



Brighton & Hove
City Council

Overview & Scrutiny

Title:	Overview & Scrutiny Commission
Date:	3 March 2009
Time:	4.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Mitchell (Chairman), Alford, Bennett, Mrs Cobb, Elgood, Meadows, Morgan, Older, Pidgeon (Deputy Chairman), Randall and Wakefield-Jarrett
Contact:	Mary van Beinum Scrutiny Support Officer 01273 - 29 - 1062 mary.vanbeinum@brighton-hove.gov.uk

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AGENDA

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The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Mary van Beinum, (01273 - 29 - 1062, email mary.vanbeinum@brighton-hove.gov.uk) or email scrutiny@brighton-hove.gov.uk

Date of Publication - Tuesday, 24 February 2009

Agenda Item 90

PROCEDURAL BUSINESS

A. Declaration of Substitutes

Where a Member of the Commission is unable to attend a meeting for whatever reason, a substitute Member (who is not a Cabinet Member) may attend and speak and vote in their place for that meeting. Substitutes are not allowed on Scrutiny Select Committees or Scrutiny Panels.

The substitute Member shall be a Member of the Council drawn from the same political group as the Member who is unable to attend the meeting, and must not already be a Member of the Commission. The substitute Member must declare themselves as a substitute, and be minuted as such, at the beginning of the meeting or as soon as they arrive.

B. Declarations of Interest

- (1) To seek declarations of any personal or personal & prejudicial interests under Part 2 of the Code of Conduct for Members in relation to matters on the Agenda. Members who do declare such interests are required to clearly describe the nature of the interest.
- (2) A Member of the Overview and Scrutiny Commission, an Overview and Scrutiny Committee or a Select Committee has a prejudicial interest in any business at meeting of that Committee where –
 - (a) that business relates to a decision made (whether implemented or not) or action taken by the Executive or another of the Council's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken the Member was
 - (i) a Member of the Executive or that committee, sub-committee, joint committee or joint sub-committee and
 - (ii) was present when the decision was made or action taken.
- (3) If the interest is a prejudicial interest, the Code requires the Member concerned:-
 - (a) to leave the room or chamber where the meeting takes place while the item in respect of which the declaration is made is under consideration. [There are three exceptions to this rule which are set out at paragraph (4) below].
 - (b) not to exercise executive functions in relation to that business and
 - (c) not to seek improperly to influence a decision about that business.

(4) The circumstances in which a Member who has declared a prejudicial interest is permitted to remain while the item in respect of which the interest has been declared is under consideration are:-

(a) for the purpose of making representations, answering questions or giving evidence relating to the item, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, BUT the Member must leave immediately after he/she has made the representations, answered the questions, or given the evidence,

(b) if the Member has obtained a dispensation from the Standards Committee, or

(c) if the Member is the Leader or a Cabinet Member and has been required to attend before an Overview and Scrutiny Committee or Sub-Committee to answer questions.

C. Declaration Of Party Whip

To seek declarations of the existence and nature of any party whip in relation to any matter on the Agenda as set out at paragraph 8 of the Overview and Scrutiny Ways of Working.

D. Exclusion of press and public

To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is confidential and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

OVERVIEW AND SCRUTINY COMMISSION

Agenda Item 91

Brighton & Hove City Council

Subject:	Request for Call-in of the 12 February 2009 Cabinet Decision on the Disposal of the Ice Rink, Queen Square		
Date of Meeting:	03 March 2009		
Report of:	The Director of Strategy and Governance		
Contact Officer:	Name: Tom Hook	Tel: 29-1110	
	E-mail: Tom.hook@brighton-hove.gov.uk		
Wards Affected:	St Peters & North Laine		

FOR GENERAL RELEASE

Note:

The Special Circumstances for non-compliance with council Procedure Rule 23, access to Information and Section 100B(4) of the Local Government Act as amended (items not considered unless the agenda is open for inspection at least 5 days in advance of the meeting) are that the additional information supplied by the Director of Finance and Resources was not available in time for the despatch of the agenda.

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To determine whether to ask the Cabinet to reconsider its decision in relation to the disposal of the Ice Rink, Queen Square, which was taken at the 12 February 2009 Cabinet meeting.
- 1.2 The following information is contained in the appendices to this report:
 - (a) **Appendix 1** to the report contains the Call-In request;
 - (b) **Appendix 2** to the report contains an extract from the draft minutes from the Cabinet meeting of 12 Feb 2009;
 - (b) **Appendix 3** to the report contains the official record of the Cabinet's decision on this matter;
 - (c) **Appendix 4** to the report contains the report from the Director of Finance and Resources which was agreed at the 12 February 2009 Cabinet meeting (including a map of the site appended to the original report);

(d) **Appendix 5** to the report contains confidential material presented to the 12 February Cabinet meeting;

(e) **Appendix 6** to the report contains further information on this issue supplied by the Director of Finance and Resources.

