


Cabinet Decision Report

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| Decision maker | Date of Cabinet: 20 April 2016 |  THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA | |
| Forward Plan details | Date decision entered onto Forward Plan: 23 March 2016 Forward Plan reference: 04801/16/K/AB | | |
| Report title | Kensington and Chelsea College, Wornington Road | | |
| Ward | ST CHARLES | | |
| Reporting officer | Richard Egan Interim Head of Corporate Property Services | | |
| Key decision | Yes | | |
| Access to information classification | Public (Part A) with Confidential/Exempt (Part B) Appendix Information relating to the financial or business affairs of any particular person (including the authority holding that information) | | |

1 EXECUTIVE SUMMARY

- 1.1 This report seeks the Cabinet's approval for the acquisition of the Kensington and Chelsea College site located on Wornington Road, North Kensington.
- 1.2 The Council's feasibility analysis suggests that the site is capable of redevelopment to support C3 residential and replacement D1 accommodation.
- 1.3 In order to establish the development potential of the site, high-level design work has been completed by an appointed professional team regarding height, bulk and acceptable uses. This advice has informed the assumptions made to support the base price of the transaction.
- 1.4 The Council has considered different 'business case' options for the site which are listed below:
 - a) Sale with planning permission for C3/D1 redevelopment.
 - b) RBKC enter a structured deal with a PRS (Private Residential Sector) developer which retains the ability to achieve vacant possession of the PRS units.

c) Retain the property as a D1 investment property.

- 1.5 There are several advantages for RBKC in pursuing this acquisition; most notably the ability to secure a significant affordable housing decant opportunity, that would be of strategic benefit to the Council's wider regeneration programme.
- 1.6 The property currently benefits from D1 use and is occupied by the Kensington and Chelsea College. It should be noted that discussions with the Local Planning Authority and/or local community stakeholders have not yet commenced.
- 1.7 The proposed transaction is to be structured as a short term sale and leaseback (to KCC) for a term of between 2 and 3 years. In lieu of a rental stream during the period of the leaseback, the initial acquisition price is to be discounted to reflect a notional rental income to RBKC.
- 1.8 This leaseback period presents an attractive and helpful period in which to explore and progress the potential for planning permission for redevelopment. Following the expiry of the leaseback, vacant possession of the site will be granted at which time construction work could commence on a proposed scheme at the time.
- 1.9 The proposed financial benefit of this strategy is set out in Part B.
- 1.10 Confidential/exempt information is contained in the exempt Part B appendix as it details information relating to the financial or business affairs of any particular person (including the authority holding that information).

2 RECOMMENDATIONS

2.1 Approval is sought for:

- 2.1.1 The acquisition of the freehold interest of the Kensington and Chelsea College site situated on Wornington Road, North Kensington.
- 2.1.2 A budget for the purchase of the site and the appointment of a professional team to progress design work and planning discussions and to determine the best delivery route for the site. The proposed budget is set out in Part B for both pre and post acquisition.

3 REASONS FOR DECISION

- 3.1 This transaction will deliver several strategic benefits for the Council, as follows:
 - A key benefit of this opportunity would be the ability to pursue a PRS development of the site where the Council would retain the ability to achieve/call for vacant possession of the residential units.

- The Council is currently working on various local regeneration opportunities and the flexibility highlighted above could provide valuable strategic decant opportunities.
- The residential element could also create significant income for RBKC through a PRS development.
- The sale and leaseback structure proposed provides RBKC with financial certainty for the period of the leaseback, as well as flexibility to consider a number of potential scheme options and secure planning permission during this period.
- The structure would also allow the Council to consider involving a development partner to assist in the planning and development process.

3.2 In turn, the transaction will deliver the following strategic benefits to Kensington and Chelsea College who are an important organisation within the Borough:

- RBKC can deliver to KCC alternative accommodation adjacent to their existing space in the Carlyle Building (owned by the Council).
- This transaction will raise funds for the College, whilst also providing certainty of occupation for 2 to 3 years.
- KCC would be offered a pre-emption right by RBKC to re-occupy any D1 component of the redeveloped Wornington Road site.
- The Council has also offered the College a temporary replacement 'decant' facility so they remain represented in North Kensington when they vacate the property.

4 BACKGROUND

- 4.1 This site is currently owned and occupied by Kensington and Chelsea College (KCC), and they are willing to agree to an 'off market' sale to the Council, subject to contract and price.
- 4.2 The property currently benefits from D1 use – non residential institutions such as health centres, crèches, day nurseries, day centres, schools, art galleries (other than for sale or hire), museums, libraries and places of worship.
- 4.3 The terms of an acquisition have been agreed and a current draft Heads of Terms has been appended to this document.
- 4.4 Initial feasibility analysis suggests that the site is capable of redevelopment to support C3 residential and replacement D1 accommodation.
- 4.5 A process of technical due diligence has been completed, and the results of this support the redevelopment of the site.

