

Committee: Sustainable Communities Overview and Scrutiny Panel (call-in)

Date: 2 June 2016

Agenda item:

Wards: Abbey

Subject: Sale of land on The Broadway (P4)

Lead officer: Chris Lee

Lead member: Cllr Mark Allison

Forward Plan reference number:

Contact officer: Jacquie Denton

Recommendations:

That the Sustainable Communities and Scrutiny Panel consider the information provided in response to the call-in request and decide whether to:

Refer the decision back to Cabinet for reconsideration; or

Determine that the matter is contrary to the policy and/or budget framework and refer the matter to Full Council; or

Decide not to refer the matter back to Cabinet, in which case the decision shall take effect immediately.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Overview and Scrutiny Commission is asked to consider the call in request together with the officer's comments and further information provided in response to the reasons for the call-in.

2 DETAILS

- 2.1. Under the Scheme of Management 2014 the Head of Sustainable Communities is authorised to negotiate and agree terms for the disposal of land.
- 2.2. Cabinet resolved at the meeting of 17 December 2007 the strategic principle that the development of the P4 site should be as a mixed development comprising commercial elements (residential and retail) and community facilities.
- 2.3. In order to ensure that the Council achieves best consideration for the site a report was taken to Cabinet on 11 March 2013 recommending that the site be disposed of (in line with the Council's Asset Management Plan), without restriction on use and that the then out dated Planning Brief of 2003 be rescinded.
- 2.4. Cabinet resolved at the meeting of 11 March 2013 that (1) the decision taken of Cabinet 17 December 2007 be rescinded and that the P4 site be disposed of on the open market without restriction on use; and (2) the then

existing Planning Brief published in 2003, entitled 3 WTC Site, Wimbledon be revoked.

- 2.5. This decision was called in by Overview and Scrutiny Commission and taken Overview and Scrutiny Commission (call-in) on 2 May 2013 and to Cabinet on 10 June 2013. Cabinet resolved that a further report be presented to the September Cabinet meeting addressing the matters arising from the Call-in.
- 2.6. At its meeting of 16 September 2013 Cabinet responded to questions raised from Overview and Scrutiny Commission and following consideration resolved that the resolutions of Cabinet made at its meeting of 11 March 2013 are upheld.
- 2.7. In line with this decision the site has been marketed on the open market without restriction on use and a report was brought to Cabinet at its meeting of 18 May 2016 in order to dispose of the site on terms as set out in that report
- 2.8. Cabinet at the meeting of 18 May 2016 resolved that Cabinet; (1). agrees to the disposal of land at 111-127 The Broadway, SW19, also known as “P4” site, on the terms set out within the report and (2). delegates the completion of the disposal and precise terms to the Director of Environment and Regeneration in consultation with the Cabinet Member for Finance.
- 2.9. Councillors Michael Bull, Suzanne Grocott, Daniel Holden and David Williams have requested that this decision is called in for the reasons shown in part four of the request form
- 2.10. The Councils procedure for dealing with call in requests is set out in paragraph 16 of Part 4E of the constitution.
- 2.11. The monitoring Officer has accepted the call-in as valid and the Panel is required to consider the reason for the call in and decide on its recommendation

3 RESPONSE FROM OFFICERS

- 3.1. **General** - Officers have considered each of the points raised, but largely these are predicated on there being an option to do something with the site other than a freehold disposal. The only options available to the Council at this stage were either to sell or not sell the site. Cabinet had made a decision in March 2013 (upheld following call-in) to dispose of the site. It had not instructed any further analysis or options appraisal or authorised the development of the site by the Council or entry into any form of lease. Therefore whilst alternative options have been considered in deciding to take forward the disposal resources have not been allocated to producing detailed analysis or financial costings. Some of the points raised were raised during the call-on of the March 2013 decision.
- 3.2. **Question** - The site is of strategic importance and key to building a creative arts cluster (as identified in Merton's Economic Development Strategy). Yet paragraph 4 makes clear that there has been very little consultation with local groups who would be key to the success or otherwise of this aspiration, such as the New Wimbledon Theatre, Polka Theatre, Wimbledon College of Art and Wimbledon Choral Society. Nor has there been recent consultation with residents living nearby.