2. RECOMMENDATIONS:

- 2.1 (a) To note the decision taken by the Cabinet on February 12 2009 in relation to the disposal of the Ice Rink, Queen Square;
- (b) To note the subsequent Call-In request;
- (c) To note the additional information supplied by the Director of Finance and Resources.
- 2.2 Having regard to the grounds for Call-In, to determine whether to refer the decision back to the Cabinet for reconsideration.

3. BACKGROUND INFORMATION

- 3.1 On February 12 2009, the Cabinet agreed a report on plans for the disposal of the former Ice Rink, Queen Square. (This report is reprinted in **Appendix 4** and confidential elements of the report in **Appendix 5**. An extract from the draft minutes is printed as **Appendix 2** to this report, and the official record of the Cabinet's decision is printed as **Appendix 3**).
- 3.2 Further information relating to this matter has been provided by the Director of Finance and Resources (this is contained in **Appendix 6** to this report).
- 3.3 On February 17 2009, Councillors Pete West, Amy Kennedy, Ian Davey, Georgia Wrighton, Jason Kitcat, Keith Taylor, Sven Rufus, Bill Randall, Rachel Fryer, Vicky Wakefield-Jarrett, Paul Steedman and Ben Duncan wrote to the Chief Executive, requesting that the Cabinet Decision be called in. (The Call-In request is reprinted as **Appendix 1** to this report.)
- 3.4 The Chief Executive accepted the Call-In request on 20 February 2009 and asked for a Special Meeting of the Overview & Scrutiny Commission to be called within seven working days.

- 3.5 Call-In is the process by which Overview & Scrutiny Committees can recommend that a decision made (in connection with Executive functions) but not yet implemented be reconsidered by the body which originally took the decision.
- 3.6 Call-In should only be used in exceptional circumstances, for instance where there is evidence that an important decision was not taken in accordance with the Council's constitution.
- 3.7 An Overview & Scrutiny Committee examining a decision which has been Called-In does not have the option of substituting its own decision for that of the original decision. The Overview & Scrutiny Committee may only determine whether or not to refer the matter back to the original decision making body for reconsideration.
- 3.8 In determining whether to refer a decision back to its originating body for reconsideration, the Overview & Scrutiny Committee should have regard to the criteria for Scrutiny reviews, as set out in the Council's constitution (Part 6.4.2). In addition, the Committee should take into account:
- Any further information which may have become available since the decision was made
 - The implications of any delay; and
 - Whether reconsideration is likely to result in a different decision.
- 3.9 More information about the Call-In process is contained in the Council's constitution (Part 6.16).

4. CONSULTATION

- 4.1 No formal consultation has been undertaken in regard to this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 Implications of any delay

As a land owner, the Council are obliged to make best use of their assets and have an obligation to achieve the "best consideration," reasonably obtainable, as set out in the legal implications in the Cabinet report. A strict timetable has been set down for the developer to meet after Cabinet approval had been granted, as the disposal is

subject to planning consent and contract which is customary for property disposals. A referral back to Cabinet would delay the start of the consultation and planning process by the developer and could have a knock on effect in delaying the capital receipt.

Delay might also have the effect of dissuading the developer or the other short listed bidders from continuing with their interest in the site. Failure to proceed swiftly with the disposal may further risk the loss of the opportunity to redevelop the site and capital receipt. It could also jeopardize the future prospects of redeveloping this derelict site as the recession worsens.

Legal Implications:

- 5.2 Under the Council's Overview and Scrutiny Procedure Rules 16.8, if the Committee has ongoing concerns, it has power to refer the decision back to Cabinet for reconsideration, setting out those concerns. Where the Committee wishes to discuss matters raised in a Part 2 report it will be necessary to hear those issues in Part 2 session.

Equalities Implications:

- 5.3 There are no direct equalities implications to this report, although the 12 February 2009 Cabinet decision was made with regard to the equalities implications contained within the original report of the Director of Finance and Resources (see **appendix 4**).

Sustainability Implications:

- 5.4 There are no direct sustainability implications to this report, although the 12 February 2009 Cabinet decision was made with regard to the sustainability implications contained within the original report of the Director of Finance and Resources (see **appendix 4**).