5 OPTIONS AND ANALYSIS

- 5.1 Various 'hold' and 'exit' strategies have been assessed. All of the options support the commercial terms proposed (see Part B). These different options are considered below:

Option A – SALE WITH PLANNING PERMISSION:

- 5.2 In this option the Council secures planning consent for a residential mixed use scheme including a D1 facility. As part of the planning consent affordable housing would be provided on site. In this option it is assumed that once planning consent is secured the site is sold and construction can therefore start immediately.

Option B – RETAIN THE SITE FOR PRS:

- 5.3 RBKC enter a structured transaction with a PRS developer which retains the ability to achieve vacant possession of the PRS units.
- 5.4 This approach has been taken by the Council previously on similar sites within the Borough. The Council will effectively 'gift' the land to a private PRS developer on a long leasehold. The developer will then build the scheme and sell a number of units to cover the total cost. The remaining units will then be managed as a PRS 'product', where there will be a revenue split on the rental return between the developer and the Council. At any point in time the Council reserves the right to force the sale of individual units within the scheme, with an accompanying pre-emption right for the Council to acquire the units for decant purposes.
- 5.5 Furthermore in this option a new D1 facility and affordable housing would also be accommodated on site.
- 5.6 The income generated from this option could be used for Council front line services which will benefit the social and economic well being of residents.

Option C - RETAIN BUILDING AS IS AS A D1 INVESTMENT:

- 5.7 This scenario assumes the Council simply holds the property as an investment in its existing use.
- 5.8 During this period the property remains in a D1 use providing accommodation for a College or similar type use.

6 Proposed Timetable

- 6.1 Following the acquisition, it is recommended that the following timetable is followed:

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| April 2016 | Completion of Acquisition |
| June 2016 | Secure appointment of consultant team. Commence surveys. |
| August 2016 | 1st Pre-application meetings |
| September 2016 | Initial design and planning response |
| October 2016 | 2nd pre-application meetings |
| November 2016 | Design and planning response |
| November 2016 | Commence procurement for delivery partner |
| January 2017 – March 2017 | Preferred partner selection and Cabinet Approval of preferred partner. |
| April 2017 – July 2017 | Contracts agreed with preferred partner |
| August 2017 – December 2017 | 3 rd and 4 th pre-application meetings |
| January 2018 | Submission of a planning application |
| March/April 2018 | Planning application determination |
| April 2018 – June 2018 | Signing of S106 |
| April 2018 – December 2018 | Detailed Design Work. Contractor Procurement |
| February 2019 | Construction Commences |

7 PLANNING IMPLICATIONS

7.1 The Executive Director of Planning and Borough Development has been consulted and comments :

7.2 Under the Council's Consolidated Local Plan 2015, the current D1 use of the site falls under the "social and community uses" category. Such uses are protected under Policy CK1:

"The Council will ensure that social and community uses are protected or enhanced throughout the borough and will support the provision of new facilities."

7.3 Policy CK1(c) contains a sequential approach:

i. protect land and/or buildings where the current use is or the last use was a social or community use, for re-use for the same, similar or related use;

ii. permit the change of use of land and/or buildings where the current or last use was a social or community use from one social and community use to another social and community use which predominantly serves, or which provides significant benefits to Borough residents and where it is demonstrated that there is a greater benefit to the Borough resulting from this change of use;

iii. permit enabling development on land and of buildings where the current use is or the last use was a social and community use in order to:

- significantly improve that use;*
- provide another social and community use on site;*
- significantly improve or provide new social and community uses elsewhere within the Borough and where it can be demonstrated that there is a greater benefit to the Borough resulting from this enabling development.*

7.4 Redeveloping the site for predominantly residential purposes would be contrary to Policy CK1 unless it can be demonstrated that such a change would significantly improve or provide new social and community uses elsewhere within the Borough and it can be demonstrated that there is a greater benefit to the Borough resulting from this enabling development. Demand for land and buildings for social and community uses remains, including for schools.

7.5 Investment in the Carlyle Building and a replacement D1 facility at the Wornington Road site would be welcomed and might be part of package of benefits to the Borough to offset the permanent loss of land from social and community use to comply with Policy CK1. However, alone these would unlikely be sufficient to comply with Policy CK1. Were the site crucial to achieving the Council's regeneration objectives, such as providing a decant site for existing residents, that would also weigh in favour of the development if the link were direct.