- 3.2.1 **Response** The matter of consultation was raised during the call in of the decision of Cabinet of 11 March 2013 and was considered by Cabinet at its meeting of 10 June 2013.
- 3.2.2 Whilst there is no obligation on the Council to consult prior to the disposal of land, as the P4 site was included in the Council's Draft LDF Sites and Policies Development Plan, there was in fact wide consultation. The details of this consultation are not repeated here but are set out in the report to Overview and Scrutiny Committee (call in) of 2 May 2013 (see paragraph 3.1 of the report to Overview and Scrutiny of 2 May 2013 Appendix 2).
- 3.2.3 Cabinet accepted that there had been sufficient consultation and did not resolve that any further consultation be undertaken. Accordingly, there has been no further consultation and it is considered that any further consultation (i.e. concerning the actual development proposed for the P4 site) would be appropriate through the normal planning process.
- 3.3. **Question** - The council clearly has a duty to deliver best value. However, there is no clarity in the report as to what constitutes best value. Best value may not necessarily be delivered through an outright sale. Nor is there clarity about what might deliver best value for the wider community in and around Wimbledon town centre. Over many years, there has been an aspiration – including by the council - to provide a new community facility as part of any redevelopment of this site to benefit residents and yet this would not be delivered through the proposed outright sale. With regard to financial implications, current pressure is on the council's revenue budget not capital budget and – unlike with a long leasehold geared interest sale for example – an outright freehold sale risks increasing pressure further on the revenue budget as a result of lost future income.
- 3.3.1 **Response** The obligation upon the Council in relation to a land disposal is set out in section 123 of the Local Government Act 1972. That duty is to obtain the best consideration reasonably obtainable (i.e. generally the best price, although other matters may be taken into account in determining the best price provided they are quantifiable). There is no duty to consider any other matters and indeed if the Council does not obtain the best consideration reasonably obtainable it must obtain the consent of the secretary of state (unless the disposal is by way of a short tenancy). It is considered that a disposal as recommended in the report to Cabinet of 26 April 2016 complies with that duty.
- 3.3.2 The decision of Cabinet of 11 March 2013 was that the site be disposed of without restriction on the use which whilst it removed the requirement for a community use on the site did not prohibit bids being submitted which include this use. The Council did not receive any bids that proposed a community use.
- 3.3.3 To offer the site on a long leasehold basis with a geared rent would not be attractive to the market for this type of development opportunity because offices become obsolete more quickly than say industrial premises and are likely to need redevelopment. For this reason the office market is not comfortable with geared leases and many developers will not bid for leasehold sites. Developers or investors will only redevelop to maintain or improve the value and/or quality of their asset. This is expected to be more

frequent for an office building than say an industrial unit but the timescale even for offices is unlikely to be less than fifty years. To have proposed this as an option would have resulted in either no bids being submitted or the Council not being able to meet its duty to obtain the best consideration reasonably obtainable.

3.3.4 Further the loss of income from the car park has been taken into account in assessing the bids received and it is considered that financially the Council will be in a better position on receipt of the capital sum despite the loss of revenue currently received. Having taken into account all factors and undertaking a vigorous evaluation process the Council considers that the bid outlined in the report to Cabinet of 18 May 2016 represents best consideration reasonably obtainable.

3.3.5 The development set out in the bid also makes a contribution to the local community in that it creates job opportunities and proposes to deliver a vibrant mixed use development that will make a significant contribution to the economic vitality and well being of this area of Wimbledon and accordingly will provide best value.

3.4. **Question** This call-in relates primarily to the due consideration and evaluation of alternatives. Whilst it may be the stated aim of the Administration to maximise the potential of the land at 111-127 The Broadway SW19 (known as “P4”), the Cabinet has failed to demonstrate that an outright sale of the property at the price proposed is necessarily maximising its potential. The last call-in relating to this decision in 2013 was submitted because no valuation had been undertaken of the site. This proved the right decision given the proposed sale proceeds being discussed at that point and the 5-fold amounts now being discussed. The situation, however, has moved on again since 2013 and any decision being made in 2016 must now take into account the current plans for Crossrail 2 which could involve the re-development of part of Wimbledon town centre. It may well be that the proposed sale price already reflects this, but this is by no means clear.

3.4.1 **Response** Up to date valuations have been undertaken in order to inform the decision making process (which were included as an appendix to the report to Cabinet of 18 May 2016). These take into account all relevant market factors. It is difficult to determine the impact of Crossrail since this is currently only at the point of consultation with work not expected to commence until 2023. The Council has and, are sure bidders will have fully considered the uncertainty of Crossrail and accordingly the positive and negative implications.

3.5. **Question** A decision as important as this should not also be accepted on the basis that the Council perceives that it would cause a “loss of reputation” if it “changed its mind” after lengthy discussions. It has to presumed that a legally binding “verbal agreement” had not been given before official approval of the decision and, therefore, any prospective buyer would understand that a change in circumstance/ new information would be taken into account without detriment.

