

# Cheltenham Borough Council

**Council – 10 October, 2011**

**Cabinet – 18 October, 2011**

## **North Place & Portland Street - progress update**

### **Report of the Cabinet Member for Built Environment**

Note: this report will only go to Council & Cabinet if the bid passes the assessment process and the evaluation panel wants to recommend proceeding with the appointment of a preferred bidder

<b>Accountable member</b>	<b>Councillor John Rawson, Cabinet Member Built Environment</b>
<b>Accountable officer</b>	<b>Grahame Lewis, Executive Director</b>
<b>Accountable scrutiny committee</b>	<b>Environment</b>
<b>Ward(s) affected</b>	<b>St. Paul's &amp; Pittville directly</b> <b>All Saints, Lansdown &amp; College indirectly</b>
<b>Key Decision</b>	<b>Yes</b>
<b>Executive summary</b>	<p>The Cheltenham Development Task Force was established on 4<sup>th</sup> January, 2010, with the purpose of driving forward the ambitions previously set out under the Civic Pride banner. It became clear that due to changing circumstances the previously adopted brief for this key site was not likely to be deliverable, so following public consultation, the Council approved the revised development brief for this site in December 2010. As a result, the site was marketed in line with the EU Competitive Dialogue procedure set out in the Public Contracts Regulations from 24<sup>th</sup> January 2011. A tight timetable was proposed in order to maximise developer interest. This resulted in a positive market response and by 26<sup>th</sup> July, 2011, it was possible to identify two short listed bidders, who were invited to work up full schemes based upon their initial proposals (which were judged both on their design interpretation and financial package).</p> <p>Unfortunately, one of the two shortlisted consortia withdrew in early August. However, given the merits of the remaining scheme, it was decided to proceed with the competitive dialogue process, albeit with minor amendments reflecting the change in circumstances.</p> <p>Dialogue meetings have continued with a specific focus upon design and financial factors. Design considerations have been informed by input from the urban design and planning teams, together with responses from the public, whilst the financial focus has been on capital values and assessed scheme deliverability.</p> <p>Cabinet will now consider whether to convey preferred bidder status on Augur Buchler and their associated scheme, at its meeting on 18<sup>th</sup> October, 2011. In view of the significance of the proposed development, Cabinet is</p>

keen to engage with the wider Council and to secure input from fellow Councillors, to help inform its own deliberations and subsequent decision.

Additionally, the proposal will be considered by the Cheltenham Development Task force on 14<sup>th</sup> October, 2011, and that too will result in a recommendation to help inform the Cabinet decision.

Given the visual nature of the development proposal, a short presentation will be provided. Additionally, given the financial and commercial sensitivity of this matter, members are advised that it will be necessary to consider any financial aspects of the scheme in closed session, if they want to debate or consider these matters in more detail.

Officers consider that the key factors are design issues and financial outputs.

Note: The following additional documents will be made available to Cabinet prior to its meeting on 18th October: 1) the Council recommendation 2) a report and recommendation from the Cheltenham Development Task Force; and 3) an exempt Appendix attaching Augur Buchler's final proposal.

## Recommendations

- 1. That Council recommends to Cabinet that it should appoint Augur Buchler Partners Limited as the preferred bidder to undertake the redevelopment of the North Place and Portland Street sites.**
- 2. That Cabinet:**
  - a. considers the recommendation of Council on 10 October 2011 and taking into account the advice of the Cheltenham Development Task Force, agrees to appoint Augur Buchler Partners Limited as the preferred bidder to undertake the redevelopment of the North Place and Portland Street sites (the Sites);**
  - b. delegates authority to the Head of Property Services in consultation with the Borough Solicitor to:**
    - i) conclude the documentation necessary to appoint Augur Buchler Partners Limited as the preferred bidder;**
    - ii) conclude the documentation required to dispose of the Sites as necessary (noting that the Sites may be disposed of in parts by way of leasehold and freehold disposals and to more than one party);**
  - ii) enter into an agreement with Gloucestershire County Council for the purchase of land at Warwick Place.**

