

Committee Name and Date of Committee Meeting

Cabinet – 20 December 2021

Report Title

Westgate Chambers Redevelopment - Removal of the Developer Overage Provisions

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Boston Castle

Report Summary

Westgate Chambers was a key redevelopment site in the Town Centre that was previously in the ownership of the Council. It was disposed of to the current developer in 2016 at a reduced value as there were serious viability issues in delivering any scheme on the site and the Council were keen to support the wider regeneration of the area.

Cabinet approved the above disposal and included in the sale was a number of overage provisions to provide extra security to the Council in the event that there was a significant upturn in the market and scheme viability was no longer an issue.

The developer is now having difficulty in securing further funding against the part completed scheme, a number of lending institutions have been approached and none are prepared to release any funds against schemes where overage provisions are in place. This is causing serious financial issues as it was always the developer's intention to secure borrowing on the completed first phase of the development to then continue and complete the full scheme.

The developer has now approached the Council to see if they will consider the removal of the overage provisions to allow the additional funding to be secured and the full redevelopment of the site will then be completed in a timely fashion.

In support of the request, and now that true value of the scheme and build costs have been identified, the developer has provided supporting evidence to demonstrate that in the current market no overage payments would be triggered on the development.

Recommendations

1. That Cabinet approve the removal of the developer overage provisions that were included in the original sale transfer of the Westgate Chambers redevelopment site.
2. That the Strategic Director (Regeneration and Environment) is then authorised to instruct Legal Services to formally remove the restrictions from the title documentation and the transfer for sale.

List of Appendices Included

Appendix 1 Westgate Chambers (Site Location Plan)
Appendix 2 Exempt Financial Appendix
Appendix 3 Equalities Analysis
Appendix 4 Carbon impact Assessment

Background Papers

None.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Cabinet – 30 April 2014

Council Approval Required

No

Exempt from the Press and Public

Yes

An exemption is sought for Appendix 2 to the report under Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A of the Local Government Act 1972 as it contains financial information around the disposal of a previously owned Council property.

It is considered that the public interest in maintaining the exemption would outweigh the public interest in disclosing the information because the report contains sensitive commercial information.

Westgate Chambers Redevelopment Removal of the Developer Overage Provisions

1. Background

- 1.1 Westgate Chambers was a key redevelopment site in the Town Centre that was previously in the ownership of the Council. The site is identified in the attached location plan that can be seen in Appendix (1) of this report.
- 1.2 As part of previous town centre regeneration proposals and more specifically as part of the Westgate Demonstrator redevelopment, the Council acquired a significant part of the Westgate Chambers site in 2006. A further acquisition then followed in 2008 for Nos. 13-26 Domine Lane. The intention at the time being to redevelop the amalgamated site for residential purposes to complement the nearby Keppel Wharf, Old Market Street and Imperial Buildings developments.
- 1.3 The developer of the Westgate Demonstrator project (Iliad) had an option agreement to develop Westgate Chambers as a further phase of their successful adjacent residential development. However, as a result of the banking crisis and subsequent downturn in the economic climate, they chose not to exercise their option and the property remained in Council ownership.
- 1.4 Furthermore, the austerity measures that followed and the tightening of public sector finances removed all potential grant funding that had previously been available to help fund the viability gap in development costs. This further reduced the Council's ability to engage with developers to redevelop the site.
- 1.5 However, in 2016 a joint venture agreement was brokered whereby the Council would dispose of the site at a reduced value, to help bridge the viability gap, and the developer would build out a scheme, but with overage provisions in place should the Gross Development Value of the completed project be significantly increased in the event of any market upturn.
- 1.6 The above disposal was approved at Cabinet and the sale was finally completed to the current developer on 13th December 2016. The sale was approved at a reduced value, as there were serious viability issues in delivering any scheme on the site and the Council were keen to support the wider regeneration of the area.

2. Key Issues

- 2.1 As part of the sale a number of overage provisions were included to provide extra security to the Council in the event that there was an upturn in the market and scheme viability was no longer an issue. The transfer documentation and sale were completed, and the overage provisions were formally registered against the property title.
- 2.2 In accordance with the agreement the developer has now brought forward a full scheme of redevelopment on the site for the conversion of the first and

second floor offices to provide a mix of 1 and 2 bed apartments, alterations to the existing ground floor shop frontages, demolition of Nos. 2-26 Domine Lane and the construction of a new 4-storey building to provide retail/leisure space on the ground floor and a mix of 1, 2 and 3 bed apartments on the first, second and third floors.

- 2.3 The developer has now achieved practical completion on the first phase of the development, that being 10 no. apartments with 4 no. commercial units below. Phase II is currently ongoing and demolition of 2-26 Domine Lane is now completed, this phase will bring about a further 19 no. apartments to the market. The final and third phase will be the new build part of the project and a new 4-storey building will deliver a further 32 no. apartments.
- 2.4 The developer is now having difficulty in securing further funding against the part completed scheme, a number of lending institutions have been approached and none are prepared to release any funds against schemes where overage provisions are in place. This is causing serious financial issues as it was always the developer's intention to secure borrowing on the completed first phase of the development to then continue and complete the full scheme. Funding cannot now be secured and the development will not be completed unless the situation is resolved. The lenders require full unencumbered title to the development.