7.6 The Wornington Road site is part of the Wornington Green strategic site allocation, although the allocation did not necessarily envisage redevelopment of the college. The Local Plan Partial Review presents an opportunity to review that allocation. The landowner may wish to make representations to that review at appropriate times.

7.7 Any purchase price should factor in the need to pay Community Infrastructure Levy at the appropriate rates, provide affordable housing at policy compliant proportions, as well as provide for a replacement D1 use at Wornington Road of a decent scale.

8 LEGAL IMPLICATIONS

8.1 The Director of Law has been consulted and comments as follows:-

8.2 The Council may:-

- Acquire land for planning purposes – s226 and s227 Town and Country Planning Act 1990 (TCPA 1990)
- Dispose of land held for planning purposes – s233 TCPA 1990

- Acquire and allocate land for specific purposes – e.g. s17(1)(a) of the Housing Act 1985
- Override easements and other rights - s237 TCPA 1990

Acquisition

- 8.3 S227 TCPA 1990 authorises a local authority to acquire by agreement any land in their area for any purpose for which they may acquire land under s226 TCPA 1990. Under that section the council can compulsorily acquire land if it will facilitate the carrying out of development, redevelopment or improvement of the land which is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated.
- 8.4 This power to purchase is only exercisable where the development, redevelopment or improvement of the land is likely to contribute to the achievement of one or more of the following objectives:-
- the promotion or improvement of the and economic well being of the area
 - the promotion or improvement of the social well being of the area
 - the promotion or improvement of the environmental well being of the area
- 8.5 The Reporting Officer states that the economic well being of the area will be improved as a result of the development if we chose the option for mixed use development as affordable housing tenants from other regeneration sites will be decanted into the development on this site which will be of a strategic benefit to the council.

Disposal

- 8.6 Disposal of land under s233 TCPA 1990 includes inter alia a sale of the freehold interest or the grant of a lease. Consent to the disposal of the freehold sale will be obtained from Cabinet under section 123 of the Local Government Act 1972 at the time the relevant disposal option for the site has been chosen.
- 8.7 However in the interim the Council will be granting a lease to the KCC pending approval of planning. The power of disposal set out in s 233 TCPA 1990 must be exercised to provide the occupiers of the land “so far as may be practicable” the opportunity to relocate on such land where the occupier carried on business or other activities on the land and desires to obtain accommodation on the land and is willing to accept the authority’s requirements as to the land’s development and use. In this proposal the Reporting Officer confirms that the occupiers will be granted a lease back of the land pending the grant of planning permission for development as detailed in the Report at which stage they will move to the alternative site at the Carlyle Building and after completion of the development will be offered a right of pre-emption to re-occupy any D1 component of the redeveloped site.

Allocation for specific purposes

- 8.8 A local housing authority may acquire land as a site for the erection of houses by agreement under section 17(1) and (3) of the Housing act 1985.

Overriding Easements and other rights

- 8.9 By virtue of s.237 TCPO 1990 the Council is empowered to proceed with the erection or construction in accordance with planning permission of any building on land which was acquired for planning purposes notwithstanding that such building works may interfere with adjoining owners' rights.
- 8.10 The principal relevance of this section, is that it enables a local authority as well as those deriving title from the council, to interfere with rights of light of adjoining owners without the possibility of challenge subject only to the obligation to pay compensation under s.237(4) of the Act. S237(4)(b) of the Act permits compensation based on injurious affection calculated and payable in accordance with s.63 and s.68 of the Lands Clauses Consolidation Act 1945 and s.7 and s.10 of the Compulsory Purchase Act 1965.
- 8.11 Legal Office: Jennifer Muller (Tel: 0207 261 3185)
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9 FINANCIAL AND RESOURCES IMPLICATIONS

- 9.1 The Director of Finance has been consulted on this report and his comments are as follows.
- 9.2 The funding for this £25.6 million acquisition is additional to the Council's latest (March 2016) three year capital programme. If all the planned capital investment, including this proposal, actually takes place within the three year period, the Council may need to undertake some external borrowing. Overall the current financial planning assumption is that annual revenue resources and release of asset value (revenue income streams or sale of assets) will broadly match the Council's total capital investment over time. If, however, the capital investment results in a requirement for external borrowing, the cost of the borrowing will have to be met from revenue. In this event, the revenue cost would be charged to the annual revenue contribution to capital provision, thus reducing its future capacity to maximise overall Council capital expenditure.
- 9.3 Given the pressing timescale in which to complete this transaction, full taxation advice had not been obtained before publication of this report, and as such, approval of the recommendation should be subject to satisfactory taxation clearances.

Richard Egan
Interim Director of Corporate Property Services

Nicholas Holgate
Town Clerk

Local Government Act 1972 (as amended)

Background papers used in the preparation of this report: none

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