<b>Financial implications</b>	<p>The final financial details are commercially sensitive and will therefore be exempt information, made available to Council and Cabinet as a confidential exempt Appendix.</p> <p><b>Contact officer: Paul Jones</b></p> <p><b>E-mail: paul.jones@cheltenham.gov.uk</b></p> <p><b>Tel no: 01242 775154</b></p>
<b>Legal implications</b>	<p>The Council has undertaken the competitive dialogue procedure as set out in the Public Contract Regulations 2006, to choose a developer to redevelop the North Place and Portland Street sites. This involved a staged process of assessment as follows:</p> <ul style="list-style-type: none"> <li>• Pre-qualification selection process;</li> <li>• Invitation to shortlisted candidates to participate in a dialogue process during which aspects of the project were discussed and solutions developed;</li> <li>• Two bidders were chosen from the shortlisted candidates and invited to continue dialogue;</li> <li>• Dialogue closed and final tenders invited for selection of a preferred bidder.</li> </ul> <p>If Augur Buchler is chosen as the preferred bidder the Council will need to enter into a preferred bidder letter, inviting the preferred bidder to enter into a contract with the Authority to deliver the Project.. Following appointment of a preferred bidder there is a further opportunity to 'clarify aspects of the tender or confirm commitments' provided that there are no substantial changes to the tender.</p> <p>The Council can dispose of the Sites using its powers under Section 123 Local Government Act 1972 and unless it can rely on a general or specific consent issued by the Secretary of State, it must achieve best consideration for the disposals. The Council can purchase the land at Warwick Place by using its powers under Section 120 Local Government Act 1972.</p> <p><b>Contact officer: Donna Ruck, Solicitor</b></p> <p><b>E-mail: donna.ruck@tewkesbury.gov.uk</b></p> <p><b>Tel no: 01684 272696</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>None arising from this report</p> <p><b>Contact officer: Julie McCarthy</b></p> <p><b>E-mail: julie.mccarthy@cheltenham.gov.uk</b></p> <p><b>Tel no: 01242 264355</b></p>

<b>Key risks</b>	<ol style="list-style-type: none"> <li>1. The state of the global economy and the current fragility of markets in relation to support for new investment are an on-going concern.</li> <li>2. If the scheme is not considered deliverable, the Council's investment plans for infrastructure improvements in other areas of the town centre will be put at risk due to the lack of available capital funding.</li> <li>3. The Council's reputation could be significantly damaged and the authority may be at risk of legal challenge if it was to withdraw from the tender process without good reason.</li> </ol>
<b>Corporate and community plan implications</b>	<p>This high profile development has the potential to improve an existing distinct scar on the urban landscape, to deliver much needed housing (including 40% affordable provision), employment opportunities, modern parking facilities, a bus node and public square; all in a sustainable manner.</p> <p>Additionally, sale of the site will yield a capital receipt that can be targeted at future town centre improvement schemes.</p>
<b>Environmental and climate change implications</b>	<p>The design brief for the site envisaged a scheme that would deliver an exemplar in terms of sustainability. The proposals at this stage indicate that this ambition will be realised, with a host of environmental improvements proposed. These include green walls and roofs which will limit run-off and flood issues as well as absorb pollutants; improvements to the local bio-diversity through trees and other planting; bus connectivity; minimum code 4 housing with the potential to reach code 5 and minimum BREEAM rating of very good on the commercial elements.</p>

## 1. Background

- 1.1 Council established The Cheltenham Development Task Force, under the independent chairmanship of Graham Garbutt on 4<sup>th</sup> January, 2010, to drive forward the ambitions previously set out under the Civic Pride banner.
- 1.2 Initial analysis by the Task Force (subsequently substantiated by independent property advice), established that the previously adopted development brief for the North Place and Portland Street sites was unlikely to be delivered in its adopted format. For this reason, an amended brief was developed and publicly consulted upon. This brief essentially retained all of the principal elements of the previous scheme, including commitments to sustainability, the delivery of a public square, a minimum of 100 housing units (of which 40% to be affordable), a minimum 300 public car parking spaces and a bus node, but a reduced level of specificity concerning what other uses would be allowed to underpin the financial provision of such requirements. The brief allowed for a wide spectrum of uses, including residential, commercial and/or leisure.
- 1.3 As a result of the requirement for physical outputs, such as the car park, the procurement moved from a simple land disposal to one whereby a comprehensive development solution was required. As a result of this, the proposal redevelopment of the Sites needed to be advertised in the Official Journal of the European Union regulations as a "concession for works". The key challenge to the Public Contracts Regulations 2006 requirement is that many potential developers find the process extremely slow and frustrating, so it was felt prudent to follow an aggressive timetable, to demonstrate to the market that CBC and its partners were serious about delivering this scheme and releasing capital for other public realm improvement initiatives.

