

CABINET MEETING:

14 July 2022

ATLANTIC WHARF REGENERATION SCHEME UPDATE

INVESTMENT & DEVELOPMENT (CLLR RUSSELL GOODWAY)

AGENDA ITEM:

PORTFOLIO: INVESTMENT & DEVELOPMENT

Appendices 2-4 of this report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 and paragraph 21 of Part 5 of Schedule 12A of the Local Government Act 1972.

Reason for this Report

1. To seek approval for the acquisition of land to assist the Council in meeting its obligations in relation to the planning agreement for the new Indoor Arena and the wider Atlantic Wharf regeneration scheme.
2. To approve the appropriation of land for planning purposes required for the delivery of the Multi Storey Car Park (MSCP).
3. To authorise a land referencing exercise relating to the masterplan area and to agree to the principle of pursuing a Compulsory Purchase Order to facilitate the delivery of the wider Atlantic Wharf regeneration scheme.

Background

4. In November 2020, Cabinet approved the 'Preferred Bidder' developer/operator for the delivery the new Indoor Arena and authorised the Council to enter into a Pre-Contract Service Agreement (PSCA) with the Preferred Bidder. Authority was also provided to progress the land strategy to enable delivery of the Arena together with outlining the obligations that will be placed upon the Council to support the delivery of the Arena through a variety of Conditions Precedents.
5. In December 2020, Cabinet approved in principle the masterplan for the redevelopment of Atlantic Wharf and authorised the commencement of a consultation process. In addition, Cabinet also authorised the submission of a hybrid planning application to secure outline permission for the

masterplan area and detailed permission for the new Indoor Arena. At the same meeting Cabinet authorised the preparation of the Outline Business Case to bring forward a redevelopment of the Red Dragon Centre site.

6. In July 2021, Cabinet approved the Outline Business Case for the delivery and funding of the new Indoor Arena by a developer/operator consortium led by Live Nation, one of the world's leading music entertainment companies and operators and promoters of Arena/Stadia.
7. In September 2021, Cabinet approved the Full Business Case for the new Indoor Arena and confirmed the Live Nation consortium as the successful bidder. Cabinet also delegated authority to agree and execute the final documentation relating to the Development Funding Agreement for the new Indoor Arena. At the same meeting, Cabinet approved the Outline Business Case for the delivery of a new MSCP which is an obligation on the Council set out in the agreement to deliver the Arena as a Condition Precedent.
8. In March 2022, the Arena Consortium secured detailed planning consent for the new Indoor Arena and outline consent for the wider Atlantic Wharf regeneration scheme (as set out in Appendix 1). This consent requires a Planning Agreement to be signed within 6 months of the date of the permission. The parties remain on track to sign the agreement by the deadline of August 2022. The Planning Agreement places a number of obligations on the Council as landowner. The key obligation for the Council is delivery of a new Multi Storey Car Park to replace the existing surface car parking spaces adjacent to County Hall and the Red Dragon Centre. The obligations in the Planning Agreement will only become effective once the planning permission is implemented. This will require the Council to firstly sign the Development Fund Agreement (DFA) to enable the detailed designs to be completed to RIBA Stage 4 and provide a further cost underwrite in certain circumstances. Once the final designs are completed and the full and final costs are known the project will reach 'Financial Close' and the Arena Consortium will be obliged to deliver the new Indoor Arena. Although Cabinet has delegated authority for the DFA to be signed, a further report will be presented to Cabinet in the autumn to provide a comprehensive update before the DFA is signed.
9. As part of the above, the Council is currently progressing the Full Business Case for the MSCP with the procurement process intended to commence in July 2022. The Full Business Case will also be presented back to Cabinet for final approval prior to Financial Close of the new Indoor Arena.

Issues

10. As part of the development of the Full Business Case for the MSCP, the Council has been required to consider and seek to mitigate the hyper-inflation that is currently affecting most projects in the construction sector. The current estimated cost for the MSCP, following market engagement, is significantly more than the approved financial envelope.

