

Report of the Strategic Director Corporate Services to the meeting of Executive to be held on 8th January 2019

Subject:

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Proposed Redevelopment of the City Centre Food Market

Summary statement:

This report will update the Executive on the review of property required for the market relocation and creation of new public realm on Darley Street.

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**Portfolio: REGENERATION, PLANNING AND
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Overview & Scrutiny Area:
Corporate

1. SUMMARY

- 1.1 This report is to provide the Executive with an update on the proposed relocation of the 'Food Market' to a new bespoke building on Darley St, which follows on from the report submitted to Exec on 10th July 2018. It is proposed to extend the scope of the development in order to maximise the regeneration impact of relocating the 'Food Market' onto Darley St and also allow the creation of an area of quality Public Realm adjacent to it.
- 1.2 This will require the acquisition of additional properties to deliver the enlarged scheme and this report is seeking Executive Approval for the Council to use its Compulsory Purchase Order (CPO) powers to acquire the necessary properties, to deliver the proposed scheme, should acquisition by private treaty fail.

2. BACKGROUND

- 2.1 The overall vision for the city centre markets is to develop and sustain an attractive, inviting and vibrant city centre retail market that offers a diverse range of goods to meet the needs of our community that will add value to the economic, social, environmental and cultural fabric of Bradford City Centre and provide a shopping location that creates a dynamic vibrant and diverse experience.

The food focused market should acknowledge the heritage and history of Darley Street as a historic market street whilst meeting the needs of the modern consumer in market building that is fit for purpose in the 21st Century. The market will offer the best of local and regional fresh food and be recognised as a centre for food retailing excellence and a key shopper destination in Bradford City Centre.

Both markets will set the national benchmark for modern designed contemporary markets and their designs should allow the opportunity for new entrepreneurs to test their business ideas in a flexible trading environment.

- 2.2 Between 2014 and March 2018 vacancy rates have increased significantly from 9% to 31% in the Oastler Centre and from 16% to 35% in the Kirkgate Centre.
- 2.3 Cushman & Wakefield (formally DTZ) were appointed in 2014 to examine the Council's strategic approach to its city centre markets provision, and to provide a commercial, technical, and financial appraisal of options for the future markets provision in the city.
- 2.4 Their report recommended that both markets should remain open until the impact of the Broadway Shopping Centre on the city's shopping patterns could be fully assessed. The report went on to advocate a phased investment programme for the Oastler Centre and adjacent public realm with the aim of creating a modern market facility. Outline plans were drawn up, however, in February 2016, Morrisons, the Oastler Centre's main anchor tenant, announced the closure of its Westgate Store from April 2016, which has had a major impact on the viability of the centre and resulted in the decision not to proceed with this scheme.

- 2.5 In July 2016, a review of the Cushman & Wakefield options appraisal report looked at ways to revitalise its market offer whilst at the same time exploring how best to assist in the regeneration of Darley Street.
- 2.6 In April 2017, the Council announced plans to create a new modern fresh food market on Darley Street and in tandem refurbish Kirkgate Market.
- 2.7 Consultations with market traders took place in April 2017, with 127 tenants being contacted and given the opportunity to comments on the Council's redevelopment proposals. 120 tenants completed the survey.
- 2.8 The results of the initial consultation exercise was that 78% of traders are in favour of the Council proposals to create a food-focused market on Darley Street and an enhanced non-food offer in a refurbished Kirkgate Market.
- 2.9 In August 2017, the Council appointed Greig and Stephenson to lead a multi-disciplinary team of professionals with specialist market knowledge. The team undertook feasibility studies and prepared initial designs for the redevelopment of both city centre markets.
- 2.10 The design team has a wealth of retail experience particularly in markets having been involved in the redevelopment of London Borough Market, London Camden Market, Leicester Food Market, Leeds Kirkgate Market, Preston Market, Sheffield Moor Market as well as markets across Europe and the Far East.
- 2.11 The design team were asked to draw up plans for the building to be as light and transparent as possible, to open up the market and to strengthen links between Darley Street, Piccadilly and the Broadway Centre.
- 2.12 The design team have developed the project to RIBA stage 2.