- 1.4** The formal marketing of the site began on 24<sup>th</sup> January, 2011 and a process has been followed that sequentially reduced bidders in a structured manner. Thus, from 115 initial expressions of interest, 9 formal bids were received; on the basis of an objective scoring matrix five were invited to participate in a competitive dialogue process (ITPD). One of these withdrew at this stage, leaving four bidders to submit 'Outline Solutions' by 1<sup>st</sup> July, 2011. Throughout the process, all bid proposals were considered against an evaluation matrix endorsed by Cabinet at its meeting on 8th February, 2011, which essentially allocated scores on a 50:50 basis for design and financial return criteria.
- 1.5** From the 4 bids received, two schemes scored much higher than the others and were invited to continue dialogue on 26<sup>th</sup> July, 2011, with the purpose of ultimately partaking in an invitation to submit a final tender (ISFT). The two schemes were from Salmon Harvester and Augur Buchler.
- 1.6** Unfortunately, on 9<sup>th</sup> August, 2011, the bid from Salmon Harvester was formally withdrawn for commercial reasons. This changed the dynamics of the process as it was anticipated to have two bidders up to the final stage, with one ultimately chosen as the preferred partner. Meetings were held between Augur Buchler and CBC, where both parties agreed to continue the process based upon some key assumptions, including a commitment by the bidding team not to exploit their position or CBC would feel obliged to withdraw from the process. Both Councillor Steve Jordan and Andrew North were present at these meetings.
- 1.7** In light of this commitment and the mobilisation of an even larger design and consultant team by Augur Buchler, the dialogue process has continued. Although Augur Buchler is the only bidder remaining in the process, it can only be granted preferred bidder status by a Cabinet decision.
- 1.8** The original timetable has now been accelerated to reflect this solus position. Cabinet will be asked to consider granting 'preferred bidder' status to Augur Buchler on 18<sup>th</sup> October, having first heard the views of Council on 10<sup>th</sup> October and the recommendation of the Cheltenham Task Force on 14<sup>th</sup> October. If preferred bidder status is supported and there is no overview and scrutiny call-in, so that an Award Decision Notice with a 10 day "standstill" period can be issued, it would be technically possible to secure the Development Agreement between CBC and Augur Buchler on or around 15<sup>th</sup> November, 2011, with final completion of the transaction subject to securing planning permission for the preferred scheme.

## **2. Key considerations**

### **2.1 Minimum Requirements**

- 2.1.1** The proposed scheme will deliver the mandatory bid requirements set out in the various bidding documents which mirror the design brief approved by Council. This includes:-
- A minimum 100 housing units – the scheme proposes 130 units, of which 40% will be affordable;
  - A public square – in this case opposite the church and aptly alluded to as 'Trinity Square;;
  - A bus node – utilising the stopped-up highway land at Warwick Place, in the ownership of GCC;
  - A minimum 300 car park spaces – the scheme proposes two car parks albeit within the same structure – a 300 space car park dedicated for public use and another, of similar footprint, for the use of the foodstore. The hotel will use the public space car park as its demand for space complements general day time use (Note: this is the same model deployed by the nearby NCP / Holiday Inn Express). Parking provision for the housing is separate to these allowances and will comprise at least one space per dwelling.
  - A substantial capital receipt for the Council;
  - An on-going revenue stream from the car park provision, equating to the current net current revenue generated by CBC for the Portland Street car park.

Note: These proposals may be subject to modification as a result of the formal planning process, which will ultimately determine the acceptability or otherwise of the finer details of the overall scheme.

- 2.1.2** In addition to the above, the level of sustainability proposed is higher than prescribed and will be an exemplar, with BREEAM (Building Research Establishment Environmental Assessment Method) Excellent targets for the commercial elements and Code for Sustainable Homes Level 4 targets for the housing, (level 5 if residential elements can be linked to the store's combined heat & power provision).

## **2.2 Public Engagement**

- 2.2.1** The scheme has been subject to significant scrutiny by the urban design and planning teams and critically, by the public. The scheme was unveiled to the public on 20th August, 2011, via the front page of the Echo and CBC website. This was supported by static and manned displays plus an evening meeting targeted at local residents and a further meeting with the Civic Society.

- 2.2.2** Details of the consultation and its outcomes are set out in section 3 below.