11. The approved MSCP was designed to accommodate the required number of parking space on land in Council ownership at the time. This led to an inefficient, non-uniform shape that in the current market would be expensive to build. Further analysis also suggests the shape would create circulation issues that could affect egress at peak times.
12. The proposed MSCP is to be located predominantly on the existing Red Dragon Centre over-flow car park. In order to avoid any complications relating to the rights of existing tenants of the Red Dragon Centre, the Council is seeking to appropriate the over-flow car park for planning purposes. The Council will ensure that the current provision of circa 900 spaces is retained at all times for existing tenants through a combination of the main on-site surface car park being available for use and additional spaces provided in the adjacent MSCP on Pierhead Street to compensate for the loss of the over-flow car park whilst the new MSCP is being constructed.
13. The Atlantic Wharf masterplan is situated on land predominantly owned by the Council. However, in any acquisition of land there can be title issues including historical rights of way, leases, and sometimes minor gaps within title details due to historic individual acquisitions. A land referencing exercise will assist the Council to review and consider any title issues ahead of any potential Compulsory Purchase Order that may be required to clean-up the title.

Multi Storey Car Park (MSCP)

14. A sharp rise in the cost of traditional build projects has seen the estimated cost of the MSCP rise significantly beyond the approved financial envelope. This has led the Council to explore a more efficient design and modern construction methods as a means of reducing cost and realigning with approved budgets.
15. The initial proposed solution was to modify the shape of the building and to extend the building within the boundary of the Council current land ownership. This would require either the costly relocation of the dock feeder or an expensive build-over with a transfer slab. The requirement for a transfer slab would constrain the method of construction to the traditional build approach.
16. Confidential Appendix 2 illustrates and explains four options for delivery of the MSCP taking account of the financial and site constraints and feedback from the market both in terms of the design and the construction approaches available. The options can be summarised as follows:
 - 1) Approved Design - the MSCP solution presented as part of the approved outline planning application.
 - 2) Within the Approved Red-line Boundary - optimising the shape of the MSCP within the current red-line boundary of the approved outline application by building over the dock feeder.

- 3) Within the Approved Red-line Boundary – optimising the shape of the MSCP within the current red-line boundary of the approved outline application by building a smaller car park to avoid the need to build over the dock feeder. (*This would not meet the current obligation within the DFA which requires a minimum of 1300 spaces*).
 - 4) Extending the Red-line Boundary (through the acquisition of additional land) - optimising the shape of the MSCP and re-aligning the development to avoid the need to build over the dock feeder.
17. Option 4 is the recommended approach. Option 4 proposes the acquisition of additional land to enable the MSCP development to be rotated circa 90 degrees. The rotation of the development would allow for a much more efficient rectangular form to be delivered and would avoid the need to divert or build over the existing dock feeder infrastructure. This means a transfer slab would not be required enabling cheaper modern construction methods to be utilised.
 18. The Council is able to consider Option 4 as a solution due to progress having been made with the adjacent landowner regarding the acquisition of the freehold interest in the site. The freehold interest proposed to be acquired is marked red on the plan attached at Confidential Appendix 3. The Council has already previously acquired the long leasehold interest in this site. Draft Heads of Terms are attached at Confidential Appendix 3 and an independent external valuation is attached at Confidential Appendix 4. It is important for Cabinet to note that the cost of acquiring the freehold interest also includes an additional sum relating to the relocation of existing car parking spaces for the current owner. Confidential Appendix 3 provides an estimate of costs for undertaking these works however, it is anticipated these costs could be significantly reduced if the works are contained within the contract to deliver the MSCP development.
 19. Whilst the acquisition of the freehold interest, and the commitment to deliver the associated works, could be regarded as adding an additional burden on the financial envelope for the development, the cost of acquiring the additional plot of land will be more than adequately compensated for by the reduction in the cost of construction enabled by the use of modern construction methods. The proposed new slender rectangular form of the building will also free-up further land for development as part of the Atlantic Wharf masterplan which will also generate a capital receipt to assist with off-setting the cost of acquisition. The Full Business Case for the MSCP will include these additional acquisition costs. The intention is to present the FBC to Cabinet in late autumn demonstrating that the development, including these additional costs, can be delivered within the constraints of the existing financial envelope.

