

CHESHIRE EAST COUNCIL

Cabinet Member for Regeneration

Date of Meeting:	14 February 2017
Report of:	Executive Director, Place
Subject/Title:	Sale of Land in St Annes' Lane, Nantwich
Portfolio Holder:	Councillor Don Stockton

1.0 Report Summary

- 1.1 The former Nantwich town gasworks site ceased operations during the 1980s and was acquired by Crewe & Nantwich Borough Council in two parcels in 1982 and 1989. The site, which is edged red on the attached plan, is located a short distance from Nantwich town centre. It extends to around 0.7 hectares (1.73 acres) and is bounded to the west by a new residential development, to the north by the Welsh Row Conservation Area and to the south and east by the River Weaver. The site is currently vacant; the northern half is used as an informal, unsurfaced, free car park and the south is overgrown scrubland.
- 1.2 In 2013, the Council instructed its development company, Engine of the North ("EOTN") to prepare the site for disposal. Colliers International were engaged to market the property and secure a purchaser. Following an initial round of bids there was a call for final and best offers. Five offers were received, one of which was subsequently withdrawn.
- 1.3 Three proposals were for residential or nursing home use and two of these included a restaurant. The other was for a mixed use scheme comprising a hotel, restaurants, retail units and residential apartments.
- 1.4 After a process of assessing each of the bids it is proposed that the site is disposed of to facilitate the mixed use scheme.

2.0 Recommendations

It is recommended that the Portfolio Holder:

- 2.1 Agrees that the Council enters into an agreement to sell the land indicated edged red on the attached plan to the preferred purchaser on terms to be agreed by the Executive Director, Place in consultation with the Director of Legal Services and the Chief Operating Officer.
- 2.2 Notes that if officers conclude that any land within the property is deemed to be open space, they will advertise the intention to dispose of that land and

any objections received will be presented to the Portfolio Holder for Regeneration for him to consider.

3.0 Reasons for Recommendations

3.1 A sale of the property will generate a significant capital receipt; it will transfer liability for a contaminated site from the Council to the purchaser and the site will be remediated and ultimately redeveloped in a manner that will deliver positive benefits to Nantwich and its town centre. In addition to this it will also generate a long term income for the council through rates and generate employment opportunities.

4.0 Wards Affected

4.1 Nantwich North and West

5.0 Local Ward Members

5.1 Penny Butterill, Arthur Moran

6.0 Policy Implications

6.1 Relevant planning policies are contained in the Borough of Crewe and Nantwich Replacement Local Plan. Policy S.12.3 of the Plan allocates the site, known as Wyche House Bank, Nantwich, as a Mixed Use Regeneration Area. It is identified as suitable for housing, hotel, leisure, car parking, religious, community, and office / B1 uses.

6.2 The emerging Cheshire East Local Plan Strategy identifies the Property as part of the Snow Hill strategic development site (Site CS23). It has been identified as being suitable for a wide range of uses including: retail, leisure, offices, hotel, parking, housing, bars and cafés.

6.3 The purchaser has engaged with the planning authority through the formal pre-application process. The site occupies a sensitive location adjacent to Nantwich town centre, a Conservation Area and the River Weaver. The proposals have been modified in response to comments made by officers in connection with rights of way, highways and general design. Whilst further detailed design work will be required at the planning application stage, the proposals appear to be acceptable in principle and have a realistic prospect of securing approval.

6.4 A footpath / cycleway crosses the southern part of the site, linking St. Anne's Lane to the open space of Mill Island via a bridge across the River Weaver. This route is to be retained, improved and realigned as part of the proposed development.

7.0 Implications for Rural Communities

- 7.1 The proposed development will bring forward investment that will contribute to the viability and sustainability of a town centre in a market town serving a wide rural hinterland.

8.0 Financial Implications

- 8.1 The site is being sold in its existing contaminated condition – it is a former town gasworks. It cannot be left in a contaminated condition in perpetuity. At some point in time it will have to be remediated. If the Council were to carry out the remediation itself, it would incur a cost in the order of £600 – 800+k. This is not the avenue being pursued but it is relevant both to the price being paid and the benefits that would flow to the Council from this sales transaction.
- 8.2 The sale will generate a capital receipt and transfer liability for remediating the site to the buyer.
- 8.3 In addition to the consideration, the recommended scheme, when compared to the other proposed schemes, maximises rateable value, providing an improved long term income to the Council and Govt.

9.0 Legal Implications

- 9.1 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.
- 9.2 The General Disposal Consent 2003 authorises the disposal of land at less than best consideration if the undervalue is £2million or less, if the undervalue is higher than £2million consent to the disposal is required from the Secretary of State. However the Council still has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way which is accountable to the local people.
- 9.3 The offer recommended for acceptance is not the highest offer received. In marketing the property for sale, it was stated that the Council viewed the site as offering potential for a residential led, mixed use development, in line with its planning policies, opening the river frontage to the general public and exploiting its central location close to town centre services and facilities.
- 9.4 The offer recommended for acceptance is based on a mixed use scheme comprising a hotel, restaurants, retail units and residential apartments. This mix of uses will improve local facilities, create an active, vibrant extension of the town centre, encourage footfall and activity along Welsh Row and promote greater access to the river bank.