## **2.3 Legal Structure**

- 2.3.1** A development agreement will be entered into, which will set out the developer's obligations for building out the sites and setting out when land will be disposed of by the Council and to whom. At the time of writing the report the disposal of the Sites is being negotiated, but the likely method of disposal is as follows:-

- CBC releases the freehold of the sites for housing and commercial development;
- CBC retains the freehold and grants a long lease (250 years) over the area containing the car park reserved for public use;
- CBC to receive an annual payment for the leased area; this effectively becomes ground rent, but is set at a rate that equates to the net revenue from 300 spaces currently on the site. There would be a break clause in the lease in line with the commercial lets, but if enacted it requires the asset (the car park) to be handed over to CBC to run. Alternatively, the lease could be extended, or both parties could at some point in the future determine to redevelop the site again.
- At exchange of contracts, CBC will receive 5% of the capital receipt and the remainder (95%) upon confirmation of planning permission. On this basis, CBC will release freehold title to the land before commencement of works, as it will have received all monies arising from the scheme.
- The developer is required to use all reasonable and commercially sensible endeavours to obtain a satisfactory planning permission within a fixed period from exchange of contracts (to be agreed). Additionally, the developer is required to commence and complete works within a fixed period from exchange of contracts (again, to be agreed). Failure to do so will require the developer to pay a daily sum (equivalent to the car park revenue) for each extra day.
- If the car park is not managed within the agreed terms i.e. public access for a minimum 300 spaces and quarterly rent payments to the Council, CBC has the ability to seek forfeit of the lease.
- There will be a pro-rata payment to GCC for their interest in Warwick Place (which enables the bus node facility), based upon the net capital receipt received for the whole site.

## 2.4 Financial Considerations

- 2.4.1 Should members wish to discuss the indicative financial receipt and mechanics of the car park income, this will need to be done in closed session due to the commercial sensitivity involved.

## 3. Consultation

- 3.1 Augur Buchler's initial proposal for North Place / Portland Street was made available for public comment between 22nd August and 10th September. The objective of the consultation was twofold - to gauge public reaction to the proposal and to feed comment back to Augur Buchler and the Council's design and planning teams, so that if appropriate, the scheme could be amended.

- 3.2 Consultation arrangements were as follows:-

- 20<sup>th</sup> August – front page and positive leader comment in the Echo
- 22<sup>nd</sup> August – 10<sup>th</sup> September
  - Static, unmanned displays throughout the period at
    - Municipal Offices (main and Built Environment receptions)
    - Hester's Way Resource Centre
    - Springbank Resource Centre
    - Oakley Resource Centre
    - The new Lower High Street Community Resource Centre
    - Charlton Kings Library
    - Hill View Community Centre/Hatherley Library
  - Council website, with on-line comment form
- 3<sup>rd</sup> September – 10<sup>th</sup> September (excluding Sunday 4<sup>th</sup>)
  - Manned exhibition in High Street (outside Marks & Spencer) – 1 Council officer and 2 Augur Buchler representatives available from 9am to 5pm each day. Written comment forms available.
- 6<sup>th</sup> September
  - Face to face discussions with officers and Augur Buchler representatives at the Municipal Offices – 500 invites sent out to properties neighbouring the site.. Written comment forms available.
  - Presentation to Civic Society by Jeremy Williamson and Auger Buchler representatives

Press releases resulted in articles in the Echo and exchanges in the letters column. Initially, a record of attendance numbers was kept at the High Street exhibition, but numbers on the first day overwhelmed the staff's ability to keep tally, and a counting system was abandoned. About 50 neighbours attended the event on 6<sup>th</sup> September.

Other meetings took place to help inform the design debate including with active local residents and also the Cheltenham Civic Society.

100 comments were received in writing; 68 on-line. These 168 break down as follows

Outright Support	44	26%
Qualified Support	43	26%
<b>Total Support</b>	<b>87</b>	<b>52%</b>
Outright Objection	50	30%
Qualified Objection	26	15%

**Total Objection 76 45%**

Other comments 5 3%

An analysis of the comments shows the following trends.

- Outright support comments were stridently in favour of the scheme as displayed – particularly supportive of:-
  - Contemporary architectural style and overall design quality
  - High sustainability credentials.
  - Scheme layout.
  - Traffic management objectives
  - Landscape and open space provision.