Crime & Disorder Implications:

- 5.5 There are no direct crime & disorder implications to this report, although the 12 February 2009 Cabinet decision was made with regard to the crime & disorder implications contained within the original report of the Director of Finance and Resources (see **appendix 4**).

Risk and Opportunity Management Implications:

- 5.6 The Call-In procedure seeks to provide a system via which important decisions can be re-examined in a timely fashion, so as to ensure that the Council is not unnecessarily exposed to risk associated with taking decisions contrary to established procedure, whilst also minimising risk inherent in unduly delaying the decision making process.

Corporate / Citywide Implications:

- 5.7 The decision on how to dispose of the Ice Rink is a significant one as the appropriate disposal/development of this important city centre site could serve to boost the city's economy.

SUPPORTING DOCUMENTATION

Appendices:

1. The request for Call-In;
2. An extract from the draft minutes of the 12 February 2009 Cabinet meeting;
3. The official record of the Cabinet decision in relation to this report;
4. The Director of Finance and Resources report (to the 12 February 2009 cabinet meeting): Ice Rink, Queen Square - Update on Disposal;
5. Confidential information relating to the Ice Rink, Queen Square - Update on Disposal report;
6. Additional information on this matter from the Director of Finance and Resources, with Annexes.

Documents in Members' Rooms:

There are none.

Background Documents:

1. The Council's constitution (May 2008).

Alex Bailey
Acting Chief Executive
Brighton & Hove Council
King's House, Hove

17th February 2009

Request for Call-in of Cabinet decision Ice Rink, Queen Square

Dear Mr Bailey,

Please consider our request for a Call-in for scrutiny by the relevant Overview and Scrutiny Committee, of the decision taken by Cabinet on 12th February 2009 regarding the Ice Rink, Queen Square, Brighton.

In requesting a Call-in we believe that the Cabinet have failed to follow the expectations of Article 13.01 of the Council's Constitution on two accounts: a) in regard to due consultation and b) presumption towards openness.

a) failure to consult

In compiling the report presented at Cabinet and the informal planning brief, no consultation took place with ward councillors or other effected parties (eg. the SNCGSA, Wykeham Terrace Residents Association Ltd or St Nicholas Church PPC). At the meeting, the Leader of the Council, Cllr Mary Mears, admitted that ward councillors had not been consulted, and while making an apology stated how seriously she regards the importance of consulting with ward councillors and others.

b) failure to be open

In failing to involve the ward councillors and the other effected parties in the development of the report and the informal planning brief for the proposed development site, the Cabinet has failed the presumption towards openness.

There was also a failure on the part of Cllr Mears, as Chair of the Cabinet, to ensure that the Cabinet made the decision with full knowledge of the relevant background information - including the planning brief which is cited but not appended to the papers considered (nor is this even listed as a background document, and so wasn't made available to members).

This is especially important as we feel the summary of the planning brief as laid out in the main body of the report is not correct on a number of accounts.

Of particular relevance is the failure of the report to accurately reflect all the reasons given in the planning brief for the failure of a previous proposed development. No reference is made to the important statement: "... the

preferred developer eventually withdrew from the scheme. This was partly on account of the need to scale back the size of their proposed scheme to meet the concerns of the local planning authority's officers in respect of visual impact on nearby Grade II listed buildings on Wykeham Terrace, ...". Readers are therefore left with the false impression that the only reason the previous proposal failed was because the scheme didn't overcome the D2 designation - a matter which the current proposal, we are amply informed, will successfully address.

Moreover, the report notes that the proposed development is "... for a high quality hotel scheme of approximately 85 rooms arranged over 5/6 floors...", yet fails to mention the planning brief's extensive arguments for limiting the highest point of the development to just 4 storeys.

We do not therefore believe Cabinet were in a position to make an informed and impartial decision.

We believe that our request satisfies the criteria for Call-in in that the decision by Cabinet was not taken in accordance with Article 13 of the Constitution (Para. 16.2, Part 6.1 Overview and Scrutiny Functions and Procedures).

If our Call-in request is accepted we would like to suggest that when the relevant Overview and Scrutiny Committee is considering whether or not to refer the decision back (Para. 16.7, Part 6.1 Overview and Scrutiny Functions and Procedures), then it may wish to take account of the possibility for a fresh decision following consultation on the planning brief and Cabinet report. In particular that fresh decision could include the recommendation to formalise the planning brief, with for example, a strict limit of 4-storeys placed upon the maximum height of any development.