3.5.1 **Response** The selected bidder is fully aware that authority would need to be obtained before the Council can enter into any legal agreement and no

commitment has been given. The reputation of the council would not be a deciding factor in whether a disposal proceeded. However a loss of credibility is a factor which the Council should be aware of. The recommendation to proceed with the bid has been arrived at following a rigorous evaluation process and interrogation of the proposal; had that process raised any concerns, then the recommendation would not have been made.

- 3.6. **Question** In consideration of the alternative options, Merton Council has failed properly to evaluate these. It is an overly risk-averse decision taken by a Cabinet which has not seriously undertaken any real examination of alternatives, but just wants to “get rid of the land as soon as possible”. 3.5 states that “the council is keen to look at retaining property and developing sites to add value”. Yet where it has the golden opportunity to do so here with P4, it simply puts obstacles in the way such as “the council does not currently have in-house experience and expertise to carry out such a project”, without including any detail of what it would cost in terms of time and/or resources to buy-in or develop such experience and expertise. By focusing solely on the risks of the alternatives, the council shows that it is scared of failure rather than necessarily taking the most beneficial decision for the long term future of Wimbledon and its residents.

- 3.6.1 **Response** In considering the alternative options for the site the Council must consider all of the risks and balance those against the potential return. In particular when large amounts of public money are to be used to fund a project the Council must minimise those risks in order to protect that money and ensure that it is used in the best way with the best return achievable. In this instance the capital sum achievable offers the best alternative.

- 3.6.2 In terms of the cost of buying in resources, it is obviously difficult to accurately estimate these due to unforeseen problems and delays that can arise relating to professional fees such as legal, finance, project management, feasibility studies and other technical consultants.

- 3.6.3 In terms of time, one would estimate it to take something in the region of upwards of two years (with two years being very ambitious) to appoint a developer. This could of course be much longer if there is any delay in the planning process.

- 3.7. **Question** 3.3 states that the Council would either need to (a) provide the finance for the scheme or (b) seek to let a design, build and finance contract. Taking these in turn

Financing a scheme

No details are provided in the report of what level of financing would be needed for such a scheme and the rate of interest at which this funding could be borrowed.

- 3.7.1 **Response** Cabinet had made a decision in March 2013 (upheld following call-in) to dispose of the site. It had not instructed any further analysis or options appraisal or authorised the development of the site by the Council or entry into any form of lease. Therefore these options, which would require the investment of considerable time and money, are not available.

- 3.8 **Question** 3.3 highlights the risk of a “speculative development” whereas 6.5 notes “the current confidence in the Wimbledon office market”. If the market is speculative, then surely it would be better to be in control of the development, than risk the developer coming back in a year’s time (after planning permission has been granted and the building sold) saying that it can’t find tenants and requesting change of use to residential for example (as happened with the development on Hartfield Road, stating that the building was “too far away from the station”). This risk has not been included in the paper.
- 3.8.1 **Response** This would not be a Council risk. Once planning consent has been granted and the sale completed the property would transfer to the purchaser. The risk relating to the construction and future letting of the building is then completely with the purchaser. If the scenario described did occur, and the purchaser wished to apply for a change of use, then it would be able to apply (at its own risk) to the planning authority. The decision as to whether or not to grant a change of use would rest solely with the planning authority who would be bound to follow due process. Any failure to change the planning approval would have no impact on the Council.
- 3.9 **Question** No valuation on a lease of an office block with vacant possession has been undertaken; nor of current rental amounts which could be earned. The paper highlights the business rates that could be generated, but these would still accrue to the Council in either of the 2 alternative scenarios
- 3.9.1 **Response** It is unclear what scenarios are envisaged here, but we have assumed that the Council builds an office block on the site and either (a) the property is let in its entirety on a long lease or (b) the council manages and controls the property and lets it on short term lettings.
- 3.9.2 The annual rental value for a, fully occupied, completed retail and office scheme has been assessed as £2,295,000pa. (This figure is supplied by Andrew Scott Robertson although this figure is naturally speculative as it would depend on actual occupancy rates and good tenants)
- 3.10 **Question** Based on the range of valuations received; planning permission itself appears to be worth an additional £3million. If the Council was in control of a development which could provide the “high quality” being sought in 3.5, then it would be likely to be given planning permission.
- 3.10.1 **Response** We are unable to comment on the figure of £3 million as we do not understand how this figure is arrived at. Planning consent is granted (by the Council as planning authority) on the basis of each individual application. The party which makes the application is not a consideration and therefore any planning application submitted by the Council to the planning authority would not receive any preferential treatment.
- Letting a design, build and finance**
- 3.11 **Question** – The paper talks about the amount of time this would take. This option has not seriously been considered as an alternative as the council have had since 2013 to test the market to see if this would be attractive. Given the fact that there were 114 registered interests and 17 offers received; there is obviously considerable interest in this site in the market.

