

CABINET

22 October 2013

Title: Sale of Footpath Land to Facilitate the Former Barking Magistrates Court Development	
Report of the Cabinet Members for Regeneration and Finance	
Open Report	For Decision
Wards Affected: Abbey	Key Decision: Yes
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Accountable Divisional Director: Jeremy Grint, Divisional Director Regeneration	
Accountable Director: Graham Farrant, Chief Executive	
Summary <p>The former Barking Magistrates Court in the heart of Barking Town Centre has lain empty since the court use ended some years ago and due to lack of attention it has appeared on English Heritage's 'At Risk' list. The site was recently purchased by a developer who has secured planning approval (subject to a Section 106 agreement) for a development which will restore the existing building and develop a modern extension on the rear car park with ground floor commercial uses and upper floor residential flats for both the new and existing space. If implemented the scheme would safeguard the future of a key historic building, add vibrancy and vitality to the town centre including providing space which could attract a better quality restaurant/café to widen the town centre's offer.</p> <p>To implement the scheme the developer, Chrisfys Properties, needs to offset the modern extension from the existing building with a glazed link - this requires the development to extend out and include the existing footpath at the rear of the site. The developers are seeking to purchase this land from the Council in order for the scheme to proceed.</p>	
Recommendation(s) <p>The Cabinet is recommended to approve the freehold sale of the area of footpath land adjacent to the former Barking Magistrates Court, shown hatched on the plan at Appendix 1, to Chrisfys Properties on the terms set out in the report.</p>	
Reason(s) <p>Any land sale with a value over £5,000 is required to secure Cabinet approval. If approved this would be a good example of the Council using its land and powers to assist unlocking regeneration potential and delivering growth whilst failure to agree would result in an unviable, undeliverable development proposal meaning the existing building continuing to lie vacant.</p>	

1. Introduction and Background

- 1.1 The former Barking Magistrates Court is a landmark building in a pivotal location in Barking Town Centre. Its future is therefore important to the regeneration and economic development of the town centre – a vibrant, active use can support town centre regeneration whilst if it lies vacant it would symbolise stagnation and decline. The building has a Grade II Listed status and is on English Heritage's 'At Risk' list due to lack of care over recent years. A development proposal to bring the building back into use together with a modern extension to the rear requires the transfer of a strip of LBBD land (the existing footpath) shown on Appendix 1.

2 Proposal and Issues

- 2.1 A planning application has recently been approved (subject to a S106 agreement) by a private sector developer for a scheme which involves restoring and reusing the existing building with ground floor commercial (ie. restaurant, café) uses and 13 private residential flats on upper storeys. On the rear car park site they propose demolishing the unattractive single storey extension and utilising the whole site for a modern building with the same mix of ground floor commercial uses and 24 residential flats on upper storeys. The rear of the Magistrates court is by far the least attractive façade whilst a modern building can complement and enhance the historical building as well as ensuring a viable development.
- 2.2 The developers would not be able to secure a viable scheme on the basis of conversion of the existing building alone given residential values in the borough and the fact that safeguarding some of the internal original features (staircases etc) means the development is not as space efficient as a new build would be. The application documents included a viability assessment by BNP Paribas showing the project costs are £6.8m but the scheme is extremely marginal and that a £6k per unit S106 contribution towards education provision or any affordable housing would make the scheme unviable. The S106 would cover public realm improvements, local labour/supply obligations and a lighting scheme for the front of the building.
- 2.4 The developer is experienced and knowledgeable about the restaurant market and given the quality of the development believes an operator who would improve the town centre's offer can be secured. The assessment includes an 18 months rent free period to attract good quality tenants. There has been interest however no deals are likely to be signed until the development is underway. Given the lack of evening economy and the desire to expand the opportunities alongside the new Leisure centre and the Broadway theatre, the Magistrates court development is important and helps link these facilities to the Technical Skills Academy (with its evening economy offer) and the ASDA and its parking facilities which are currently under construction.
- 2.5 As part of the scheme the developer proposes extending the new building at the rear to cover the area which currently forms the footpath. This would enable the rear extension to be offset from the main building with some glass walling providing a break between the old and new buildings and allowing better servicing arrangements for residential and commercial uses (see the plan at Appendix 1 and CGI image at Appendix 2). This helped secure English Heritage's support for the planning application. They would remove the 'At Risk' designation if the application was implemented.

