risk'. RDC could take this course of action if they choose to with some financial risk.

- 7.14 If the Council terminates the Agreement it would repay the deposit of £100,000 to GMIHL within 21 days. This is not a risk as the deposit is held within the Council's balance sheet.

- 7.15 The consequences of terminating the Agreement are that the proposed sale on a long leasehold basis and the objectives for such a sale will not be achieved. No capital receipts will be obtained and there will be no resulting funds to support a capital programme to deliver beneficial projects for the people of Ryedale.

- 7.16 There is a reputational risk that the Council finds itself in a position where developers do not trust the Council to work as a partner. This could have an impact on market confidence and inward investment in the future. There is also the opposite view which is that sufficient time has already been given and that the Council's reputation has



already been damaged due to the legal challenges and subsequent costs incurred by the Council.

- 7.17 The Council has to get the best use for its assets. If the Council decide to terminate this contract it will in time have to consider the best use for WSCP and go back to the market which will incur additional costs. If this action was chosen the Council has the opportunity to consider the representations made by those opposed to this scheme and open discussions to see if there is a scheme where all interested parties can work together for the greater good of Malton and wider Ryedale.
- 7.18 If the Council were to decide to take this course of action it could either remarket the site as a land disposal, which is the route it chose to take in 2009, or it could decide to go to public procurement and go through an OJEU procurement process of open competition or competitive dialogue.
- 7.19 Members are aware that there is an opinion shared by a number of Organisations and individuals including Fitzwilliam (Malton) Estate (FWME), Malton Town Council (MTC), Norton on Derwent Town Council, and the Ward Members for Malton that the best approach is to terminate the contract with GMIHL and consider alternatives. It is their view that the original agreement has not been delivered in the time agreed and that since the agreement was entered into the market conditions have changed to the point that it is this scheme is no longer deliverable and that it is not the right project for the land at WSCP. That the Council goes back to the drawing board and thinks again about how it can get the best consideration for the underutilised land at WSCP.
- 7.20 It is important to clarify that If Members choose to terminate the Contract with GMIHL for the conditional lease agreement of WSCP this does not mean that it is also terminating or changing the Local Plan Strategy and concept of the Northern Arc. If members do decide to terminate the agreement with GMIHL they will have to give consideration to the disposal of WSCP and the future strategy for the site.

## **8.0 FINANCIAL ISSUES**

- 8.1 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 capital projects that deliver each of the Council's priorities, including meeting housing needs and maintaining a high quality sustainable environment and economic development.
- 8.2 Like many other relatively small district councils, the Council has limited scope to achieve anything other than a basic capital programme without the generation of capital receipts. The leasehold sale of Wentworth Street Car Park, therefore, has a role to play in enabling the Council to support capital projects that are desirable in the public interests.
- 8.3 If a claim for costs is received and is successful the financial position of the Council is that it has of uncommitted New Homes Bonus and in addition the Council has other reserves which have been earmarked for specific purposes but could be used if required, however use of these reserves would lead to a reduction in financial resilience going forward.

## **9.0 LEGAL ISSUES**

- 9.1 If the Council chooses not to extend the longstop date contained within the Agreement then the Council would have the power under clause 3.8 of the agreement to terminate the Agreement and simply repay the deposit that is *"unless the reason for the conditions not having been satisfied is the act, default or delay of the Council under this clause 3"*.
- 9.2 It is GMIHL's considered view that they have been severely hampered in the delivery of the redevelopment of this site by a series of unforeseen factors which have fallen outside of their control and consider these delays to be due to the Council. GMIHL own a strip of land adjacent to the current access and they also make the point that the failure by Taylor Wimpey to deliver the access road planned for 2013 means that no operator of a medium sized foodstore would be able to operate from WSCP until this has been delivered.

**Janet Waggott**  
**Chief Executive**

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**Background Papers:**

Relevant files with exempt papers as referred to in the report.