
Executive

27 September 2018

Report of the Director of Economy and Place
Portfolio of the Executive Leader (inc. Finance and Performance)

Establishing an investment budget for a strategic commercial property acquisition

Summary

1. This report recommends a further investment to acquire property in the Swinegate area in order to promote the growth and economic health of the city centre and secure additional income to the commercial portfolio.

Recommendations

2. Executive is asked :
 - i. To recommend to full council the establishment of a capital budget of £2.52 million to fund the acquisition of the freehold interest in commercial property assets in the Swinegate area identified in confidential annex A.
 - ii. To delegate authority to the Director of Economy and Place to complete the purchase once all due diligence is satisfactorily conducted on the property assets.

Reason: - To ensure the ongoing economic vibrancy of the city centre while increasing the income from the council's commercial property portfolio in line with budget targets.

Background

3. The council operates a significant commercial portfolio acquired over many years in order to develop and regenerate areas of the city, promote business growth and protect heritage buildings. This portfolio generates a revenue income stream supporting the council's revenue budget. The Council's ownership of this portfolio achieves many objectives including the protection of some of the City's most precious assets, maintaining good quality accommodation and making provision for a range of businesses to operate and grow within the City.

4. Last year the Council made a major acquisition of property in Swinegate with the aim of ensuring the ongoing economic vibrancy of the city centre while increasing the income from the council's commercial property portfolio. All of the units within these sites are fully let. This acquisition was in line with the Council's approach of purchasing assets which support wider council objectives while achieving a return rather than investing simply where the highest returns are to be made.
5. Following the Swinegate acquisition agreed in July 2017, a further opportunity has arisen to make an additional strategic purchase of a mixed commercial portfolio in York city centre, in the Swinegate area which has a good rent roll and is available at a respectable investment yield, representing an opportunity for the council to support the economic prosperity of the city centre and make a good investment. The Council has been approached by the owner of some property in the Swinegate area, through a local property agent as to whether it may be interested in acquiring the portfolio. This opportunity is thus not on the open market and the details of such are hence commercially sensitive and confidential. Details of the asset are attached as confidential Annex 1; together with a pre-acquisition report prepared by York based commercial property agents, which provides a commercial view of the opportunity.
6. In line with previous acquisitions, should the purchase be agreed by Executive then further due diligence legal and survey work will be carried out on the property and considered prior to completing the acquisition.
7. The Swinegate area contains a range of smaller footprint offices, shops and food and beverage establishments and is populated by a number of local, smaller retailers. Purchasing assets in this area will enable the council to ensure the continuation of support for local businesses and to ensure that these sensitive buildings are properly maintained and well managed. Consideration will also be given to the potential for future on site energy generation.
8. The Swinegate area is currently working well and the commercial mix in this area is thriving with high occupancy levels and good footfall. This will promote local economic growth and furthers the council's commitment to promoting the growth and economic health of the city centre. The current tenants are local businesses.
9. York's Economic Growth Strategy recognises the key role that independent businesses play in keeping our city vibrant and competitive. The city's cluster of creative businesses, independent retailers and visitor attractions are at the heart of our aspiration to promote York to new audiences and help to retain more of the talented young people who pass through the city's universities. York currently has the second lowest commercial

property vacancy rate of according to a report undertaken by “Centre for Cities” which sampled key centres across the UK. York benefits from strong footfall driven by visitors who are attracted by the unique mix of businesses housed in the city centre. Areas such as Swinegate, with its mix of shops, restaurants and offices, underpin the economic health of the city centre.

10. This investment is modest relative to the Council’s total turnover/overall debt and it is consistent with the Council’s budget strategy. The budget report for 2018/19 sets out an approach to a 5 year budget and identified the need to consider further property investment opportunities, in order to continue good progress over future years. Given that interest rates are low, property acquisitions perform well when compared to other forms of investment and are capable of delivering higher yields.

Funding

11. It is recommended that an overall capital budget of £2.52m is set aside to fund the acquisition and associated costs.
12. The funding will be provided by borrowing from the Public Works Loan Board (PWLB) and will be repaid from rental income.
13. The outline business case is set out in confidential Annex 2. The business case is based upon borrowing over 50 years and minimum revenue provision being based on the asset’s perceived life. This is the prudent approach and is in accordance with the Treasury Management Strategy. In addition to rent, each lease has the ability for a service charge to be levied which will pay for the repairs and maintenance liabilities of the property.
14. Given current low interest rates, even with making full provision for repayment of the costs of purchase the rental income will provide an additional source of annual revenue, net of borrowing costs. In addition the value of the asset is likely to increase over time.
15. The investment therefore represents a good opportunity to support city centre economic prosperity and well being, which will also increase the commercial portfolio rental stream.

The Council Plan

16. The acquisition will support the following priorities;
 - The creation of a prosperous city for all,
 - Be a council that listens to residents particularly by ensuring that :
 - Everyone who lives in the city can enjoy its unique heritage and range of activities.

- Visitors, businesses and residents are impressed with the quality of our city.
- Local businesses can thrive.
- We are entrepreneurial, by making the most of commercial activities.

Implications

17.

Financial – These are covered in the report and in confidential annex 2.

Human Resources (HR) – If the acquisition goes ahead additional resource will be needed to manage the expanded commercial portfolio. This will be funded from additional income.

Equalities – none

Legal –

Section 1 of the Localism Act 2011 contains a “general power of competence” for local authorities giving a power to do anything that an individual may do, rather than be limited to those things which are related to or necessary for the discharge of an existing function of the authority. There are however statutory limitations on local authorities’ pre-existing powers and functions.

Key amongst those limitations is that a local authority wishing to use the power for a commercial purpose must do so through a company. Recent case law has though established that what is key here is the purpose for which the council undertaking the activity. If the council is proposing to acquire land, for example, to ensure the availability of attractive accommodation for businesses or the protection of historic buildings, then the fact that a commercial return will also be achieved does not make this a commercial purpose. If, however, the dominant purpose is to act as a commercial landlord to achieve investment returns then the powers in the Localism Act are not likely to be available unless exercised through a company. The objectives of the Council are a question of fact. The report, however, describes the objectives of the proposed purchase in terms which would seem to permit reliance on the general power of competence.

There are other powers which may be capable of being relied upon. The Local Government Act 1972 gives the Council powers to acquire any land for the purposes of its functions or for the benefit, improvement or development of the area. Ensuring the economic well being of the City is one of the functions of the Council and the proposed purchase is for the benefit of the area. This power therefore is available to the Council given the benefits set out in the report.

The decision in respect of this purchase must also be made having regard to normal public law principles. The Council must exercise its powers reasonably. This includes having regard to the implicit fiduciary duty owed to council tax payers. The due diligence referred to in the report will be key in demonstrating compliance with these duties as is the specialist advice already obtained.

Information Technology (IT) - There are no IT implications.

Crime and Disorder – none

Property – All property implications are covered in the report.

Risk Management

18. As with all property acquisitions there is a risk that the value of the property may decrease over time. There is also a risk that there may be a level of empty properties or voids. The business case makes provision for that risk and specialist advice has been obtained to provide an independent view of the commercial opportunity.

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Approved

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Wards Affected: Guildhall

**For further information please contact the author of the
report**

Annexes

Confidential Annex 1 – Pre Acquisition Report with Details of the Asset
Confidential Annex 2 – Outline Business Case

List of Abbreviations

None