Yours sincerely,

1. Cllr Pete West
2. Cllr Amy Kennedy
3. Cllr Ian Davey
4. Cllr Georgia Wrighton
5. Cllr Jason Kitcat
6. Cllr Keith Taylor

7. Cllr Sven Rufus
8. Cllr Bill Randall
9. Cllr Paul Steedman

For general release

**EXTRACT FROM THE PROCEEDINGS OF THE CABINET MEETING HELD ON
12 FEBRUARY 2009**

Present: Councillors Mears (Chairman), Mrs Brown, Caulfield, Fallon-Khan, Kemble,
K Norman, Simson, Smith and Young

Also in attendance: Councillors Kennedy (Green Party Spokesperson), Mitchell
(Opposition Spokesperson) and Watkins (Liberal Democrat
Spokesperson).

Other Members present: Councillor Cobb

PART ONE

172 ICE RINK, QUEEN SQUARE, UPDATE ON DISPOSAL

- 172.1 The Cabinet considered a report of the Interim Director of Finance & Resources that sought approval for the disposal of the Ice Rink Site and the adjoining office building at 11 Queen Square, Brighton (for copy see minute book).
- 172.2 The Chairman invited Councillor West to address the meeting.
- 172.3 Councillor West spoke as a Ward Councillor and on behalf of concerned residents in the neighbourhood. He recognised the need for development in the city, but was concerned that residents had not been consulted at this stage. He appreciated that the majority of concerns raised were pertinent directly to the Planning Committee but felt that, given the sensitive nature of the area and the number of existing community groups, that consultation at this stage would have been beneficial.
- 172.4 Councillor West noted that the report contained reference to a proposed five or six storey building. This, he stated, was contrary to the council's own planning guidance. He felt that a proposal of this type would struggle to obtain planning consent and could have deleterious consequences for future proposals for the site. Councillor West requested that that the recommendations made in the report not be approved.
- 172.5 Councillor West noted that the report stated that Ward Councillors had been consulted; he explained that this was not the case.

172.6 Councillor Fallon-Khan apologised for the erroneous information contained within the report as regards consultation with Ward Members. He accepted that this had not happened.

172.7 Councillor Fallon-Khan noted that the recommendation to dispose of the long leasehold interest did not pre-judge the outcome of the planning process, or fetter planning officers in assessing the merits of the proposed scheme in making their recommendation to the planning committee. The sale was subject to planning consent which had to be obtained following consultations by the developer with interested parties.

172.8 Councillor Fallon-Khan understood that all of the interested parties had copies of the informal planning brief and understood the factors constraining the development of the site. He appreciated the concerns expressed about a possible 6 storey development, noting that none of the sketch proposals envisages 6 storeys above ground level.

172.9 Councillor Mitchell welcomed the development of the site, but questioned the lack of consultation with local groups. She was also concerned about the sensitivity of the location, noting the church and churchyard in the immediate vicinity.

172.10 Councillor Mitchell asked which background documents had been referenced to support the provision of additional hotel bed spaces in the city.

172.11 Councillor Fallon-Khan appreciated the need for sensitive development in the area and the specific issues relating to the church and its environs. He ensured Members that there would be proper consultation at the appropriate time.

172.12 Councillor Kemble noted that a Local Development Framework document contained reference to the number of bed spaces designated for the city. He requested that officers provide the information to Councillor Mitchell.

172.13 **RESOLVED** - That, having considered the information and the reasons set out in the report, the Cabinet accepted the following recommendations:

(1) That Cabinet approve and authorise

(a) the disposal of the Ice Rink site and 11 Queen Square on a 150 year lease to the successful bidder for a premium and a peppercorn rent, following the full evaluation of informal bids and recommendations by the council's appointed agents, Oakelys, as outlined in item 3.9 of this Agenda and detailed in the part two report.

(b) the detailed terms to be settled by the Director of Finance & Resources, Assistant Director Property & Design and the Solicitor to the

Council provided the terms are certified by the valuer to be the best consideration reasonably obtainable.

- (2) Should the disposal to the preferred party not be completed, to approve and authorise the disposal to either of the short listed parties, or other bidders on similar terms with an agreed target premium.

Decision No: CAB – 73

KEY

Forward Plan No: CAB 7173

This record relates to Agenda Item 173 on the agenda for the Decision-Making

RECORD OF CABINET DECISION

DECISION-MAKER: CABINET

PORTFOLIO AREA:

SUBJECT: ICE RINK, QUEEN SQUARE, UPDATE ON DISPOSAL

AUTHOR: ANGELA DYMOTT

THE DECISION

Cabinet accepted the recommendations as set out in the report.