3. Options considered and recommended proposal

- 3.1 The Council could provide no further assistance to the developer and refuse to look at the discharge of the overage provisions. This decision would be entirely within the Council's legal rights to do so, but the overall scheme would remain unfinished (until funding restrictions are lifted by lenders) and this part completed scheme would blight the landscape of an important area of the Town Centre that is in much need of regeneration. This is not the recommended option.
- 3.2 The Council and the developer did look at an option whereby the further funding could be secured against the completed property with a Deed of Priority Charge. This basically would have meant that the lender's new charge would have taken priority over the Council's overage provisions in the event of any loan default, but the Council's position would have still been protected as the overage provisions would still remain on title, but just sit behind the priority lending charge. In the event of any banking foreclosure, any new purchaser of the uncompleted development would have been required to enter into a direct deed of covenant to comply with the overage provisions moving forward.

This would have been the recommended option, but all funding institutions approached on this basis have rejected this proposal outright and the position is that they require full unencumbered title.

- 3.3 The release of the overage provisions solely in relation to the completed Phase 1 was also considered as an option, with a view to leaving the provisions on the title to the remaining phases. However, Phases 1, 2 and 3

are not on separate titles and as such the release on Phase 1 alone would not be feasible because part of the titles would be encumbered.
This proposal is no longer an option.

- 3.4 The total removal of the overage provisions will allow the developer to secure the much needed funding to complete the project. In addition to the above request the developer has provided additional supporting evidence to demonstrate that in the current market, and now that true build costs are known, there would be no overage payment triggered on the development. This information can be seen in the Exempt Financial Appendix (2) attached to this report.

This is now the recommended option.

4. Consultation on proposal

- 4.1 Local Ward Members have been consulted on the proposals and no concerns have been raised.

5. Timetable and Accountability for Implementing this Decision

- 5.1 Should approval be forthcoming for the release of the overage provisions then Asset Management (Estates Team) will instruct Legal Services to progress the removal of the clauses from the property title.
- 5.2 Legal Services will then seek the removal of the clauses from the title information as a matter of urgency. However, it must be noted that this process will involve engagement with an external body (HM Land Registry) and the Council will have no control over how quickly the application will be dealt with.

6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)

- 6.1 The recommended option is that the overage provisions in respect of this site are removed, to enable the development to be completed in full. The financial details with regard to this decision are included in the Exempt Appendix 2. Completion of the development will lead to an additional 51 apartments being brought to market. This will enhance the regeneration of the area and lead to additional council tax receipts for the Council. Given the current property market in the town centre, and the increased build costs as a result of inflationary pressures, the current position is that the Council will not benefit from the existing overage provisions, so there is minimal financial risk to the Council if the recommended option is approved.

7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

- 7.1 The Council is required by Section 123 of the Local Government Act 1972 to obtain the best price reasonably obtainable in land transactions. Therefore

the main legal implications arising from the recommended option (to release of the overage provision) are around whether or not this means that the Council has not obtained best consideration on the disposal of the property. Given the additional financial information supplied in the Exempt Financial Appendix 2, there does not seem to be any realistic prospect of any overage being payable. Taking this into consideration along with the negative effects of not releasing the overage means that Legal is satisfied that a decision to release the overage would be justifiable from a legal perspective.

8. Human Resources Advice and Implications

8.1 There are no implications arising from the proposals within this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 There are no implications arising from the proposals within this report.

10. Equalities and Human Rights Advice and Implications

10.1 There are no implications arising from the proposals within this report.

11. Implications for CO2 Emissions and Climate Change

11.1 Although there would have been existing emissions from the existing buildings, the completed development will bring forward 51no. new apartments to the market and also 4no. commercial units. Upon occupation and use this will lead to an increase in emissions from the site.

12. Implications for Partners

12.1. As the initial funding to acquire the site was awarded from the Homes and Communities Agency (HCA) the funding agreement links them to the overage and as such the Council also need their approval for the release of the overage provision. Initial discussions have taken place with the HCA and they are in agreement in principle to the proposal. The HCA are currently in the process of obtaining their own internal approvals and will advise further once these have been obtained.

13. Risks and Mitigation

13.1 There is a risk (however this has been demonstrated as minimal) that in releasing the overage provisions the Council could be potentially foregoing a future capital payment on the scheme. This minimal risk is supported by the detailed financial information provided in the exempt Appendix (2) of this report.

13.2 As the legal process will require engagement with the HM Land Registry then there is a risk that the matter will not be dealt with in a timely fashion. The Council will have no control over these matters, but will request that the release transaction is expedited as soon as possible. However, it is hoped

that the funders would be happy to rely upon the actual deed of release and the confirmation that it is being registered rather than waiting for registration.

14. Accountable Officers

Tim O'Connell – Head of RIDO

Jonathan Marriott – Head of Asset Management

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	06/12/21
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	30/11/21
Assistant Director, Legal Services (Monitoring Officer)	Phil Horsfield	24/11/21

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