

CABINET

18 September 2018

Title: Vicarage Field - New Lease Arrangements	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report with Exempt Appendix 1 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972 as amended)	For Decision
Wards Affected: Abbey	Key Decision: Yes
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Accountable Strategic Leadership Director: Claire Symonds, Chief Operating Officer	
Summary <p>The Council owns the freehold of the Vicarage Field Shopping centre with Lagmar (Barking) Ltd holding a leasehold interest.</p> <p>By minute 16 (17 July 2018), Cabinet approved the use of compulsory purchase order (CPO) powers to facilitate the redevelopment of the Vicarage Field shopping centre and adjacent land. This was conditional on Cabinet approval for the revised terms for the Council lease arrangements with Lagmar (Barking) Ltd being approved. The current lease length would not enable the development to happen. The July Cabinet report highlighted that the principles of the regear would be that the Council would retain its freehold ownership but grant a new lease of no more than 250 years based on ongoing turnover rent as well as a premium for any marriage value.</p> <p>The Heads of Terms have been agreed with Lagmar (Barking) Ltd (an entity of Benson Elliot Capital Management LLP) and are summarised in this report. External advice from CBRE has been sought. Entering into a conditional development agreement and lease will enable the development to progress to the next stage whilst ensuring a long term rental stream for the Council together with a proportion of any marriage value. Delegated approval is sought to enter into new lease arrangements based on the heads of terms.</p>	
Recommendations <p>The Cabinet is recommended to authorise the Chief Operating Officer, in consultation with the Director of Law and Governance, the Director of Inclusive Growth and the Cabinet Member for Finance, Performance and Core Services, to enter into all necessary agreements with Lagmar (Barking) Ltd for a conditional development agreement / lease for the Vicarage Field site under terms set out in the report.</p>	

Reason(s)

The initiative will contribute significantly to the Council Priority of 'Growing the Borough.' The project would have a major impact on changing perceptions of the Borough and ensuring Dagenham is focussed on new employment opportunities which raise aspirations of local residents and help deliver the 'No-one left behind' objective of the Growth Commission and the vision of the Borough Manifesto.

1. Introduction and Background

- 1.1. The proposed redevelopment of Vicarage Field shopping centre is a significant mixed-use regeneration proposal for Barking Town Centre. The scheme would contribute towards the Council's vision for growth and positive change. This is in line with the Growth Commission's recommendations including that Barking Town Centre should continue its direction towards becoming a more urban centre, with an active, interesting street life, a broad range of retail and restaurants and places of employment. The Growth Commission recommended that Barking Town Centre should be the initial priority for growth and investment and that it should be used as an exemplar for the Council's new approach to its urban areas. The delivery of the Vicarage Field scheme has the potential to be an exemplar scheme in delivering these recommendations. The developer (Benson Elliott) achieved outline planning consent which included additional land outside of its ownership.
- 1.2. In July Cabinet approved use of compulsory purchase order (CPO) powers to ensure the assembly of the additional land required to deliver the scheme. The Council is the freehold owner of the Vicarage Field site and approval was conditional on Cabinet agreeing terms for a new lease with Lagmar (Barking) Ltd (an entity of Benson Elliot Capital Management LLP).
- 1.3. Three elements - the development agreement/lease (the subject of this report), the senior debt (approved at Cabinet 23 January 2018) and the CPO/Indemnity agreement (approved at Cabinet 20 March and 17 July 2018) are all interdependent and documentation will be co-ordinated over the autumn.

2. Proposal and Issues

- 2.1 Over a number of months, Be First (with support from CBRE) has been negotiating with Benson Elliott and their advisors GVA on the heads of terms for the agreement for lease. The Heads of Terms summarised in Appendix 1 are presented as the best result for the Council in terms of enabling development and generating income from the Council's assets.
- 2.2 The Heads of terms propose a surrender of the existing head lease and the grant of a new institutionally acceptable head lease to enable the facilitation of the scheme which has secured planning approval. The new head lease will be for a term of 250 years. The surrender of the head lease would take place on the satisfaction of a number of pre-conditions of the development agreement. The pre-conditions are set out in paragraph 2.4. Like the existing lease, the Council would gain a percentage of the commercial rent generated so benefitting from the scheme's success (and indeed the broader regeneration of the Borough helping drive footfall

to the centre). To address the lack of rent during the extensive construction period a fixed annual rent until Practical Completion has been agreed at the current income the Council has been receiving.

- 2.3 In addition the Heads of terms set out a calculation for the Council to secure a proportion of any marriage value generated. The calculation and the percentage splits are in appendix 1 along with the percentage of ground rent proposed for the residential units.
- 2.4 The Development agreement is to be negotiated in greater detail with lawyers and will include preconditions which Lagmar (Barking) Ltd will need to address including:
- 1) Necessary Statutory agreements in place (eg S106 agreement, Stopping Up orders etc)
 - 2) Any use of appropriation/ section 237 Town and Country Planning Act 1990 areas in relation to third party rights.
 - 3) Necessary consents/approval – securing all other necessary consents if required and appropriate
 - 4) Satisfactory due diligence including site investigations and other appropriate surveys
 - 5) Grant of any necessary oversailing rights
 - 6) Viability assessment to determine overage
 - 7) Proof of funds
- 2.5 Most terms in the new lease will mirror the existing lease terms other those set out in this report. Both parties all agree the need to ensure the lease arrangements are ‘institutionally acceptable’ so do not prevent funding issues now or in the future.