3. OTHER CONSIDERATIONS

- 3.1 Following on from July 2018 Exec report, officers have had an opportunity to reflect on the extent of the proposed scheme, and reviewed the opportunity of acquiring additional properties adjacent to the site of the proposed new 'Food Market', the former Marks & Spencer building at 16-24, Darley St, these being 10-14, Darley St and 8, Darley St. The inclusion of these properties will improve the service access for deliveries into the basement of the Food Market, and also allow the creation of a new area of quality Public Realm in the city.
- 3.2 This will have a positive impact on Darley Street, resulting in over 50% of the frontage facing the Kirkgate Centre currently unoccupied being redeveloped and improved, with the critical mass of the new 'Food Market' creating strong pedestrian flows in this part of the city.
- 3.3 The new area of Public Realm, would not only enhance the Market setting by creating an additional trading frontage, but also improve access and visibility (and rental levels) for the lower ground trading floor and augment the 'Market offer' by using the space to host 'ad hoc' events throughout the year. It will also provide

improved permeability and amenity space for visitors to the city centre and local residents, providing better access between the Kirkgate and Broadway shopping centres. The Design team will be tasked to explore ideas for the design and layout of the Public realm.

- 3.4 In order to ensure the deliverability of the proposed 'Food Market' and adjacent Public Realm, it is proposed the Council uses its Compulsory Purchase Order (CPO) powers, to acquire the properties which will guarantee the acquisition of the necessary freeholds with vacant possession, should negotiation by 'Private Treaty' fail.
- 3.5 Legal Services have confirmed that the Council has the necessary legal powers to initiate a CPO to enable this scheme to be developed, subject to the necessary criteria being met, and these are detailed below:
 - The CPO is a "last resort" if it can be demonstrated that there is little or no prospect of all the interests being acquired by voluntary negotiations;
 - Sufficient funding is available;
 - There are no planning obstacles;
 - The scheme is economically viable and there are, or are likely to be sufficient resources available to enable the scheme to be implemented and completed within a reasonable timeframe.

It is proposed that a planning application for the entire scheme will be submitted in the early part of 2019.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The recommendations set out in paragraph 10 of this report have a number of financial, risk and resource implications. Further detailed financial analysis can be found in **Appendix 1** which is exempt for legal and commercial reasons as outlined in section 6 of this report.
- 4.2 The financial model that underpins the proposed new Markets is projected to restore the operations back into balance within a year of opening, thus arresting decline and ensuring a neutral effect to the Council's bottom line. The modelling assumes other Markets operation such as St James's Wholesale Market and the Keighley Market maintain favourable budget performance throughout.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 A 'Top of Town Steering Group' chaired by the Strategic Director for Place was set up to take a strategic overview of city centre development. Members of this group include the Assistant Director for Estates and Property, Assistant Director, Economy and Development and Assistant Director, Planning, Transportation & Highways.
- 5.2 In addition a Market Relocation Project Board, chaired by the Assistant Director for Estates and Property, has been established to focus on market design,

construction, media management and the legal work stream.

- 5.3 The project will be further reviewed for value for money when compared against wider financial duties. The scheme has been referred to the Council's taxation advisor in order for VAT and the Council's VAT partial exemption risks to be accounted for. Estimated costs include stamp duty levy and associated ancillary costs are included in the baseline estimates.
- 5.4 The success of this programme will depend upon the Council's ability to let space in the new property. There also risks linked to the timing of property acquisition; the move from the Oastler Centre; sustainability of markets traders in current overall economic trading climate and there is the uncertainty over market trader's appetite for new rent and service charges.
- 5.5 Before the Council legally commits to the development of the scheme the Strategic Director of Place will provide a further report to PAG (Project Appraisal Group) including a full review of the cost modelling once the detailed design work has been completed and tenders received, for sign off and authority to proceed. This will include any implications under the current regime for State Aid.