- 2.6 To accommodate for the loss of the footpath, Clockhouse Avenue can be altered to create a shared surface. Clockhouse Avenue will be less busy when the Police station moves although it will remain a principal servicing route for the market. A shared surface will reduce the dominance of the road making links between East Street and Town Square more attractive for pedestrians. The area in front of Iceland's service yard however will continue to require a tarmac surface given the nature of vehicles carrying out tight manoeuvres which limits the potential for an alternative paving treatment in this area. As part of the implementation of the scheme public realm work would occur on three sides of the development. The main frontage public realm works would form part of the East Street public realm improvements.
- 2.7 Clearly there is limited value to the footpath apart from to the owner of the former Magistrates Court land and the Property Advisory Group has recommended a sale price of £50,000. This is likely to be challenging for the viability of the scheme.
- 2.8 The land is currently public highway however the intention is that following sale it will form part of the development site and will be stopped up under the powers in the Town and Country Planning Act 1990. During this time the developer would need to negotiate with utility providers who have services in the footpath to ensure any diversions are carried out. The developer would be responsible for funding any utility diversions into the adjacent public highway.

3. Options Appraisal

- 3.1 The two key options are to either agree to the sale or not.
- 3.2 The 'Do Nothing' option of refusing to sell the land would result in the developer being unable to deliver the scheme that planning permission has been secured for. This is likely to result in the building continuing to lie vacant with its heritage at risk. There is a risk the developer may seek to sell the building and a use which would not have the regeneration impact of quality commercial units and private residential units may come forward. A number of uses could operate in the building under its current D1 planning use class without need for planning approval.

4. Consultation

- 4.1 The issue has been discussed at a number of Property Advisory Group meetings involving Members and officers. The Planning application was subject to public consultation.

5. Financial Implications

Implications completed by: Phillip Horner, Principal Accountant

- 5.1 The sale price agreed for the area of land at the rear of the Court House, which is currently public highway, is £50,000.
- 5.2 The sale of the land, enabling this project to commence, will create the potential for the Authority to increase the Council Tax base by 37 units which will generate at least a further £32,000 per year. There will also be an additional share of business rates received from the proposed commercial units.
- 5.3 An additional 37 residential flats will also generate a New Homes Bonus for the Authority of £277,500.
- 5.4 The Section 106 agreement has not yet been finalised, however, it is important that the monies paid to the Authority will be sufficient to fund all of the public realm works that become necessary as a result of this development.
- 5.5 Paragraph 2.4 mentions the possibility that commercial tenants will be given an initial rent free period of 18 months. This arrangement would be between the developer and its tenants and, therefore, there would be no financial implications for the Authority if this arrangement was agreed.

6. Legal Implications

Implications completed by: Jason Ofosu, Property Lawyer

- 6.1 The land is highway land and currently unregistered land at the moment and the land should ideally be registered at the Land Registry before any potential disposal. The land will need to be stopped up before the transfer of land could take place. If the developer needed to use the land prior to the proposed sale the Council could grant a licence to occupy the land and enter into sale conditional on the council registering the land at the land registry.
- 6.2 Under Section 123 of the Local Government Act 1972 ("LGA" 1972), the Council has powers to dispose of land in any manner that they wish which includes the sale of land at market value. An independent valuation has been carried out and the disposal is at market value.
- 6.3 The Council can dispose of the land by private treaty to the developer as a special purchaser but must take into account part D of the Land Acquisitions and Disposal Rules (paragraph 6.4). That paragraph stipulates that the progress of the negotiations with the developer will need to be recorded in writing and documented by Property Services on their disposal file.

7. Other Implications

- 7.1 **Risk Management** – The issue of any service utilities in the land would need to be addressed prior to the transfer ensuring that the developer fully funds any diversion works.

7.2 **Crime and Disorder Issues** - Reuse of the existing former Magistrates Court with new commercial and residential uses will bring more activity and natural surveillance to the area improving safety.

7.3 **Property / Asset Issues** - These are explained in detail in the body of the report.

Background Papers Used in the Preparation of the Report:

- Former Magistrates Court Planning Application and association documents

List of appendices:

- Appendix 1: Plan of new development and land proposed to be transferred
- Appendix 2: Computer Graphic Image of Proposed Development