

<b>Subject:</b>	<b>Longley Industrial Estate and New England House</b>		
<b>Date of Meeting:</b>	<b>14 June 2018</b>		
<b>Report of:</b>	<b>Executive Director for Economy, Environment &amp; Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Alan Buck</b>	<b>Tel: 01273 293451</b>
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<b>Ward(s) affected:</b>	<b>St. Peter's &amp; North Laine</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The committee is being asked to agree to the council signing an agreement for lease and ultimately grant a new long lease with Legal & General in respect of the Longley Industrial Estate. This would secure a premium for the council and enable Legal & General to build a mixed use residential and office development on the site.
- 1.2 The intention is that the premium received by the council will contribute towards funding the refurbishment and expansion of New England House. Combined with the employment floorspace delivered on the Longley site, this will help to deliver key outputs of the Greater Brighton City Deal. Additional strategic benefits will also be delivered through the substantial number of new residential dwellings constructed on the Longley site (100% for rent, including an affordable element) and the wider regeneration of the local area.

**2. RECOMMENDATIONS:**

- 2.1 That the committee:-
- 2.1.1 approves the Heads of Terms appended to this report for an agreement for lease and new lease on the Longley Industrial Estate;
- 2.1.2 grants delegated authority to the Executive Director for Economy, Environment & Culture, Assistant Director Property & Design and the Executive Lead Officer – Strategy, Governance & Law to enter into an agreement for lease and a lease with Legal & General that will secure a premium in respect of the Longley Industrial Estate;
- 2.1.3 grants delegated authority to the Executive Director for Economy, Environment & Culture, Assistant Director Property & Design and the Executive Lead Officer – Strategy, Governance & Law to make minor amendments to the Heads of Terms, settle all the legal documents and take any other necessary steps required to implement the recommendation at 2.1.2;

- 2.1.4 appropriates the Longley Industrial Estate for planning purposes, agrees in principle that the council will authorise the use of S203 and delegates the final decision to authorise the use of S203 powers to the Executive Director for Economy, Environment & Culture;
- 2.1.5 agrees to ring-fence the premium received for the extension and refurbishment of New England House;
- 2.1.6 notes the work which is progressing in relation to New England House and notes that there will be a further report brought to Committee to seek approvals in relation to that project.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council has been seeking a viable delivery route to meet its Greater Brighton City Deal outputs in respect of New England House (NEH) to consolidate the building's role as a flagship hub for Creative, Digital and IT (CDIT) businesses. Under the City Deal the council received a grant of £4.9 million towards delivering the building's refurbishment and to enable the council to deliver a minimum net additional 7,090 square metres of new employment floorspace.
- 3.2 The council owns the freehold of the adjacent Longley Industrial Estate (Longley). The current lease has over 90 years left to run and is held by Maplebright. Over the last few years the council has been seeking a land deal with Maplebright that will help to secure City Deal outputs for NEH across the two sites (Longley and NEH).

#### ***Current proposal***

- 3.3 Following discussions between the council and Maplebright, Maplebright entered into an agreement with Legal & General (L&G) in 2017 to bring forward a development proposal and associated land deal for Longley. Since last spring three-way negotiations have progressed between the council, L&G and Maplebright to seek an outcome whereby all three parties can secure their objectives relating to the site. If successfully concluded, the following outcomes will be achieved:
- The council receiving a capital sum from L&G (payment conditional on L&G receiving planning permission).
  - Maplebright securing a capital sum from L&G (conditional on L&G receiving planning permission).
  - L&G obtaining Maplebright's leasehold interest on Longley (which will then be surrendered).
  - The council granting L&G a revised and enhanced 250 year lease on the Longley site.
  - L&G delivering a mixed use redevelopment on the Longley site, including 200 (or more) units of 'build to rent' residential units managed by L&G and 3,000 sq metres of new office floorspace, owned by L&G

but contributing to the City Deal NEH target of 7,090 sq m of net additional employment floorspace.

- The council combining its capital receipt with the £4.9 million secured through City Deal and additional borrowing to provide for its remaining City Deal outputs – i.e. the refurbishment of NEH and a minimum 4,090 sq m of net additional floorspace. These proposals are still being developed and a further report will be brought back to Committee for a decision on the NEH site.