REASON FOR THE DECISION

- (1) To regenerate this area of the City, opening up the site to the north allowing more permeability to the site and enabling environmental improvements to create a lively south facing square.
- (2) To make best use of an existing asset and provide employment opportunities for the City encouraging local small businesses and apprenticeship training opportunities in construction.
- (3) The level of interest in the site has been good and the offers encouraging in the present economic climate. By initiating the development process now there is potential for the scheme to take advantage of an improving market when it comes. There is unlikely to be any higher price to be achieved in the near future from residential or office developers as these markets have some way to go before recovering.
- (4) Delay in disposing of the site will leave the Council with on going security and safety problems with the buildings and postpone the opportunity to improve safety and the general environment of the Square and Church yard.

DETAILS OF ANY ALTERNATIVE OPTIONS

- (1) The bids that have been submitted have been encouraging despite the impact of the credit crunch and the poor economic background. Due to the uncertain current property market the council asked its agents to carry out thorough due diligence before making their recommendations.
- (2) With the backdrop of the 'credit crunch' market conditions have been extremely difficult during 2008 and have resulted in a whole sale withdrawal from the development market in most property sectors, perhaps with exception in the hotel, restaurant and entertainment sectors. This is a reflection of the fall in the demand for both residential property and the lack of confidence in the business sector, whether this be commerce or retail, resulting in significant falls in value through 2008.
- (3) If the disposal falls through the alternative options available to the Council are :-
 - (a) Negotiate with short listed parties: Re-visit the other short listed parties bids and explore the possibilities of negotiating acceptable terms with other bidders with a target premium over a similar range.
 - (b) Submit a Planning Application for the site: this would remove some uncertainty for the successful developer but would not be appropriate for every party. There is the likelihood that a further planning application would be made varying the planning permission negating the time saved. The estimated cost for a full planning application with an Environmental Assessment is £100,000 which may not be fully recovered by any increase in the price.
 - (c) Set up Joint Venture to deliver planning permission and potentially develop: this would be undertaken by approaching selected parties of sufficient standing. It would involve a more complicated legal structure and documentation. There would be a share in the potential upside to compensate for a lower current price but the Council would not receive 100% of the uplift in land values if market conditions improve.
 - (d) Wait until the economy improves before going back to the market: This may not be until late 2009 /2010 and this option remains open if the current disposal does not proceed. There is no guarantee that a higher price would be achieved nor that market conditions will improve in the near future. In the meantime the property would remain vacant and vulnerable to vandalism and security problems.

OTHER RELEVANT MATTERS CONCERNING THE DECISION

None

CONFLICTS OF INTEREST

None

CONFIRMED AS A TRUE RECORD:

We certify that the decision this document records was made in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and is a true and accurate record of that decision

Date:

12 February 2009

Decision Maker:

Councillor Mary Mears
Leader of the Council

Signed:



Proper Officer:

12 February 2009

Mark Wall, Head of Democratic Services

Signed:



SCRUTINY

Note: This decision will come into force at the expiry of 5 working days from the date of the meeting at which the decision was taken subject to any requirement for earlier implementation of the decision.

Or: This decision is urgent and not subject to call-in (date of CE's agreement to urgency of decision).

Call-In Period

12-19 February 2009

Date of Call-in *(if applicable) (this suspends implementation)*

Call-in Procedure completed *(if applicable)*

Call-in heard by *(if applicable)*

Results of Call-in *(if applicable)*

Subject:	Ice Rink, Queen Square - Update on Disposal	
Date of Meeting:	Cabinet 12 February 2009	
Report of:	Director of Finance & Resources	
Contact Officer:	Name:	Angela Dymott
		Ralph Long: 291442
	E-mail:	Ralph.long@brighton-hove.gov.uk
Key Decision:	Yes	CAB 7173
Wards Affected:	St Peters & North Laine	

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 To advise Cabinet on the present position and seek approval for the disposal of the Ice Rink Site and the adjoining office building at 11 Queen Square, Brighton. The site has remained vacant and derelict for some years and this proposal will regenerate a critical City centre site encouraging ways through to the North of the site and affording substantial opportunities for environmental improvements to this south facing square. The report is complemented by a report in Part Two of the Agenda.