Land Strategy

20. Appendix 5 provides an illustration of the wider Atlantic Wharf masterplan area. Whilst the Council owns the majority of the land, it is prudent to undertake a land referencing exercise to ascertain ownerships and rights over the land subject to consideration for regeneration. In its capacity as

local authority, the Council has the right to pursue a Compulsory Purchase Order to acquire any parcels of land and/or any legal rights that are required to enable the regeneration.

21. It is proposed that the Council may use its powers under section 226(1)(a) of the Town and Country Planning Act 1990 in order to acquire any parcels of land in the Site, if they cannot be acquired by agreement. Under section 226(1)(a) of the Act, the Council, upon being authorised, can acquire any land in their area:

“if the Council thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in the land”.

22. The exercise of the power also requires that the Council:

“thinks, that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:

- *the promotion or improvement of the economic wellbeing of their area*
- *the promotion or improvement to the social wellbeing of their area*
- *the promotion or improvement of the environmental wellbeing of their area”*

23. The Welsh Government Circular 003/2019 “Compulsory Purchase in Wales and ‘The Crichef Down Rules (Wales Version, 2020)” sets out guidance for acquiring authorities in relation to the making of Compulsory Purchase Orders, including when it is appropriate for compulsory purchase powers to be utilised pursuant to section 226(1)(a). The Guidance sets out the key tests which need to be satisfied before a Compulsory Purchase Order will be confirmed – these are considered by the Welsh Ministers prior to deciding whether to confirm the Order and must be considered by the Council prior to the making of any Order. Further details of these tests and the justification for making the Order will be provided to Cabinet in a subsequent report if it should prove necessary to seek authority from Cabinet to make a Compulsory Purchase Order in the future. If a Compulsory Purchase Order is made it will be critical to demonstrate to the Welsh Ministers that there are no hurdles to the delivery to the Development that cannot be overcome, including the fact that planning permission has been or will be granted.

24. It is considered that the criteria within section 226(1)(a) are likely to be satisfied, as the acquisition of any outstanding interests will facilitate the delivery of significant benefits by the development, that will improve the economic, social and environmental wellbeing of the area. These benefits include:

- The delivery of an Indoor Arena with a minimum capacity of 15,000;
- The delivery of circa 2,000 jobs during the construction phase and circa 1,000 jobs during the operational phase of the Arena;
- Significant improvements to public realm in the vicinity of the Indoor Arena;
- 1,000+ new homes, re-provision and development of significant commercial and retail space.

- Improvements to transport links to the area.
25. The draft Order, Order Map and Statement of Reasons would be provided for consideration and approval by Cabinet in the event that it should prove necessary to seek authority from Cabinet to make a Compulsory Purchase Order in the future.
 26. The Council also needs to appropriate land within the site for planning purposes so that the relevant land takes the benefit of the powers within Section 203 of the Housing and Planning Act 2016 that permit private rights to be overridden. Appendix 6 provides advice on the appropriation of land within the masterplan area. Appendix 7 provides a site plan of the land proposed to be appropriated, including the Red Dragon Centre overflow car park which is required to deliver the MSCP proposal set out in Option 4 above. The Council will take active steps to negotiate a release of those rights before the powers within Section 203 are implemented.

