

Subject:	Circus Street Redevelopment		
Date of Meeting:	23 March 2017		
Report of:	Executive Director for Economy Environment & Culture		
Contact Officer:	Name:	Alan Buck	Tel: 01273 293451
	Email:	alan.buck@brighton-hove.gov.uk	
Ward(s) affected:	Queens Park		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The report informs the committee of changes to the Circus Street project, following the decision by the University of Brighton (“the University”) to seek a withdrawal from the current Development Agreement (between the council, the university and Cathedral (Brighton) (“Cathedral”)). The University wishes to reconsider its development options for its proposed academic site in the light of its current landholdings, recent estates investments and as part of a wider strategic assessment of its future development needs.
- 1.2 The report requests authority for the council to agree an appropriate land deal between the three parties and a revised Development Agreement between the Council and Cathedral that will enable construction work to commence at the beginning of May, to bring forward all elements of the mixed use development (aside from the academic building) while enabling the university to reconsider its future university-related development options for the academic site.

2. RECOMMENDATIONS:

- 2.1 That the committee agrees to a Deed of Variation to the existing Development Agreement that will enable the University to withdraw as a development partner.
- 2.2 That the land transfers as per the existing Development Agreement remain unchanged. The University Annex site to be transferred to the council’s ownership, appropriated by Cathedral for demolition and construction as per the current planning permission, and the land allocated for the university’s proposed academic building to be transferred from the council to the university, for future development by the university.
- 2.3 That delegated authority is granted to the Executive Director Economy, Environment & Culture and the Executive Lead Officer, Strategy Governance and Law to agree and/or sign any necessary legal documentation to enable the necessary land transactions to take place and for the Development Agreement to go unconditional.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Circus Street regeneration project is a longstanding strategic objective for the council. It involves a comprehensive mixed use development on three sites: the former Municipal Wholesale Market and Carlton Hill Car Park (both owned by the council) and the University's Annex Building (owned by the university).
- 3.2 The project has been through various changes over the years since 2005 when Cathedral (now part of U+I plc) was successful in being appointed by the council and the University, following the production of a development brief and a procurement exercise for a development partner. The land was appropriated for planning purposes in 2008, a revised financial offer from Cathedral was agreed in 2010 (following the economic recession that commenced in 2008), a design approved in 2013 (to RIBA Stage D), planning permission granted (subject to a Section 106 agreement) in 2014 and the Section 106 signed-off in 2015.
- 3.3 The planning permission is for a high density mixed use development comprising housing, student accommodation, offices, commercial/retail units, an academic building for the University and a Dance Studio.
- 3.4 Over the last two years the developer has been working to reach a position whereby it can finalise and let the construction contract. A high rate of construction cost inflation has made it difficult for Cathedral to reach a position whereby viability can be achieved, despite considerable work by its team in identifying best-value supply-chains and undertaking value engineering to reduce costs without compromising quality.
- 3.5 In September 2016 Cathedral advised the council and the University that, despite its best endeavours in working with its contractors, it had been unable to secure a viable build price. It therefore intended to retender the construction contract, as it was confident that the work already undertaken to reduce costs and identify supply-chains for construction materials, coupled with a changed market situation, would yield a successful outcome.
- 3.6 Shortly after Cathedral revealed its decision to retender, the University advised the partners of its intentions to reconsider the nature of its proposed academic building (that had been intended to provide its new library facility and academic floorspace). This was partly the result of the various delays in realising the project since its inception in 2005 (with the world economic situation following the 2008 'crash' being a major contributory factor), the development of revised plans thereafter and the consequent need for the University to invest in alternative premises to meet its ongoing operational needs. At this point in time, therefore, the University has made the decision to put its plans for Circus Street on hold, pending a review of its wider estates strategy.

- 3.7 While the University considers its potential future development options for the academic site, it is working co-operatively with the council and Cathedral to ensure that construction on the remainder of the long-awaited mixed use development can commence. While it intends to withdraw from the Development Agreement, the University has advised that it will continue to require the academic site as a landholding to meet future needs. This will provide it with the option to bring forward its academic building at a future date, although at this point in time it is not known whether its future needs would accord with the same details as the building that has received planning permission, or whether permission for a revised planning permission would be sought. In the meantime, re-phasing the academic building from the start to the end of the build programme would enable other elements of the current planning permission to proceed (subject to the agreement of the Local Planning Authority).
- 3.8 The three parties are therefore continuing to work towards a land deal as per the existing Development Agreement, with the net end-result (following construction of all elements bar the academic building) that the developer obtains a 250 year lease on the majority of the site (with the council as freeholder) the council obtains the freehold of the Dance Space (granting a lease to South East Dance) and the University obtains the freehold of the site identified for the academic building.
- 3.9 A plan showing the overall land transfers between the three parties is shown at Appendix 1. Appendix 2 highlights the land to be sold by the council to the University, while Appendix 3 highlights the land to be sold by the University to the council.
- 3.10 Pending the future development of the academic site for a University-related use, it is intended that the site be occupied by the developer and used as a construction compound during the build programme, following which it would be landscaped and managed by them as open space for the benefit of the wider development (under license from the University).
- 3.11 The three parties have been working to secure an outcome whereby the Development Agreement can become unconditional by 24 April 2017. It is important to achieve this deadline to enable the developer to finalise the letting of its construction contract and for construction work to commence at the start of May. The developer has advised that this commencement date is crucial for it to meet its obligations to student housing provider Kaplan, for the accommodation to be completed in time for occupation in September 2019 (the start of the academic year).
- 3.12 In order to provide the council with sufficient confidence that the construction will proceed once the Development Agreement is unconditional, Cathedral will need to have evidenced before today's committee decision a range of information confirming their pre-contract agreement with their contractor (Henry Construction), that the contract price is acceptable to the U+I Board, that the contractor can mobilise the contract to start on site within a timescale that fits the above programme, that finance is in place from their funder and that Kaplan are comfortable with the programme in terms of delivery of the student accommodation to meet their deadline requirement.