2. RECOMMENDATION:

- 2.1 That Cabinet approve and authorise
- a) the disposal of the Ice Rink site and 11 Queen Square on a 150 year lease to the successful bidder for a premium and a peppercorn rent, following the full evaluation of informal bids and recommendations by the council's appointed agents, Oakelys, as outlined in item 3.9 of this Agenda and detailed in the part two report.
 - b) the detailed terms to be settled by the Director of Finance & Resources, Assistant Director Property & Design and the Solicitor to the Council provided the terms are certified by the valuer to be the best consideration reasonably obtainable.
- 2.2 Should the disposal to the preferred party not be completed, to approve and authorise the disposal to either of the short listed parties, or other bidders on similar terms with an agreed target premium.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1** The site of 0.2 acres (0.08 Ha) is located at the end of Queen's Square in the City Centre, immediately to the north of Western Road and Churchill Square. The site is shown by bold outline on the attached plan. The Ice Rink has been vacant since 2003 and was marketed for disposal on a long lease in 2004. The previous planning requirement for the ground floor limited to D2 purposes (Assembly and Leisure) has imposed constraints on developers. Consequently previous attempts at disposal of the site in 2004 -2006 ended in developers being unable to secure a D2 use on the ground floor and withdrawing from the deal, thus leaving the ice rink site vacant and derelict.

Planning

- 3.2** The established land use of the former ice rink site is D2 (Assembly and Leisure). The adjoining building at 11 Queen Square is occupied as offices within Use Class B1. For planning purposes the ice rink would be affected by Local Plan policy SR21 which limits the loss of indoor recreation facilities. To the west of the site are Grade II listed buildings on Wykeham Terrace. To the north of the site is the historic Churchyard of St Nicholas within the Clifton Hill Conservation Area and the Church itself is Grade II Listed. Other tombs and the flint boundary walls are Listed by virtue of being pre-1947 structures within the curtilage of the listed church.
- 3.3** Since the previous unsuccessful marketing, Property & Design have been working with the Planning team exploring a definitive use for the site. The council owns the adjoining office building at 11 Queen Square and following an asset management review it was decided to include this building in the marketing package thus affording a mixed use redevelopment of the site and further increasing the possible options for the site.
- 3.4** An updated informal planning brief has been developed with the planning team to support the re-marketing of the site. In this, the planning team have indicated improvements to the environment to offset the loss of leisure use of the ice rink. These include a scheme to help redefine St Nicholas Churchyard as a safe, accessible and well used public open space for the City centre and local residents which could be achieved by incorporating a pedestrian/cycle route through the Ice Rink site linking the churchyard and Queen Square.
- 3.5** The brief has been further broadened to include retail or café/food and drink type uses on the ground floor that could act as a magnet for pedestrian flow through Queen Square and provide passive surveillance for users of the Churchyard. The upper floors could be developed for hotel, residential or office use and again this could provide passive surveillance of the Churchyard.

Marketing

- 3.6** In April 2008 local and London agents were approached for their interest in acting for the Council in marketing the site and local agents Oakleys were appointed. Following a period of conducting surveys and assembling information the marketing campaign was launched on the open market in September 2008. The property was offered for sale by way of an informal tender and interested parties were requested to put forward their financial and development proposals by 7th November 2008.
- 3.7** A total of 10 submissions were made and the majority of the bids and the 5 highest were for hotel schemes. Other uses included residential office and medical clinic all of which were in the bottom half of the bids.
- 3.8** From the 10 submissions a short list of 3 were identified by an assessment of the merits of the proposals and the price offered against the evaluation model. The short-listed bidders were invited for interview on 8th December 2008 with a panel comprising Council officers and the agents Oakleys. The interview process involved a question and answer session using the criteria of the evaluation model with a matrix of scoring based on the 8 criteria weighted as follows :track record 10% ; deliverability 15% ; price 15% ; funding 15% ; planning 15% ; quality 10% ; added value 10% ; timing 10%.
- 3.9** Following evaluation of the bids and interviews the council's agent's recommendation is to proceed with highest scored developer as the preferred purchaser for the site with the bid being subject to planning, contract and a preliminary timetable. The timetable has ambitious milestones for exchange of contract - March 2009, submission of Planning application - May 2009 with completion of sale to take place on receipt of planning permission within 2009/10. A separate Section 106 contribution will be paid by the developer.
- 3.10** The proposal is for a high quality hotel scheme of approximately 85 rooms arranged over 5/6 floors with restaurant facilities/bar/café on the part lower ground and ground floors. A walkway is proposed providing pedestrian and cycle access to St Nicholas Churchyard and providing a link through to Queen Square converting it from a cul de sac into a thoroughfare. The architects for the scheme are an international firm of architects who have a local office in the City. They are considering both a pre-let to a high quality restaurant operator or running the restaurant as part of their business.
- 11 Queen Square, Brighton**
- 3.11** 11 Queen Square is currently occupied as offices by Youth Advocacy and Participation (YAP) a CYPT/ Council service who provide advice and support to young people. The premises are let to YAP on a full repairing lease and have recently had structural and heating problems with the building which also does not have suitable access requirements. CYPT and Property & Design have been working together to relocate this function to more suitable premises and a letting has been agreed on the first floor of Ovest House, West Street with an anticipated relocation date of February 2009.