Next Steps

27. The new Indoor Arena project and the associated Atlantic Wharf regeneration scheme is a large complex development that is progressing positively in the face of significant emerging financial pressures. In particular, the UK has seen historic levels of hyper-inflation in 2022 with some areas of construction experiencing more than 20% increases in costs within the last 12-months. The Council had hoped that the Development Fund Agreement would have been signed before June, however, a significant increase in costs had led the Arena Consortium to review their RIBA Stage 3 designs before moving on to Stage 4. It is now anticipated that the DFA will be signed before Christmas.
28. A further report will be presented to Cabinet in October setting out a new timeline for the Indoor Arena development. As part of this, a detailed update will be presented to Cabinet covering the obligations required of the Council in the Planning Agreement. Despite the delay in signing the DFA, the Planning Agreement is required to be signed under delegated authority in August 2022. However, the obligations in the Planning Agreement will not become binding on the Council until the development is implemented following Financial Close. The obligations contained in the Planning Agreement are normal planning requirements and/or have been presented to Cabinet in previous reports set out as Conditions Precedent. Consideration of these obligations will be presented to Cabinet in the form of Outline Business Cases and subsequently Full Business Cases and will include projects such as the new MSCP, the redevelopment of the Red Dragon Centre, delivery of the public realm and solutions for green space and drainage such as the proposed Lloyd George Avenue scheme.
29. Further due diligence on the detailed design undertaken in recent months has also underlined the important relationship between the new Indoor Arena project and other Council projects/decisions such as the decision on the future of County Hall, and the Heat Network project. The report in October will set out in detail the implication of these projects/decisions on the new Indoor Arena project.

Reason for Recommendations

30. To enable the acquisition of land and other land matters to support the delivery of the Atlantic Wharf regeneration scheme, one of the Council's primary regeneration priorities.

Financial Implications

31. This report provides progress updates on the Indoor Arena and associated Multi Storey Car Park (MSCP), whilst also seeking approval to acquire and appropriate relevant land parcels to progress the development. The report sets out that a business case led approach will be utilised with more detailed scheme proposals for the Multi Storey Car Park to be brought forward to Cabinet for review and approval in due course. More detailed financial implications will be provided as and when these detailed proposals are brought forward, with clear funding strategies in place to implement.
32. The table contained within Confidential Appendix 3 sets out high level cost plans for each MSCP option, concluding that option four (rotating MSCP 90 degrees and acquiring Future Inns land) is the most affordable and best value for money solution for delivering the 1,300 space MSCP in line with Council's obligations as part of Arena DFA contract.
33. To enable the commercial delivery of option four, the Council is also seeking to acquire the freehold interest of an additional piece of land to deliver revised car park layout. This report seeks delegated authority to acquire freehold of land currently owned by Future Inns in accordance with the Heads of Terms outlined in Confidential Appendix 4, and in line with the independent valuation set out at Confidential Appendix 5.
34. Funding for this acquisition will come from Arena Affordability Envelope as part of the obligations on Council to deliver a 1,300 space MSCP. The additional capital cost of land acquisition (as per Confidential Appendix 3) The enabling works to reconfigure the existing Future Inns car park (as per Confidential Appendix 3) will need to be taken into account as part of the proposed MSCP business case and options appraisal to be presented to a future Cabinet. This business case will need to demonstrate a self-financing approach to delivering a car park remains achievable and can be delivered within the limitations of Arena Affordability Envelope despite these additional capital costs, whilst also demonstrating proposed delivery mechanisms remain the best value for money solution available to the Council in meeting obligations.
35. The Council will need to assess the VAT implications arising from this land transaction and proposed development, particularly any potential impact on the Council's partial exemption position. Specialist VAT advice may need to be sought and relevant actions will need to be taken prior to the acquisition being completed and works commencing, including submission of an option to tax form to HMRC.

36. This report also seeks approval for the appropriation of land outlined for the delivery of the Multi Story Car Park (MSCP). The Council will need to make a balanced decision regarding the costs and benefits of appropriation both from a financial and non-financial perspective. Appendix 6 sets out relevant details on the case for appropriating this land for planning purposes.
37. Recent inflationary increases in construction sector have resulted in projected cost of delivery for the MSCP rising. Initial capital funding for delivery of the car park remains in place via the Arena affordability envelope, however This will directly impact the Arena Affordability Envelope, so the MSCP business case will need to demonstrate and the funding available to support this project.