3. Risk Assessment

- 3.1 There is a detailed risk assessment in relation to the broader Vicarage Field development. Specifically in relation to the lease the key risk concerns continuing to have a turnover rent rather than a fixed rent as it does generate uncertainty. Should the scheme not proceed or if it does and it is not successful there will be reduced income implications for the Council. However a turnover rent ensures the Council can benefit financially from the redevelopment and its success – having a stake in the scheme’s success.
- 3.2 It is clear the retail sector as a whole is going through a challenging period – the turnover rent risk for the redevelopment is reduced by the fact the scheme is a mix of commercial rents including food and beverage, leisure and office space and not just retail - the scheme design gives long term flexibility to adjust to changing market conditions. Barking’s population is growing and the centre is not seeking to compete with Stratford Westfield but offer a range of facilities to serve the growing local catchment. On Be First’s behalf, consultancy CBRE carried out a Barking Retail Catchment Analysis looking at future retail patterns and providing a recommended mix of commercial facilities to inform understanding of Barking’s.
- 3.3 There are reputational issues if the new lease is not entered into as development would not be able to progress and previous approvals for use of CPO power etc could not progress.

4. Options Appraisal

Option	Advantages	Disadvantages
Do not enter into new agreement – hold out for better terms	Scope for better terms	Negotiations have been going on for a number of months and the proposed terms are seen as the best achievable. Not entering into the agreement would prevent the VF redevelopment occurring.
Enter into agreement on terms set out in report	This is seen as the optimal solution in terms of balancing supporting the redevelopment of the site whilst also achieving income for the Council from its asset	Turnover rent rather than a fixed rent generates potential uncertainties over income.
Seek fixed rent rather than turnover rent	Reduced uncertainty. Fixed income.	No opportunity to benefit from the scheme's success and likely higher income.
Not enter into new lease instead seek to purchase leasehold and redevelop centre	Complete rental income/development returns to the Council	Would need to buy out Lagmar and fund development costs - Conflicts with approach previously agreed by Cabinet.

5. Consultation

- 5.1 There has been extensive consultation regarding the proposed redevelopment – please refer to July Cabinet report. This report has been discussed at Capital and Assets Board.
- 5.2 The proposals in this report were considered by Be First's September Board.

6. Financial Implications

Implications completed by: Katherine Hefferman, Group Manager - Service Finance

- 6.1 The financial implications are set out in Appendix 1, which is in the exempt section of the agenda as it contains the commercially confidential terms of the proposed arrangements (relevant legislation - paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

7. Legal Implications

Implications completed by: Erol Islek (Senior Property Solicitor), Law & Governance,

- 7.1 Section 1 of the Localism Act 2011 provides a general power of competence enabling the Council to do anything individuals generally may do, therefore allowing

the Council to undertake a wide range of activities. Furthermore Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.

- 7.2 Under section 123 of the Local Government Act 1972 the Council has the power to dispose of land in any manner that they wish which includes the surrender of the existing lease and re-grant of a new 250 year lease. One constraint is that the disposal must be for the best consideration reasonably obtainable unless there is ministerial consent or the transfer is to further local well being. Independent advice by CBRE has been provided to ensure the new lease will yield market rent for the Council.
- 7.3 The Council's Constitution, Part 4, Chapter 4 sets out the Land Acquisition and Disposal Rules. In accordance with paragraph 2.1, all strategic decisions about the use, acquisition and disposal of land and property assets are usually within the remit of the Cabinet. Formulation of strategic decisions is overseen by the Property Advisory Group (PAG) and the Cabinet. Generally, the recommendations and a grant of a new lease at the current value, which renders this decision a key decision, require the disposal decision to be taken by Cabinet in accordance with the Council's Constitution and its Land Acquisition and Disposal Rules.
- 7.4 The reporting officer has procured independent (arm's length) advice from CBRE which supports the proposed disposal and transaction.
- 7.5 In respect of third party rights, there is potential risk that the Council will not be able to acquire, by agreement, all the interests that are required for the proposed new lease. Cabinet has given conditional approval to exercise its Compulsory Purchase Powers.

8. Other Implications

- 8.1 **Risk Management** – There is a detailed risk assessment for the wider Vicarage Field project.
- 8.2 **Contractual Issues** – There will be significant further legal work on drafting the full documentation following agreement to the principles set out in this report.
- 8.3 **Staffing Issues** – This is a major project for Be First and is likely to take up significant staff time.
- 8.4 **Corporate Policy and Equality Impact** - There are no equality and diversity issues directly related to the lease. A full EQIA has been produced in relation to the Vicarage Field redevelopment proposals and implications of the CPO.
- 8.5 **Safeguarding Adults and Children** – Any safeguarding issues would be addressed as part of detailed design proposals for the site.
- 8.6 **Health Issues** – Any health issues would be addressed as part of detailed design proposals for the site.

- 8.7 **Crime and Disorder Issues** – Any crime and disorder issues would be addressed as part of detailed design proposals for the site.
- 8.8 **Property / Asset Issues** - The proposal involves new lease arrangements for an existing Council freehold facilitating the Council's desired redevelopment but also addressing the Council's fiduciary interests.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1** – Heads of Terms summary and Financial Implications (exempt document)