6. LEGAL APPRAISAL

- 6.1 **Compulsory Purchase Power** - This Report considers the consequences and justification of proceeding to authorise the use of compulsory purchase powers to facilitate a proposed redevelopment scheme. In deciding on the most appropriate power to use to enable a CPO to be made, regard must be had to the use of the specific power available for the purposes intended. As the proposed scheme involves the redevelopment of land, it is proposed to rely on the use of planning development powers under Section 226:Town and Country Planning Act 1990 (as amended) The Report also recommends that compulsory purchase powers are used to create a new right pursuant to Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to enable the Council, if necessary, to enter and occupy Vintry House, in order to effectively use the building as a site compound to help facilitate the scheme.
- 6.2 **Compulsory Purchase Guidance** - In consideration of the potential use of compulsory purchase powers to support voluntary negotiations to acquire all the land needed for the scheme, reliance has been placed on Government guidance entitled "Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion" published in 2015. Weight must be given to the Guidance to ensure that the proper compulsory procedures are followed, that the process is open and transparent and that nobody with a purported interest in the development land is prejudiced.
- 6.3 **The rights of the individual** – An important part of the compulsory purchase process is the need to ensure that the rights of the individual are recognised and taken into account by complying with the following human and equality rights -

6.3.1 Human Rights

Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the “European Convention on Human Rights”. Various Convention rights are likely to be relevant to the Compulsory Purchase Order, including –

- 6.3.1.1 **Entitlement to a fair and public hearing** in the determination of a person's civil and political rights (Convention Article 6) - this includes property rights and can include opportunities to be heard in the consultation process.
- 6.3.1.2 **Rights to respect for private and family life and home** (Convention Article 8) - Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest.
- 6.3.1.3 **Peaceful enjoyment of possessions** (First Protocol Article 1) - This right includes the right to peaceful enjoyment of property and is subject to the Council's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
- 6.3.1.4 **Right to life** - in respect of which the likely health impacts of the proposals will need to be taken into account in evaluating the scheme (Convention Article 2).

The European Court has recognised that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*". Both public and private interests are to be taken into account in the exercise of the Council's compulsory purchase powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate. If compulsory purchase powers are required, project officers are of the view that in pursuing a CPO, careful consideration has been given to the balance to be struck between individual rights and the wider public interest. Any interference with Convention rights is considered to be justified in order to secure the economic, social, physical and environmental regeneration that the redevelopment scheme will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compulsory purchase national compensation code.

- 6.3.2 Project officers therefore believe that the redevelopment scheme is in the public interest and that this outweighs any harm that may be caused by the use of compulsory purchase powers to acquire and interfere with third party land and rights needed for the scheme. That any interference with any human rights protected by the Human Rights Act 1998 and the “European Convention on Human Rights” is considered to be justifiable in order to secure the public benefits that the scheme will bring to the community and wider area.”

6.4 Public Sector Equality Statement

- 6.4.1 In addition to the human rights legislation and requirements, project officers in formulating and promoting a CPO have so far and at this stage, also had regard to the Council's statutory duties and obligations under the Equality Act 2010 and in particular, to the Council's obligations under Sections 149 and 150 of the said Act, by taking into account the differential impact a CPO might have on various groups of persons with protected characteristics. As a result, project officers are satisfied that no negative impact upon any protected social groups has been identified.
- 6.4.2 In addition, the scheme aims to maximise public access by being, fully DDA compliant and dementia friendly, with plans to consult and engage all relevant stakeholder groups throughout the design process.