3.4 L&G and Maplebright have already signed a contract (to which the council is not a party). All three parties will sign an Agreement for Surrender and Lease. The parties have agreed the Heads of Terms for this agreement and the lease, the key terms of which are as follows: once L&G has secured planning permission, Maplebright will assign their existing lease to L&G. L&G will then surrender that lease and BHCC will grant a new 250 year lease to L&G at a peppercorn rent. The Heads of Terms in respect of the agreement for lease and the lease form appendix 3 to this committee report. The Premium will be adjusted once planning has been obtained. If L&G secure more residential units than expected, the premium will be adjusted accordingly.

3.5 GVA under instruction by the council have been undertaking the necessary valuation exercises and negotiations with Maplebright's agents in respect of the agreement for lease, the new lease and the Premium payable to the council. The amount agreed is referenced in a separate Part 2 report on today's agenda and satisfies Section 123 Local Government Act requirements in terms of best consideration reasonably obtainable.

3.6 This deal does not place any legal obligation on L&G to build the proposed development. If the council was to place a legal obligation on L&G to build (i.e. if this was a development agreement) the contract would amount to a works contract which the council would have to procure. This would not have the agreement of Maplebright, so it would be very difficult to secure the surrender of the existing lease.

3.7 The deal is structured to ensure that, despite the absence of a legal obligation to build, it is highly likely that L&G will do so. They will be required to submit a planning application which meets the council's requirements (3,000 sq metres of employment space). They will have expended significant resources in obtaining planning permission so they have a strong commercial incentive to implement it. L&G will also have to demonstrate that they have sufficient funding to carry out the development. There will also be a longstop date in L&G's lease so that, if they have not carried out the building works within a reasonable time period, the council will have the right to break the lease and buy back the land.

3.8 L&G have requested that the council appropriates the site for planning purposes. Section 203 of the Housing and Planning Act 2016 provides that where land is

held for planning purposes and work is done in accordance with planning permission, third-party rights are overridden. Thus an effect of appropriation for planning purposes is to protect the council and developers from the risk of the development process being stopped once it has started. The rights of third parties whose private interests may be affected by development are protected to the extent that they have a right to compensation against the local authority. The council, however, will be indemnified against such claims for compensation by the developer of the site. Failure to appropriate the site for planning purposes will jeopardise the sale as the buyer would face the risk that the development would be delayed by legal proceedings by those with third party rights.

- 3.9 The council's power to appropriate land under s122 of the Local Government Act 1972 is exercisable on determination that the site "is no longer required for the purpose for which it is held immediately before appropriation". The council no longer requires the site be used for its current trade warehousing use, as the City has a significant need for additional B1 commercial space and housing. This is reflected in the site's inclusion as a strategic allocation within an identified development area (DA4) of the City Plan, for a mixed use commercial and residential development to include at least 3,000 sq m of B1 floorspace.
- 3.10 If the Committee agrees to the recommendation to appropriate the site for planning purposes, the appropriation will occur immediately upon the Committee reaching that decision. The Committee is also asked to authorise the use of the power contained in S203 Housing and Planning Act 2016. S203 is the power which allows the carrying out of building work even if it involves interfering with third party rights. The caselaw suggests that before exercising this power, the council should consider the third party rights which will be overridden and ensure steps have been taken to engage with those third parties. The indemnity which L&G have signed requires them to provide sufficient information to satisfy the council that it is appropriate to authorise the use of S203. This report therefore seeks delegated authority to the Executive Director for Economy, Environment & Culture to make the final decision to authorise the use of S203 once he has seen evidence of appropriate engagement with third parties.

### ***Planning and housing issues***

- 3.11 L&G have prepared a draft masterplan for the wider area to accompany their planning application. This includes a range of urban design information including indications of heights, massing, block layouts for Longley, NEH and other nearby City Plan site allocations and public realm proposals. The masterplan is intended to provide a context within which their proposal can be considered, demonstrating how it can integrate into a wider regeneration of the area - and assist the passage of the proposal through the planning system. The masterplan has been the subject of pre-application meetings and Design Review Panels. L&G have also been providing officer and member briefings to explain their model for delivering and managing 'build to rent' housing and how they might

accommodate an affordable element that addresses the council's identified needs and priorities. It is anticipated that they will be submitting their planning application for Longley this summer. A note provided by L&G setting out their approach to 'build to rent' developments forms appendix 3 to this report.

