

Executive

4th November 2008

Report of the Director of City Strategy

Castle Piccadilly – procurement issues

Summary

1. This report provides members with background information with regards to the historic and current position in respect of the Castle Piccadilly area, and sets out the current understanding of the Council's aims and objectives. The report also provides an explanation of the legal position (particularly in the context of procurement) applicable to the options which may be open to the Council in achieving its objectives. The report provides a recommended course of action and requests authority to proceed with the recommendation.

Background

2. Members will be familiar with the adopted planning brief for the Castle Piccadilly area. The Council remains a significant landowner in the Castle Piccadilly area. Previously, the Council has pursued the objective of a comprehensive regeneration of the Castle Piccadilly area, including potentially making the Council's land available to developers in order to achieve this objective.
3. A proposal by Land Securities for a comprehensive retail-led scheme was refused planning permission by the Secretary of State in September 2003 following a 'call in' inquiry that ended in August 2002.
4. The Council prepared a new planning brief for the site involving considerable community involvement including an externally facilitated Reference Group to inform the key principles in the planning brief. This was adopted by the Council for development control purposes in March 2006.
5. The York Retail Study by Roger Tym and Partners (2005) and a more recent city-wide Retail Study by GVA Grimley (2008) have concluded that the Castle-Piccadilly site provides the best location for extending the current primary shopping area and the best site in the city centre for meeting the city's longer term retail needs.
6. Land Securities have disposed of their interest in the current Coppergate Centre and other land ownerships within the wider Castle Piccadilly area to La

Salle earlier this year. La Salle have appointed Centros as development managers and are considering plans for an extension to the Coppergate Centre in response to the planning brief.

The Council's Aims and Objectives

7. To recap, the aims of the City of York Council in relation to the land in its ownership and the other land identified in the planning brief can, at present, be summarised as:
 - To achieve best consideration for its land
 - To achieve the Council's vision and planning objectives as set out in the planning brief including: a high quality development which helps to meet the retail needs of the city; development that is viable and helps to deliver wider planning objectives for the area e.g. the provision of quality civic and open space, links across the river, riverside paths and relocation of the Castle car park

All to be addressed looking at the area comprehensively.

Confirmation is requested that these are still the Council's aims and objectives.

How can the Council's Objectives be met?

8. Assuming that the Council wish to pursue the objectives stated in paragraph 7, then the objectives could be achieved by the present majority landowner in the Castle Piccadilly area, La Salle, if they were to come forward with a suitable scheme, but it is also possible that the objectives could be met by other developers or the Council could consider acquiring land and undertaking a development itself. It is clearly impractical for the Council to seek to acquire land to achieve the objectives stated. It is anticipated that the Council will need developers to achieve practical delivery of the Council's objectives.
9. Until the decision in the case of Jean Auroux –v- Roanne, decided in January 2007, public bodies, including local authorities, considered that they were legally entitled to enter into direct negotiations with a potential developer, work up an appropriate scheme and a price for the Council's land, and simply sell the land to the developer with a Development Agreement controlling how the development would proceed. However in the light of the Roanne decision such an option is no longer legally acceptable.

Current Legal Position

10. The Council has sought legal advice regarding the present position due to changes in understanding of how public bodies are obliged to meet their legal and procurement obligations. The case of Roanne, combined with the effects of earlier cases, has more closely defined what is a public works contract, and when the present procurement regulations are applicable. We are advised

that, entering into a sale or letting of land, where the Council wish to achieve something other than simply payment for the land, will, in most circumstances, amount to public works to which the Procurement Regulations 2006 will apply. The Council's aims and objectives are already clear, from the adopted planning brief, and these include regeneration of the area and the provision of quality, civic and open space. Therefore, even though the Council will not be undertaking the works themselves, the works that we anticipate will be provided by a developer will be meeting the needs and objectives of the Council and, as such, will fall into the definition of works under the Procurement Regulations.