- 3.11.1 **Response** The interest shown and number of bids received demonstrates only that disposal of the site as a freehold without restriction, is a very attractive opportunity for the market. It gives no indication as to how attractive a design, build and finance option may be. It is equally possible to argue that such a response demonstrates that this is by far the most attractive option to the market and that the Cabinet decision to dispose of the freehold was the correct decision.
- 3.12 **Question** Again, no costing has been given to benchmark against an outright sale. No detail is given in the report about the potential benefits of a Long Leasehold Geared Interest sale. The site could be sold subject to a 150 year lease for example with the council retaining the freehold. This would generate a year on year return for the council which could more than offset the loss of parking revenue whilst the council would also retain additional control over the development. The option would still remain to sell the freehold interest at a future date.
- 3.12.1 **Response** Cabinet had made a decision in March 2013 (upheld following call-in) to dispose of the site. It had not instructed any further analysis or options appraisal or authorised the development of the site by the Council or entry into any form of lease. Therefore these options, which would require the investment of considerable time and money, are not available.
- 3.12.3 Disposal of the site on a long leasehold geared basis is not viable or appropriate for a development of this type. For the reasons set out in paragraph 3.3.3. above. Income generated from any lease is dealt with at paragraph 3.9.2.
- Request for documents**
- 3.13. **Request** Any internal or external discussions or costing on what expertise would be needed and possible exploratory discussions with 3rd parties to underpin comments made in para 3.2 of the report. **Response** In consideration of the Cabinet decision that the site be disposed of freehold there are no detailed costings relating to this.
- 3.14 **Request** All minutes and documentation relating to any discussions held with other Councils that have formed a joint venture to develop property sites. **Response** There are no minutes and documentation available with regard to discussions relating to joint ventures specific to this site.
- 3.15 **Request** Evidence to substantiate the differing timescales expected for the various options (outright sale; financing a scheme; design build and finance) **Response** In consideration of the Cabinet decision that the site be disposed of freehold there are no detailed timescale relating to this.
- 3.16 **Request** Full costings and risk analyses for the following options:
Freehold sale of the land, Long annuity income receipt, Joint Venture, Council develops land directly
- 3.16.1 **Response** Cabinet had made a decision in March 2013 (upheld following call-in) to dispose of the site. It had not instructed any further analysis or options appraisal or authorised the development of the site by the Council or entry into any form of lease. Therefore these options, which would require the investment of considerable time and money, are not available

- 3.17 **Request** Details of the latest utilisation rates for the P4 car park compared to other car parks in Wimbledon town centre. **Response** This information is given in Appendix 5.
- 3.18 **Request** Forecasts for capital appreciation of the site over the next 5, 10 and 20 years **Response** There is no data available that would allow us to reliably project these figures.
- 3.19 **Request** Details of any 'non embarrassment' clause proposed as part of the contract to avoid the purchaser 'flipping' the asset at a profit. **Response** The contract for sale will not include a claw back provision as there is no restriction on the use of the site, the proposed use of office represents the highest value for the site. This has been demonstrated by both the valuation and the marketing process.

4 ALTERNATIVE OPTIONS

- 4.1 None. The monitoring Officer has deemed the call in request to be valid and the commission is required to consider the request as the matter falls within its remit.

5 CONSULTATION UNDERTAKEN OR PROPOSED

- 5.1 None for the purpose of this report. Any consultation undertaken, as part of the decision being considered, will be referred to in the report on which the decision was based.

6 TIMETABLE

6.1

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 7.1 Included within the body of this report and the cabinet report of 18 May 2016

8 LEGAL AND STATUTORY IMPLICATIONS

- 8.1 Included within the body of this report and the cabinet report of 18 May 2016

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 9.1 None for the purposes of this report

10 CRIME AND DISORDER IMPLICATIONS

- 10.1 None for the purpose of this report.

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 11.1 None for the purpose of this report

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 Cabinet report 11 March 2013
- Appendix 2 Overview and Scrutiny Commission (call-in) report 2 May 2013
- Appendix 3 Cabinet report 10 June 2013
- Appendix 4 Cabinet report 16 September 2013

- Appendix 5 Car park utilisation rates (exempt report)

13 BACKGROUND PAPERS

- 13.1 Cabinet report 18 May 2016, Cabinet report 11 March 2013, Overview and Scrutiny Commission (call-in) report 2 May 2013, Cabinet report 10 June 2013 and Cabinet report 16 September 2013.

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