### ***New England House proposals***

- 3.12 Work on design options for delivering City Deal outputs for NEH was undertaken in 2017 by the council's architects, following the commissioning of a Heating and Ventilation Strategy. These conceptual options have been reviewed and refined on the basis that the L&G proposal would secure 3,000 sq m on the Longley site that can count towards the 7,090 sq metres minimum required under City Deal. Delivering a reduced amount of floorspace at NEH will assist the viability and deliverability of the scheme. It also has additional benefits of keeping development free of the car park area, which allows an appropriate gap to be retained between NEH and the proposed L&G development and reduces potential disruption and loss of amenities to existing NEH tenants. It is now proposed to explore extending the building to the south by adding new wings to its York Place façade, adding a two storey roof extension to the existing building and the possibility of infill developments on one, or possibly two, of the building's inset areas (on its western and eastern elevations). Along with the building's refurbishment these additions should be capable of meeting City Deal outputs (in conjunction with the 3,000 sq m delivered by L&G on Longley) with the final net total to be determined following more detailed design work.
- 3.13 Other aspects of the preferred concept design could include the following:
- Minimising changes to the interior of the existing building, retaining its essentially industrial nature and as far as possible its existing tenant mix.
  - Providing for greater thermal efficiency and mechanical and engineering (M&E) improvements, while allowing tenants flexibility to determine their own heating and ventilation options.
  - The potential to explore a modular form of cladding that can be applied in stages to reduce disruption to tenants.
  - Provision of kiosks for commercial rent at street level on the Elder Place frontage as part of wider street scene improvements.
  - Provision of a pedestrian ramp on York Place to replace the existing staircase and to improve access between Elder Place and New England Street.
  - Significant improvements and changes to the appearance of the building through replacement curtain walling - NB this would be explored further at a later stage of the design process (Stage 3 as set out in the RIBA Plan of Work, as widely used in the construction industry).

- 3.14 These concepts are being further explored through current work that will provide indicative floorplans to RIBA Stage 2. This will also allow for more accurate costings to be undertaken (see Finance section below). This report seeks approval to ring-fence the premium received from the disposal of the L&G site to enable the NEH refurbishment and extension to progress.

#### **4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The development outcome of the proposed land deal constitutes an alternative means of delivering City Deal floorspace outputs for NEH, by extending the 7,090 sq m employment floorpace output across an area that incorporates Longley. The current proposal provides a more financially-viable development solution for delivering City Deal and would reduce potential disruption to existing NEH tenants. The development proposals for Longley and NEH combine to address a range of strategic economic, social and physical regeneration objectives in respect of the London Road/New England Quarter Development Area (DA4) as identified in the Brighton & Hove City Plan. The developments on these two sites can also be expected to have the added benefit of providing a critical mass and catalyst for further new development on other nearby DA4 sites. An alternative approach would be to 'do nothing' - but this would not provide the necessary finance to secure City Deal objectives, resulting in the continued decline physical decline of NEH (the curtain walling of which is in urgent need of replacement). In this instance City Deal outputs would be difficult to meet - the council would need to consider other options for seeking funding for NEH to combine with its £4.9 million and the leaseholder of Longley would need to consider alternative options for their site.

#### **5 COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 L&G have carried out early public consultation on their development proposal for Longley. Further public consultation will be carried out as part of the planning process following submission of their planning application later this year.
- 5.2 The council will be consulting with NEH tenants on its proposed plans for the building. A planning application will be required for NEH and wider public consultation will be carried out as part of the planning process.

#### **6. CONCLUSION**

- 6.1 The L&G proposal and payment of a premium to the council will help bring forward the development of both sites and help enable the council to deliver its City Deal outputs in respect of NEH.