Typically, comments include “get on with it” and “about time”.
- Qualified supporters are generally supportive of the proposals, but have some concerns. The most frequent concerns are:
  - Query the need for a supermarket and suggest the Council looks for an alternative use (generally not specified, though there are references to leisure uses – e.g. skating rink - and youth related uses).
  - A need to be less restrictive in traffic management arrangements on St Margaret’s Road junctions to allow all-way turning movements and relieve rat-running to the site through Monson Avenue and Clarence Square
  - Introduce 2-way movement on Portland Street.
  - Introduce Regency style architecture.
  - More greening
- Qualified objectors are against the scheme as drawn and are generally looking for a rethink. Often these are people directly affected (neighbours or near neighbours). Typical concerns:
  - Introduce Regency style architecture.
  - No need for supermarket
  - Noise, amenity and visual amenity issues (particularly impact of the car park and service access on housing in Northfield Terrace/Passage and impacts on Dowty House)
  - Building height
  - Impact on car parking in neighbouring streets (a number seeking a residents parking scheme)
- Outright objectors have nothing positive to say about the project. Concerns include:
  - Supermarket is unnecessary – not needed, will impact on town centre viability, etc
  - Dislike architectural style
  - Need to retain all car parking on the site
  - Hotel is unnecessary – will impact on local hotel trade
  - Parking provision totally inadequate
  - Traffic impact untenable
  - Amenity, noise and crime issues
  - Social housing unnecessary
  - Parking impact on neighbouring streets (a number seeking a residents parking scheme).
  - Underground parking

The comments have been forwarded to Augur Buchler and have been discussed with the Council’s planning and design team. This level of support is unusual, in that consultation events often elicit predominantly negative responses, with those supporting remaining silent – officers consider this level of support an endorsement of the scheme and the process followed thus far. A



number of the issues raised can be addressed through amendments to the proposal; others require action by outside agencies – notably the County Council on wider traffic and parking management issues.

Turning to the remaining issues of concern:

- Amenity impacts on neighbours are being closely examined for possible design solutions – particularly the impacts resulting from service and car park access, height and overlooking.
- The supermarket is not of a size that necessitates any special retail assessment in this edge of town centre location, which is within the core commercial area.
- Both supermarket and hotel elements will be assessed in terms of their impact as part of the planning process. Notwithstanding this, both of these elements have been considered through previous bidding rounds, including through the economic integration assessment, which has provided sufficient assurances about the potential impact of the proposals for this stage of the OJEU process.
- The County highways team has been supportive of this scheme in principle, as it makes no amendments to the existing highway network. However, it is likely that existing junction priorities will have to be amended once the full traffic modelling impacts are understood. This analysis will be a fundamental requirement of the formal planning submission.
- Initial discussions with County highways suggest that lifting the junction restrictions maybe an acceptable solution, subject to modelling and detailed consideration.
- It is a requirement of the development brief approved by Council that architectural style should be of its time and not a Regency copy or pastiche. This is also the view of the Council's officers and the developer team.
- Underground parking has been an issue in the press, but only an occasional issue in the comments received. The adopted development brief offers a range of options for parking -on-street, in public spaces, undercroft, underground or multi-storey. The proposal offers on-street, multi-storey and on-plot parking, which is compliant with the requirements of the brief. The solution proposed reflects a commercial decision by Augur Buchler, having regard to the overall requirements of the brief and the site specific circumstances.

## **4. Next steps**

- 4.1** If the Cabinet decides to grant preferred status to Augur Buchler on the 18th October, 2011, sufficient time will be allowed for any potential Overview & Scrutiny call-in. If no such call-in arises, an Award Notice will be issued. This requires a “standstill” of 10 days to give the opportunity for judicial challenge of the award process. If no such challenge is received, CBC can proceed to exchange of contracts, on the basis of the legal structure outlined in 2.3 above and will secure a 5% deposit at point of exchange.
- 4.2** Following exchange, Augur Buchler is keen to submit a planning application as soon as practicable. This could be submitted as early as late January/early February 2012.
- 4.3** The scale of the scheme necessitates a 13 week planning decision time frame including statutory consultation, but the public engagement exercise has already identified the key issues that need to be addressed by the applicants. On this basis, it should be possible for the detailed scheme to be considered as early as the May 2012 planning committee.

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<b>Appendices</b>	1. Risk Assessment

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
CR57	If the North Place & Portland Street process is compromised by misunderstanding of the proposal or legal framework (OJEU) within which proposal has been developed then Councillors will not lend their support to the scheme.	AN	23/05/11	4	3	12	Reduce	Full debate at council and recommendation from Cheltenham Development task Force to inform Cabinet decision	18/10/11	GL	Yes
	If the global economic situation deteriorates further then it is possible that bidding partners will either withdraw from the scheme or fail to commit.	AN	01/09/11	4	5	20	Accept	Given only one bidder remaining steps have been taken to accelerate the process in order to reduce the period of risk exposure.		GL	
	If the scheme does not proceed to conclusion then funds will not be available to re-invest in other town centre improvement schemes	AN	01/09/11	4	3	12	Contingency	Council would need to decide whether other disposals could help provide funding		GL	