

Delivering a Leisure Development for Macclesfield Town Centre

Options Appraisal

A number of options to enable delivery of a leisure led development on part of the site have been explored including:

- (I) Variation of/new Development Agreement with Wilson Bowden;
- (II) Direct delivery of a leisure led scheme by the Council;
- (III) Offering land for sale to developers for a leisure led development;
- (IV) Appointment of a Development Manager to deliver scheme;
- (V) Appointment of a new Development Partner;
- (VI) Agreeing Special Purchaser status for one potential bidder.

A summary of the issues taken into account for each as identified by officers with assistance from an external consultant is set out below. Option (III) has been identified as the recommended route forward. Option (I), seeking continuation of an agreement with Wilson Bowden as a development partner to deliver the leisure element of their approved scheme only was considered but has been ruled out for the reasons set out below. The other Options could potentially be pursued but are considered by officers to be overall less advantageous in this particular instance than the recommended Option (III).

Option (I)

Variation of/new Development Agreement with Wilson Bowden

The option of either varying the Development Agreement between the Council and Wilson Bowden or making a direct award of contract under a replacement Development Agreement to enable the delivery of the leisure element of the Silk Street scheme only was considered but has been discounted given the significant risks posed by such an option.

The potential benefits of such an option are linked to the fact that existing agreements for lease are in place between Wilson Bowden and Cineworld and a number of restaurant operators. However these leases are predicated on the delivery of the wider scheme and would require revision. In addition, although the Wilson Bowden Silk Street scheme has planning permission, given that the existing planning permission for the cinema is conditional on numerous conditions and a legal agreement both of which are linked to the delivery of the wider scheme, Wilson Bowden could not realistically look to rely on the existing planning permission for delivery of the cinema only. This being the case, there is little or no advantage in planning terms in retaining an exclusive relationship with Wilson Bowden.

Even more critically, Public Contracts Regulations 2015 would only allow variations of the existing agreement which did not amount to a material change. A significant number of pre-conditions within the Development Agreement were linked to the wider scheme and any variation to allow delivery of the leisure element of the wider scheme only would result in a materially different contract. Similarly, to justify the direct award of a new contract to Wilson Bowden, the Council would need to prove that only they can provide the relevant services. It is not considered that this can in any way be reasonably argued in this instance. These options would therefore expose the Council to significant risk of legal challenge which could result in the varied or replacement agreement being deemed ineffective, the Council paying damages to the successful complainant and the project being significantly delayed.

Furthermore, early feedback from the Macclesfield Town Centre Vision Stakeholder Panel indicates seeking to continue to retain a contractual relationship with Wilson Bowden rather than looking for alternative schemes and developers would be unpopular locally.

This option should therefore be ruled out because legal advice suggests the need to formally and transparently tender the opportunity means that significant risks of legal challenge would exist if looking to pursue this option.

Option (II)

Direct delivery of leisure led scheme by the Council

With this option the Council would take direct control of delivery of a cinema/leisure development project managing the entire process. This would involve being responsible for managing the design, tenancies, planning application and contracts to build.

This option would require the Council funding the development. Whilst this creates higher financial risk for the Council, the Council securing funding up front could provide confidence to potential tenants of the schemes likely delivery.

Given the specialist nature of cinema development there are issues with lack of relevant experience and capacity within the Council to project manage a niche leisure development scheme. There is therefore considered to be substantial risk of unforeseen hurdles resulting in non-delivery. Given the scale and nature of this risk, and the threat that further lack of delivery poses for the health of the town centre, this option is not therefore recommended.

Option (III)

Offering land to sale to developers for a leisure led development

Under this option a suitable parcel of CEC land within the wider site would be marketed with a view to giving all potential developers interested in developing a leisure led scheme the opportunity to put forward a scheme for consideration by the Council. The best all round option, having regard to fit with the wider Town Centre Vision, public opinion, and price, would be chosen and a sale progressed with the successful bidder.

Control over the development of the site could be secured for example using Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, which allows positive covenants to be placed on sites when sold. Alternatively a staggered sale route could be considered requiring a longer two stage sale process but potentially allowing greater control for the Council over the use of the land. Further influence over the form of the development can of course also be secured via the planning process.

This option allows value for money to be transparently considered as part of this process and Wilson Bowden would be able to bid for the site alongside other interested parties.

The timescale from placement of advert to appointment of developer could potentially be achieved in around a three month period via this route. A preferred developer could be chosen having regard to a wide range of factors such as technical ability and innovation alongside price.

This option is suggested as the best compromise route retaining relative speed of appointment of developer, low risk of legal challenge and allowing consideration of new ideas put forward by other developers.

Option (IV)

Appointment of a Development Manager to deliver scheme

Under this option the Council would seek an external Development Manager to deliver a leisure scheme for a fee. Whilst there is the potential for costs to be less if procuring a Development Manager and a contractor rather than only a Developer (as per option v), the costs of the development for the Council under this option are unclear, since the appointed Development Manager would need to procure a contractor.

As the cost of delivery of a cinema and restaurant offer is understood to be in the order of £15M, based on normal development management fees it is likely the value of the contract with a development manager would exceed the thresholds that require a compliant procurement process to be undertaken pursuant to the Public Contracts Regulations 2015. The shortest timescale for undertaking an open procedure is three months. Realistically it would be likely to take in the order of 5 months to appoint the Development Manager following which the scheme design, tenant packages, and cost plan would all need to be detailed and actioned prior to progression to any contractor being appointed. There is a risk that this process may be viewed as onerous and off putting to developers.

Having considered the likely timescales, financial implications, risks and costs it is recommended that this option is not put forward as the recommended option.

Option (V)

Appointment of a new Development Partner

Under this option the Council would appoint a new development partner to deliver a leisure scheme with the developer carrying the financial risk.

Again, the Council would need to undertake a compliant procedure process undertaken pursuant to the Public Contracts Regulations 2015. The likely timetable for delivery would be dependent on the OJEU process undertaken, but could be in the order of 15 months to start on site. Whilst this option carries low risk of challenge the tendering requirements for a public contract can be off putting for developers as it is considered to be time consuming and costly and may therefore limit or remove interested parties.

Having considered the likely timescales, financial implications, risks and costs it is recommended that this option is not put forward as the recommended option.

Option (VI)

Agreeing Special Purchaser status for one potential bidder

As set out under Option (i), it is not considered that Wilson Bowden could currently be classed as the only contractor able to deliver the desired scheme. There is however the possibility that a potential bidder could come forward making a case that they are in a unique position to deliver a development with such social, economic and other benefits that they should be treated as a special purchaser such that the land did not need to be offered for sale to others.

Should this happen, before pursuing this option the Council has been advised that it would be wise to carry out market testing to reduce risk of challenge and also to ensure independent valuations are undertaken to determine pricing transparency. Taking this route would be dependent on a developer coming forward and proving the case for Special Purchaser status. Should this occur delivery could potentially commence in as little as 10 months.

Having considered the likely timescales, financial implications, risks and costs, it is recommended that should a developer come forward and prove a case for Special Purchaser status this could be an alternative option to the land sale route set out under Option (iii), but that the Council should proceed with marketing the site as set out under Option (iii), reconsidering the position should a bidder come forward and suggest they should be treated as a special purchaser