6.5 Compulsory Purchase Order – Justification

- 6.5.1 As this is the first time that the Executive has been invited to consider the making of a CPO, the Executive must be satisfied prior to authorising the making of a CPO, that there is sufficient justification to make an Order and to demonstrate that the Council has exercised due diligence and probity and has been open and transparent in formulating its scheme proposals and in contacting and opening negotiations with interested parties to acquire the land needed.
- 6.5.2 Of paramount importance is for the Council to be satisfied that the following requirements have or are reasonably likely to be met, prior to a decision being taken to make a CPO -
- 6.5.2.1 That it is apparent from negotiations already undertaken, that there is little or no prospect of the land needed being acquired by voluntary means;
 - 6.5.2.2 That sufficient funding is or is likely to be available;
 - 6.5.2.3 That there are no planning obstacles;
 - 6.5.2.4 That the scheme is economically viable (i.e funding of the scheme represents "value for money");
 - 6.5.2.5 That there are sufficient resources available to implement and complete the scheme within a reasonable timeframe;
 - 6.5.2.6 That the scheme will contribute to achieve the object of either promoting or improving economic, social or environmental well-being in the locality of the scheme and wider community;
 - 6.5.2.7 That the compulsory purchase process is open and transparent;
 - 6.5.2.8 That due regard has and is being given during the compulsory purchase process to the rights of the individual under human rights and equality impact legislation; and

6.5.2.9 That there is a compelling case for the scheme in the public interest.

6.6 Expert Advice- it is not considered that any external specialised expert advice is needed at this stage of the compulsory purchase process, although it might be necessary to instruct Counsel should a local public Inquiry be held to consider objections if a CPO is made and published.

6.7 Options

6.7 1 If the Council continues to rely on current negotiations and only seeks to authorise a CPO if negotiations break down, valuable time would be lost. By making a CPO at this stage, it demonstrates that the Council is serious in its intentions to promote the proposed development with the support of a CPO and which in turn, might encourage those whose land is affected to enter into more meaningful negotiations.

6.7.2 In essence –

6.7.2.1 The Council can either make a CPO in accordance with the recommendations below whilst continuing to explore whether the scheme land needed can be acquired by voluntary means and if not, to use compulsory purchase powers as a last resort or

6.7.2.2 Not authorise a CPO to be made to acquire the scheme land and instead to continue to rely on voluntary negotiations, notwithstanding that there is at present, little indication of all the land needed being able to be acquired by voluntary treaty and as a result - the Executive is strongly invited to authorise a CPO to be made in accordance with the recommendations below.

7. OTHER IMPLICATIONS

Referred to in paragraph 6 above.

7.2 SUSTAINABILITY IMPLICATIONS

A naturally ventilated building to reduce as much as possible the Council's use of energy which in turn reduces tenant costs through their service charges.

Maximum use of natural daylight to reduce the demand for electrical lighting, LED lighting and roof mounted solar panels to minimise Green House Gas (GHG) emissions.

The creation of carefully designed spaces allowing for easier maintenance which significantly reduce Facilities Management and the Operational Maintenance of the market.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

Referred to in 7.2 above.

7.4 COMMUNITY SAFETY IMPLICATIONS

N/A

7.5 HUMAN RIGHTS ACT

Referred to in paragraph 6 above.

7.6 TRADE UNION

There will be some redesigning, repurposing, or restructuring of staff to meet the needs of the new markets.

The cost of staffing the markets is ultimately paid for by traders. This needs to remain as cost effective as possible to reduce the financial burden on traders.

All the relevant Trade Unions will be consulted as required under Council HR procedures and will be invited to engage in any necessary staffing changes.

7.7 WARD IMPLICATIONS

A briefing note has been circulated to Ward members to make them aware of the proposals

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

N/A

7.9 IMPLICATIONS FOR CORPORATE PARENTING

N/A

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

N/A

8. NOT FOR PUBLICATION DOCUMENTS

8.1 In view of the financial and business content of **Appendix 1**, the public interest in maintaining the exemption outweighs the public interest in disclosing the report.

8.2 The rationale behind this decision is based upon the fact that the report includes:

Details relating to the values to purchase the required site on Darley Street could undermine the Council's ability to negotiate the best prices for these sites. The Report contains details relating to the anticipated redevelopment plans and costs of the new market sites, which could undermine the Authority's ability to tender the works at the most reasonable price.