- 3.13 In order to reach agreement on the financial and legal issues around the necessary land transfers relating to the existing University Annex site (from the council to the University) and the site allocated for a new University building (from the council to the University) the two parties have had separate valuations undertaken to a jointly agreed brief. From the council's perspective, it is important to ensure that it addresses its statutory obligations in respect of land disposals. Further information concerning the results of the valuation exercise is given in the Legal Implications section of this report (paragraph 7.6 below) and a Part 2 report to this agenda.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The recommendations to this report have been worded to facilitate the University's withdrawal from the Development Agreement, for the land transfers as per the current Development to continue to take place, for the University to consider its future options on the academic site and for the Development Agreement to go unconditional on 24 April 2017– a necessary pre-requisite for construction to commence in May of this year. Any alternative recommendations would almost certainly prevent the above process from being achieved within the challenging deadline.
- 4.2 Should un-conditionality not be achieved by the above deadline and construction fail to commence in May, the council would have the opportunity to consider further options for the future of the site in the light of the knowledge that the University, the council and the developer are bound by the terms of the current Development Agreement only until this August, after which time any partner would be free to serve notice on another of their intention to withdraw from the agreement. This option would not secure the long-awaited redevelopment of the site under this scheme.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Cathedral and the council undertake regular consultation and information-sharing with the community living and working in close proximity to the development site via newsletters, regular attendance at meetings of the Tarner Area Partnership, local information boards etc. Community engagement and consultation will intensify in the run-up to and over the course of the construction period, in order to ensure clear dissemination of information and ensure that problems are minimised and issues are appropriately addressed wherever possible.

6. CONCLUSION

- 6.1 Approval of the recommendation to this report will put in place the necessary arrangements for the council to enter into appropriate agreements with Cathedral and the University that will enable construction to commence on the long-awaited Circus Street regeneration programme.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The proposed variation to the Development Agreement (DA) maintains the requirement for Cathedral to pay the council £1.7 million as compensation for the loss of the Carlton Hill car park. This payment would be secured when the DA goes 'unconditional'. While, at the time of writing, the final valuation report has not been received, it is anticipated from discussion with the valuer that the land transfers between the council and the University are of broadly equal value and therefore no capital receipt or payment is anticipated. However this transfer will be subject to Stamp Duty Land Tax (SDLT) for each transaction based on the valuation of the respective sites and paid by council and the university. The cost of SDLT to the council for this transaction will be met from the £1.7 million compensation payment.
- 7.2 The council has secured Local Growth Fund grant from Coast to Capital Local Enterprise Partnership of £2.7m toward the capital cost of this project and the money has been earmarked toward these capital costs as and when they are incurred.
- 7.3 The development will generate additional Council Tax and Business Rates revenue, and potentially New Homes Bonus for the council. Once the development is underway these new income streams can be built into future income forecasts for the Medium Term Financial Plan.

Finance Officer Consulted: Name James Hengeveld Date: 10/03/17

Legal Implications:

- 7.4 The proposed changes necessitate entering into a Deed of Release to acknowledge that the University is no longer a part to the Development Agreement, a Conditional Sale Agreement to obligate the parties to undertake the land swap, a Deed of Variation to vary the Development Agreement and a Memorandum (which provides BHCC's approval to Cathedral's funder and other associated matters).
- 7.5 The relevant land has been appropriated for planning purposes. The council is therefore obliged under s233 of the Town and Country Planning Act 1990 to secure best value for its disposal. The valuations confirm that the University's Annex site and the Council's land (which was previously allocated for the university's proposed academic building) are of essentially equal value. The obligation under S233 is therefore satisfied. The valuation has also confirmed that the overall land deal meets our obligation to secure best value. The valuations are described in Part 2.

The legal implications are further dealt with in the Part 2 report.

Lawyer Consulted: Name Alice Rowland Date: 17/02/17