4 CONSULTATION

- 4.1** Consultations have been held with our appointed agent Oakley, the potential bidders, the planning team, economic development and CYPT and local Ward Councillors.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1** The disposal on long leasehold will generate a significant capital receipt, less associated fees, in connection with the disposal of the site. The council currently receives rent for the offices at 11 Queens Square, part of the capital receipt will be used to repay debt or generate interest to offset the loss of rent. The remaining net capital receipt will be needed to support the corporate Strategic Investment Fund for future years.

Finance Officer consulted: James Hengeveld Date: 15th January 2009

Legal Implications:

- 5.2** S 123 of the Local Government Act 1972 enables the Council to sell this property provided it achieves the best consideration reasonably obtainable. It is not considered that any individual's Human Rights Act rights will be adversely affected by the recommendation in this report.

Lawyer consulted: Anna Mackenzie Date: 15th January 2009

Equalities Implications:

- 5.3** The planners would require any development to incorporate improved access for all to include disabled access requirements, level and ramped access and cycle access.

Sustainability Implications

- 5.4** The site is in a sensitive location, within the City centre being close to St. Nicholas churchyard within the Clifton Hill Conservation Area and listed buildings in Wykeham Terrace.

Crime & Disorder Implications:

- 5.5** The site is vacant (apart from 11 Queen Sq) and there will be continuing issues of security and dereliction whilst the site remains undeveloped. The lack of public presence in St Nicholas churchyard will continue to be a problem and pose a risk to those who do use it.

Risk & Opportunity Management Implications:

- 5.6** The risks are dependant on the wider economic climate, property market conditions, the timing of the disposal, not achieving 'best consideration', obtaining planning consent, withdrawal of the developer selected and the site remaining vacant.

Corporate / Citywide Implications:

5.7 The disposal of properties is part of the corporate asset management process to ensure efficient and effective use of assets. This contributes to the regeneration of the City, the Council's strategic priorities and the increased opportunities for employment.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 The bids that have been submitted have been encouraging despite the impact of the credit crunch and the poor economic background. Due to the uncertain current property market the council asked its agents to carry out thorough due diligence before making their recommendations.

6.2 With the backdrop of the 'credit crunch' market conditions have been extremely difficult during 2008 and have resulted in a whole sale withdrawal from the development market in most property sectors, perhaps with exception in the hotel, restaurant and entertainment sectors. This is a reflection of the fall in the demand for both residential property and the lack of confidence in the business sector, whether this be commerce or retail, resulting in significant falls in value through 2008.

6.3 If the disposal falls through the alternative options available to the Council are :-

- a) *Negotiate with short listed parties* : Re-visit the other short listed parties bids and explore the possibilities of negotiating acceptable terms with other bidders with a target premium over a similar range.
- b) *Submit a Planning Application for the site*: this would remove some uncertainty for the successful developer but would not be appropriate for every party. There is the likelihood that a further planning application would be made varying the planning permission negating the time saved. The estimated cost for a full planning application with an Environmental Assessment is £100,000 which may not be fully recovered by any increase in the price.
- c) *Set up Joint Venture to deliver planning permission and potentially develop*: this would be undertaken by approaching selected parties of sufficient standing. It would involve a more complicated legal structure and documentation. There would be a share in the potential upside to compensate for a lower current price but the Council would not receive 100% of the uplift in land values if market conditions improve.
- d) *Wait until the economy improves before going back to the market*: This may not be until late 2009 /2010 and this option remains open if the current disposal does not proceed. There is no guarantee that a higher price would be achieved nor that market conditions will improve in the near future. In the meantime the property would remain vacant and vulnerable to vandalism and security problems.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1** To regenerate this area of the City, opening up the site to the north allowing more permeability to the site and enabling environmental improvements to create a lively south facing square.
- 7.2** To make best use of an existing asset and provide employment opportunities for the City encouraging local small businesses and apprenticeship training opportunities in construction.
- 7.3** The level of interest in the site has been good and the offers encouraging in the present economic climate. By initiating the development process now there is potential for the scheme to take advantage of an improving market when it comes. There is unlikely to be any higher price to be achieved in the near future from residential or office developers as these markets have some way to go before recovering.
- 7.4** Delay in disposing of the site will leave the Council with on going security and safety problems with the buildings and postpone the opportunity to improve safety and the general environment of the Square and Church yard.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan of site