- 8.3 On this basis, this appendix is not for publication as its publication would prejudice the Council securing Best Value for purchase options, construction costs and assets disposal incomes.

9. OPTIONS

Referred to in paragraph 6 above.

10. RECOMMENDATIONS

That the Executive approves the following recommendations -

- 10.1 That the Executive is satisfied that the proposed redevelopment scheme is in the public interest and that any harm caused by the use of compulsory purchase powers to acquire and interfere with third party land and rights needed for the scheme is outweighed by the public benefits which the redevelopment scheme would generate, having also taken into account at this stage, the statutory obligations under the Equality Act 2010 in relation to the differential impact a Compulsory Purchase Order might have on various groups of persons with protected different characteristics;
- 10.2 To authorise
- 10.2.1 a Compulsory Purchase Order to be made pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by Section 99 of the Planning and Compulsory Purchase Act 2004), Section 1 of the Localism Act 2011 and the Acquisition of Land Act 1981 and all other relevant and enabling powers, to secure the compulsory acquisition of the land and buildings shown edged red and the creation of a new right referred to at 10.2.2 in respect of the building known as Vintry House, shown coloured blue on the plan appended hereto and which land and new right is needed to facilitate and enable a viable and deliverable scheme of redevelopment to be implemented and completed in the interests of promoting the environmental, economic and social wellbeing of the community and wider area;
- 10.2.2 a right to be created pursuant to Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to permit the Council to enter and occupy Vintry House, shown coloured blue on the plan annexed hereto, for the purpose of using the building as a site compound for the storage of machinery, equipment and other apparatus necessary to facilitate the proposed redevelopment scheme.
- 10.3 To delegate to the Strategic Director: Corporate Resources authority to -
- 10.3.1 make, if necessary, minor or technical amendments to the Compulsory Purchase Order;

- 10.3.2 modify and settle the draft “Statement” to justify the use of compulsory purchase powers, the Compulsory Purchase Order Map and Schedule and all other legal documentation necessary to support and accompany the Compulsory Purchase Order to the Secretary of State for Housing, Communities and Local Government for confirmation;
 - 10.3.3 approve agreements with landowners setting out the terms for withdrawal of any objections to the Compulsory Purchase Order, including where appropriate, seeking exclusion of land from the Compulsory Purchase Order;
 - 10.3.4 confirm the Compulsory Purchase Order, if satisfied that it is appropriate to do so, in the event that the Secretary of State notifies the Council that the Council has been given the power to confirm the Compulsory Purchase Order;
 - 10.3.5 promote any modifications to the Compulsory Purchase Order, if expedient to do so;
 - 10.3.6 take all and any necessary action, as the case may be to continue or open negotiations with persons for the acquisition of land and the exercise of a right to occupy Vintry House to facilitate the scheme and any other interests included in the Compulsory Purchase Order and any other land needed for the redevelopment scheme and to authorise acquisitions by agreement where the use of compulsory purchase powers is in contemplation and to approve the purchase price, advance payments and all other compensation payments;
 - 10.3.7 take all necessary steps in relation to any statutory blight proceedings instituted against the Council for the acquisition of land claimed to be blighted by the threat or presence of the Compulsory Purchase Order and
 - 10.3.8 take all necessary action, should the quantum of compensation flowing from the threat or use of compulsory purchase powers be in dispute and be referred to the Upper Tribunal (Lands Chamber) or other form of arbitration.
 - 10.3.9 to take and do all things necessary or incidental to the implementation of the above resolutions;
- 10.4 That all land acquired for the redevelopment scheme be held for planning purposes.
- 10.5 That Executive approve the recommendations contained within the confidential appendix.

11. APPENDICES

Appendix 1 Confidential appendix

Appendix 2 OS plan identifying the extent of the proposed scheme

12. BACKGROUND DOCUMENTS

Executive Report – 10 July 2018