- 9.5 The proposed development will promote and improve the economic, social and environmental well-being of the residents of Nantwich and this justifies acceptance of an offer at less than the best consideration achievable. However, the Council must ensure that the benefits are secured.
- 9.6 All disposals must comply with the European Commission's State aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and the amount of the subsidy complies with State aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £155,000 (200,000 Euros) in state aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).
- 9.7 Contractual arrangements will be included in the sale agreement to ensure that liability for remediating the site transfers to the purchaser. The Council cannot use the sale contract and land transfer to obligate the Buyer to remediate the land or to implement the proposed development as to do so would amount to a development agreement which is subject to the Public Contract Regulations 2015. The Council would therefore be in breach of these regulations by failing to undertake an EU compliant procurement and would be at risk of challenge.
- 9.8 The legal structure for the disposal is structured to ensure that the developer delivers the proposed development without risk of challenge to the Council.
- 9.9 Section 123 of the Local Government Act requires the advertisement of any open land before its disposal and consideration of any objections received following such advertisement.
- 9.10 The recommended scheme maximises the opportunity for the Council to generate a revenue stream through generating business rates and council tax. Other proposed schemes are not able to achieve the same level of returns.

10.0 Risk Management

- 10.1 As set out in the Legal Implications, the sale of land for securing development raises the following risks:
- The Council could be at risk of challenge for breach of the Public Contract Regulations 2015 by exerting too much control over the buyer to such an extent that the sale agreement is viewed as a development agreement as should have been procured;
 - To avoid the above risk, the legal deal will be structured such that the development can be secured but without the buyer being under an

obligation to deliver it. By its very nature, such a structure does not have the same level of control as a development agreement and therefore the Council cannot guarantee delivery of the development to the same extent;

The value accepted for the land together with the developer's profit return for the development will have to be considered to ensure that the land value accepted does not give a significant benefit to the developer to the extent that it be seen to breach State Aid Regulations.

11.0 Background and Options

- 11.1 The site has a number of issues and constraints that have, for almost 30 years, frustrated attempts to bring about a sale to facilitate redevelopment.
- 11.2 A legacy of its historic use as a gasworks, the site remains heavily contaminated. Limited remediation was carried out in the 1980's but the extent of contamination that remains was unknown, creating uncertainty and risk for potential buyers. Furthermore, the historic remediation works were funded by a Derelict Land Grant ("DLG") of £409,000 which became repayable when the site eventually sold.
- 11.3 The Council has sought to address these issues. It succeeded in negotiating with central government a waiver of the DLG clawback. This will save the Council £409,000 when the site is sold and it will make a sale financially viable.
- 11.4 With regard to contamination, the Council has engaged with the Environment Agency and the Council's Contaminated Land Team. It has carried out further site investigation work. This has helped achieve a level of certainty about the extent of contamination and the cost and risks associated with remediation.
- 11.3 The Council has also resolved some longstanding title issues. When the site was acquired, the Council was unable to deduce satisfactory title to a wide strip of land running through the centre. The Land Registry refused to grant title and as a consequence the Council did not legally own a key part of the property. Between 1990 and 2015, numerous attempts were made to resolve the issue but were unsuccessful. In 2015, the Council, assisted by a firm of solicitors, advanced a novel line of argument with the Land Registry which proved successful and resulted in the Council being granted absolute title to all of the site. This removed a title risk and made the property more saleable. In addition, a small section of the site was encumbered by a long lease to British Gas. This was intended for a gas governor but the apparatus was not installed. The Council negotiated a surrender of this lease and it has since been removed from the legal title.
- 11.4 The site occupies a prominent location close to Nantwich Town Centre and fronting onto the River Weaver. It is presently under-utilised and unsightly. The Council has had aspirations to sell the property for almost 30 years but

various issues have frustrated previous attempts. A number of these issues have been resolved and there is now an opportunity to sell the site and bring forward a prestigious and attractive mixed use development that will contribute positively to Nantwich and its town centre.

11.5 An extensive marketing exercise produced four offers for the site. Of these, three were based on residential use which would bring the site back into use, but which would not make a significant contribution to Nantwich Town Centre. The proposal recommended is for a hotel, restaurants, retail units and apartments. These uses will bring people and activities onto the site, generating footfall along Welsh Row and promoting the use and enjoyment of an important river side resource.

11.6 The mixed use proposal recommended does not represent the best financial offer for the site, but the social, economic and environment benefits that flow from it are an important consideration that justify acceptance of an offer at less than best consideration. The mixed use scheme will have increased regenerative and economic benefits and maximises the opportunity to maintain an income stream through rating and council tax.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Frank Jordan
Designation: Executive Director, Place
Tel No: 01270 686643
Email: frank.jordon@cheshireeast.gov.uk