Procurement Process

11. The Council will wish to ensure that it complies with its legal obligations and its own regulations with regards to achieving best consideration for its land, and by making available opportunities, by way of a competitive process, in order to achieve the most economically advantageous outcome. Under the Procurement Regulations, different specific procedures apply, depending upon whether the public works are works being delivered to, or for, the benefit of the Council, or whether they are, in part, concessionary in nature.
12. It is envisaged that the works that may be undertaken by a developer will not involve the delivery of physical works to the Council. If an arrangement is made with a developer, it will be on the basis that the Council will make available its land in return for payment and possibly some degree of future income, together with a developer undertaking to deliver a particular scheme, including meeting the specified Council's aims and objectives. Such an arrangement, whilst involving works, will be a works concession. That is the Council will be making its land available for a developer to use and exploit in a way which is consistent with the Council's aims and objectives. In such circumstances, a works concession procurement procedure must be followed.
13. In procurement of works, the Council is obliged to follow one of 5 processes for placing the work for competition, assessing bids and the relative merits of bids before deciding upon the successful bid and deciding whether to proceed to enter into a contract. In a works concession situation, the procedure is not prescribed, but the Council must follow good procurement practice.
14. A works concession competition commences with the lodging of a Works Concession Notice in the OJEU. Beyond the continuing obligations to conduct a fair, transparent and proportionate process, the Council can then set its own process and reasonable timeframe for assessment and negotiation of bids received.
15. The Council should undertake a fair, transparent and proportionate process to assess the credentials and capability of potential developers to bring forward a development, to negotiate with potential developers with regards to what might be provided, with a view to final proposals being worked up for the approval of the Council. This process can include public consultation. The successful

bidder will be obliged to undertake a competitive tender process to locate subcontractors for a significant part of the overall works it is to undertake.

Recommended Approach

16. It is recommended that the Council adopts a works concession process in order to progress the Council's identified aims and objectives, for the reasons set out in paragraphs 10-15 above.

Corporate Priorities

17. The delivery of a comprehensive scheme in accordance with the vision and objectives of the planning brief, in a way that achieves best consideration for the Council's land, will help to achieve the following corporate priorities:
 - improve the actual and perceived condition and appearance of the city's streets, housing estates and publicly accessible spaces
 - improve the economic prosperity of the people of York with a focus on minimising income differentials

Implications

18. The following implications have been assessed:
 - **Financial** - The cost of undertaking a works concession procurement process will have to be funded by the Council. The likely cost is not yet known but it is a necessary requirement for taking this critical council priority forward in accordance with the legal regulatory framework for procurement.
 - **Human Resources (HR)** - None
 - **Equalities** - None
 - **Legal** – The legal advice is set out in the main body of this report.
 - **Crime and Disorder** - None
 - **Information Technology (IT)** - None
 - **Property** – The property implications are set out in the main body of this report. The process set out will ensure that the Council achieves best consideration for its land.
 - **Other** - None

Risk Management

19. In compliance with the Council's risk management strategy, we have considered the main risks in relation to this issue. The procurement approach recommended in this report minimises the risk of not achieving the Council's planning objectives for this site, and will ensure we achieve best consideration for land in the Council's ownership. The Council will undertake a fair, transparent and proportionate procurement process, to minimise the risk of legal challenge.

Recommendations

20. Members are asked:-
1. to confirm that the Council's aims and objectives are:-
 - i. to achieve best consideration for its land;
 - ii. to achieve the Council's vision and planning objectives as set out in the planning brief, including a high quality development which helps to meet the retail needs of the City;
 - iii. a development that is viable and helps to deliver wider planning objectives for the area e.g. provision of quality, civic and open space, links across the river, riverside paths, and relocation of the castle car park; and
 - iv. to achieve the comprehensive regeneration of the Castle Piccadilly area;
 2. to approve the commencement of a works concession procurement process to support the bringing forward of possible alternative developer solutions in a fair, transparent and proportionate manner;
 3. to provide delegated authority to the Director of City Strategy, in consultation with the Director of Resources, to approve a set of criteria upon which the procurement competition process will be measured.

Reasons:

To achieve the Council's objectives whilst complying with the Council's own rules and the current legal regulatory framework

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Wards Affected:

All

For further information please contact the author of the report

Background Papers

None