#### **7. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 7.1 The project has development funding from the Strategic Investment Fund (SIF). This money will be used to fund the further work outlined in this report including a

topographical survey, testing for contamination and further design work. A number of options are being considered to refurbish and extend NEH and preliminary costings have been undertaken but need refining through the further design work. The funding for the construction work and the potential costs of the works disrupting the existing tenants will predominantly come from the following sources:

- The £4.9m grant received from the government, currently held in capital reserves earmarked for NEH;
- The capital receipt from the new lease granted on the Longley site;
- New borrowing undertaken by the council where the financing costs are financed by increased rent (net of rent forgone from the Longley Industrial estate) from:
  - A modest increase in existing NEH rents to reflect the improved accommodation delivered by the refurbishment works to the existing NEH (rent increases would only be applied at the time of rent reviews and lease renewals, assuming they are not on tenancy at will arrangements);
  - Higher rents charged for the new build units in line with the upper quartile rents charged in the city.

7.2 Initial modelling shows that under these funding arrangements viability of the options requires the further design work to focus on reducing construction cost and maximising the new lettable floor space that is created.

7.3 The current rent received from the Longley site is £37,500 pa. There will be nil rent under the new lease for the site. The loss of this income stream has been included in the business case.

*Finance Officer Consulted: James Hengeveld*

*Date: 10/04/18*

#### Legal Implications:

7.4 The reasons why officers are recommending an agreement for lease and new lease to L&G (rather than entering into a development agreement) are set out in the body of the report. There are measures in place which make it highly likely that L&G will build the 3,000 sq m of office space which the council requires to help it meet its City Deal objectives but they are not under any legal obligation to build in accordance with the planning permission.

7.5 Under S122 of the LGA 1972 a council may appropriate land within its ownership that is no longer required for the purpose for which it is held, for any other purpose for which it is authorised by statute to acquire land. The council is authorised to acquire land by the Town & Country Planning Act 1990 provided that the authority believes that the acquisition will facilitate the carrying-out of development, re-development or improvement on - or in relation to - the land, but a local authority must not exercise the power unless they consider that the development etc is likely to promote or improve the economic, social or environmental well-being of their area. The reasons why the redevelopment is in the economic and social interests of the area are set out in the body of this report (including para. 3.9). The council therefore has the power to appropriate the land for planning purposes in order to facilitate the sale and redevelopment. The

council has received advice from its external solicitors and as a result recommends that the council follows the procedure outlined in paragraph 3.10 above to authorise the use of S203 Housing and Planning Act 2016.

- 7.6 Under s233 Town & Country Planning Act, the council is under an obligation to obtain the best consideration reasonably obtainable when disposing of land which has been appropriated for planning purposes. In this case the council has received advice from an external valuer who has confirmed that the premium and the mechanisms for adjusting the premium contained in the Heads of Terms will lead to a disposal which meets this best value test.

*Lawyer Consulted:*

*Alice Rowland*

*Date: 19/04/18*

Equalities Implications:

- 7.7 Entering into an agreement for lease and new lease with L&G will provide the mechanism to unlock the development potential of two sites (NEH and Longley). The subsequent development proposals will be the subject of separate planning applications. These will be assessed against policies in the City Plan, which has been the subject of an Equalities Impact Assessment.

Sustainability Implications:

- 7.8 Planning applications in respect of both NEH and the Longley site will need to meet a wide variety of sustainability principles as set out in building regulations, City Plan policies and national planning guidance.

Any Other Significant Implications:

- 7.9 As well as the benefits described elsewhere in this report (increased employment floorspace, realisation of City Deal targets for NEH and a significant element of residential development including affordable housing) new developments on both the Longley and NEH sites will provide for a much-improved and safer environment on Elder Place, a road that suffers from various forms of anti-social behaviour (including widespread graffiti) thereby helping to secure a number of objectives of the council's London Road Central Masterplan (SPD 10). Benefits arising from the developments will include an upgraded public realm, improved pedestrian access through the area and the introduction of 'active frontages' along Elder Place to enhance the local environment and strengthen the customer-draw and economic performance of the London Road district shopping centre.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Site plan of Longley Industrial Estate
2. Heads of Terms for Agreement of Lease on Longley Industrial Estate. Heads of Terms for New Lease on Longley Industrial Estate
3. Legal & General Build to Rent Strategy - Longley House Presentation

### **Background Documents**

1. Greater Brighton City Deal
2. Brighton & Hove City Plan
3. London Road Central Masterplan (SPD 10)