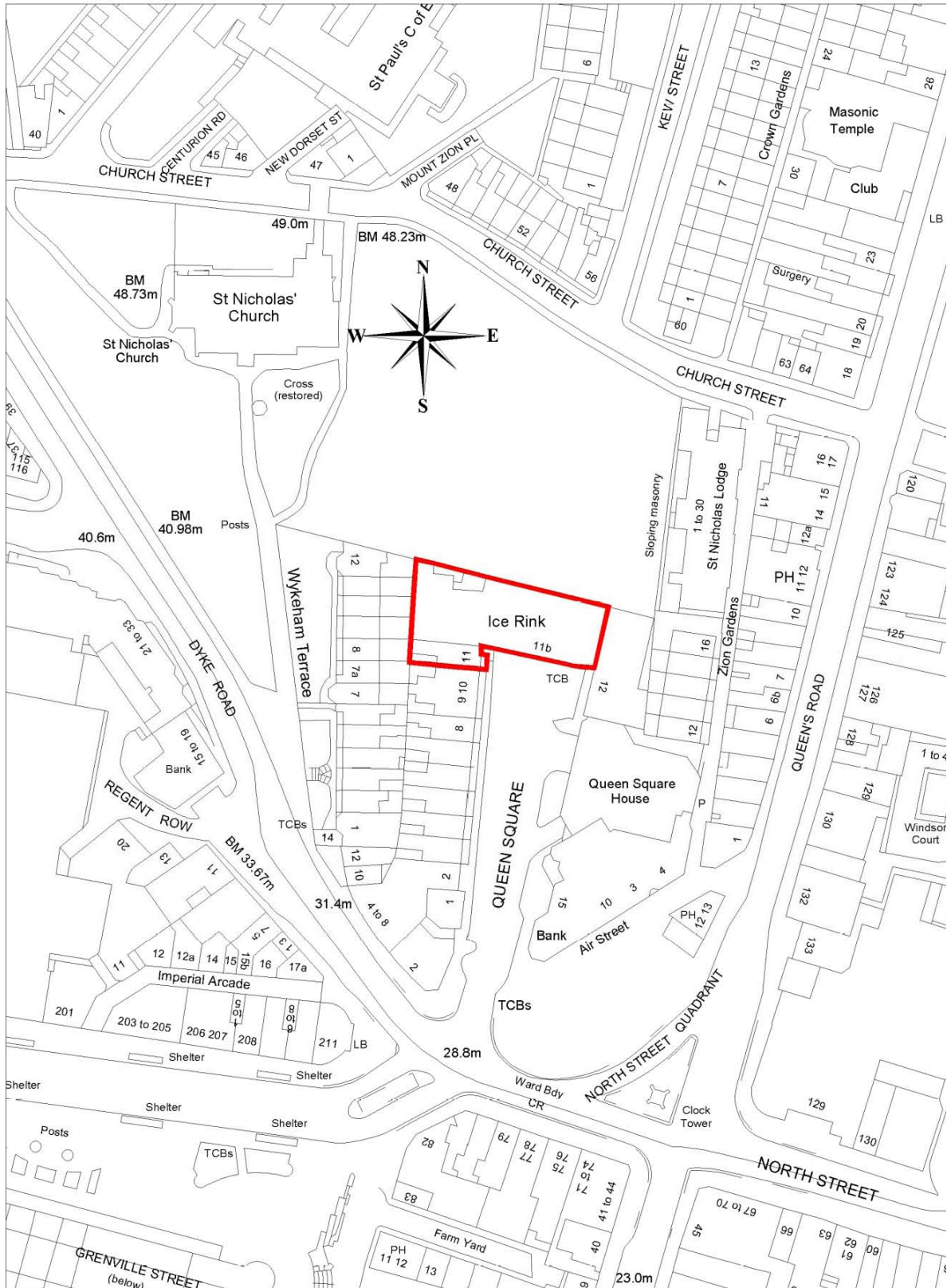
Documents In Members' Rooms

1. None

Background Documents

1. None

Queen Square Ice Rink & 11, Queen Square



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Brighton & Hove

Date: 06/06/07

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