Legal Implications (including Equality Impact Assessment where appropriate)

38. Section 120 of the Local Government Act 1972 enables the Council to acquire land for either (a) the benefit, improvement or development of its area or (b) for any of its functions under any enactment. Section 121 allows local authorities to acquire land compulsorily for the purposes of section 120.
39. Section 226 of the Town and Country Planning Act 1990 enables the Council to acquire land compulsorily for development and other planning purposes as defined in section 246 (1) of the Act for the promotion or improvement of the economic, social or environmental well-being of the area.
40. Section 145 of the Local Government Act 1972 enables the Council to do, or arrange for the doing of, or contribute towards the expenses of the doing of, anything necessary or expedient for the provision of entertainment of any nature or the provision of a theatre, concert hall, dance hall or other premises suitable for the giving of entertainments and any purposes incidental to that provision.
41. Section 12 of the Local Government Act 2003 enables the Council to invest (a) for any purpose relevant to its functions under any enactment or (b) for the purposes of the prudent management of its financial affairs.
42. The Cabinet needs to take account of the Council's fiduciary duties to the local residents and taxpayers. As such, proper consideration needs to be given to the risks, rewards and potential future liabilities of the proposals which are the subject of this report. The issue concerns whether the potential risks and liabilities described in the report and in the associated appendices are proportionate to securing the stated economic development objectives and thereby in the best interests of the local taxpayers and residents. Any viable alternatives for delivering the economic development objectives should be considered.

43. The Cabinet must also make its decision having due regard to the Council's public sector equality duties pursuant to the Equality Act 2010 (including specific Welsh public sector duties). This requires the Council, in the exercise of its functions, to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The protected characteristics are: age, gender reassignment, sex, race - including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief. If the recommendations in this report are accepted and when any alternative options are considered, the Council will have to consider further the equalities implication and an Equality Impact Assessment may need to be completed.
44. Equalities impact assessments will be undertaken as necessary as the development, and the proposals described within this report, are developed.
45. The Well-Being of Future Generations (Wales) Act 2015 ("the Act") places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales – a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
46. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2020-23:
- <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf>
47. The well-being duty also requires the Council to act in accordance with the 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without comprising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term;
 - Focus on prevention by understanding the root causes of problems;
 - Deliver an integrates approach to achieving the 7 national well-being goals;
 - Work in collaboration with others to find shared sustainable solutions; and
 - Involve people from all sections of the community in the decisions which affect them.

48. The Cabinet must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:
<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>
49. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language.

Property Implications

50. The subject of this report is centred around property and therefore there is no requirement for an additional comment in this respect.

HR Implications

51. There are no HR Implications.

RECOMMENDATIONS

Cabinet is recommended to:

- i) Delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Legal Officer to acquire the land illustrated etched red in the plan attached at Confidential Appendix 4 in accordance with the terms outlined in Confidential Appendix 4 and in line with the independent valuation set out at Confidential Appendix 5.
- ii) Authorise the commencement of land referencing investigations to identify any outstanding third-party interests that may need to be acquired to enable the regeneration scheme.
- iii) Approve the principal of making a Compulsory Purchase order under section 226(1) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) and the Acquisition of Land Act 1981 to seek the acquisition of land and interests within the site area shown edged red on the plan attached at Appendix 5.
- iv) Pursuant to powers under Section 122 of the Local Government Act 1972 and Section 227 Town and Country Planning Act 1990 to facilitate the redevelopment of the land for a Multi Storey Car Park to approve the appropriation of the Red Dragon Centre (RDC) over-flow car park land shown edged red on the plan at Appendix 7 for planning purposes as it is no longer required for its current purpose and note that the appropriation of the RDC for planning purposes would enable the finalisation of the Full Business Case for the Multi Storey Car Park development for presentation to Cabinet at a future meeting.

SENIOR RESPONSIBLE OFFICER	Neil Hanratty Director of Economic Development
	Date

The following appendices are attached:

- Appendix 1** - Hybrid Planning Permission (Red-line Plan)
- Confidential Appendix 2** - MSCP Feasibility Report (Capita)
- Confidential Appendix 3** - HOTs Future Inn
- Confidential Appendix 4** - Surveyors Report
- Appendix 5** - Atlantic Wharf Red-line Plan
- Appendix 6** - Appropriation Report (Bevan Brittan LLP)
- Appendix 7** - Red-line Plan

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