

**Executive**

**28 November 2019**

Report of the Director of Economy and Place

Portfolio of the Executive Member for Finance and Performance

## **Establishing an Investment Budget for a Strategic Commercial Property Acquisition**

### **Summary**

#### **Recommendations**

1. Executive is asked :

(i) To recommend to full council the establishment of a capital budget of £2.85 million, to fund the acquisition of the freehold interest in a York city centre asset as set out in the confidential annex.

(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.

Reason: -

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

#### **Background**

2. The Council operates a significant commercial portfolio acquired over many years which 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.

3. In 2017 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, whilst previously acquiring two sites within Hospital Fields Road. These acquisitions have been in line with the Council's approach of purchasing assets which support wider Council objectives whilst achieving a financial return rather than investing simply where the highest financial returns are to be made.
4. Following the city centre acquisition agreed in July 2017 a further opportunity to acquire an additional property holding was reported to Executive in September 2018 and approval duly provided, setting out a budget of £2.52 million for such. Unfortunately the vendor subsequently decided to retain its asset and hence that proposed acquisition did not take place.
5. There is a growing local awareness of the emerging challenge facing the high street which has led a wide range of stakeholders, including York Retail Forum; York Bid; Make It York; Indie York and media outlets , to call for strong local leadership, joined up thinking and collaborative solutions to ensure the city centre's long term survival. The council has agreed a budget of £100k to develop, through public and stakeholder engagement, a long term strategic vision for the future of the city centre under the 'My City Centre' banner.
6. An opportunity has now arisen to make a strategic purchase of a hugely significant asset at the heart of York city centre. Specific details of the asset and the value of the offer are both commercially sensitive until the contract for sale is completed, at which time details will be published.
7. The owner is seeking to dispose of their freehold interest which is let to a commercial tenant. The opportunity was identified and a non-binding subject to contract offer has been made. The vendor was seeking offers in a short time frame through their commercial agents, as is the norm in the commercial property market, with other potential purchasers interested. We have been advised by the vendor's agents that following the subject to contract offer, the Council is the preferred bidder of the property.
8. Given the details are commercially sensitive the details of the business case are contained within the confidential appendices, as well as specific details in relation to the property which support the strategic rationale for the purchase.
9. The purchase of this asset would be a strategic lever in future consideration of how the city centre adapts to reflect the changing retail picture. Acquiring ownership of this strategically placed asset will enable the Council to shape

further discussions with neighbouring land owners and steer future direction, rather than simply relying on the Council's powers as a statutory authority, in accordance with the My City Centre vision.

10. Financially, the opportunity would also provide the Council with a good rent roll through the commercial tenancy agreement already in place on the property, which provides a respectable investment yield at the agreed purchase price. In addition the property has future potential for development to increase public access and amenity and to bring upper floors into active use, potentially for residential conversion. The business case and the strategic potential of the site are set out in the confidential appendix.
11. Strategically, this is an opportunity for the council to support the economic prosperity of the city centre now and in the future and thus represents a good investment. A pre-acquisition report prepared by commercial property agents, provides a commercial view of the opportunity and recommends the Council proceed with the purchase and is contained within the confidential appendices of this report.
12. 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.
13. Making this strategic investment in the City Centre would also be consistent with the Council's budget strategy. The budget report for 2018/19 set out an approach to a 5 year budget and identified the need to consider further property investment opportunities. In order to continue this 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**

14. It is recommended that a capital budget of £2.85 million is set aside to fund the acquisition and associated costs.
15. The funding will be provided by borrowing from the Public Works Loan Board (PWLB) and will be repaid from rental income.
16. The outline business case is set out in the confidential appendix which sets out the return on the potential investment. The business case is based upon borrowing over 50 years and minimum revenue provision being based on the asset's perceived life. The lease in place on the property provides that the tenant is responsible for ongoing repairs and maintenance of the property.

17. 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.
18. The investment therefore represents a good opportunity to support city centre economic prosperity, gives the council ownership of a strategic asset in order to influence future regeneration opportunities and increases the commercial portfolio rental stream.

## **The Council Plan**

The proposal accords with the Council Plan 2019-2023 in specific regard to the following core outcomes of the Plan;

- An open and effective Council
- Well paid jobs and an inclusive economy.

## **Implications**

### **Financial –**

The proposed acquisition accords with the Council's Capital Financing and Investment Strategy 2019/20 which was approved by Executive in February 2019. The Strategy set out that the reasons for buying and owning property are (in order of importance):

1. Economic development and regeneration in York
2. To generate income in order to provide services for local people
3. The opportunity

As detailed within the report, the purchase will be funded by borrowing. The Strategy sets out that the rental income generated must exceed the cost of repaying the borrowing each year with any surplus being used to support the council's overall budget position, enabling the council to continue to provide essential services for residents. As illustrated by the business case within confidential appendix 3, this opportunity meets this parameter.

**Human Resources (HR) – N/A**

**Equalities – N/A**

### **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 report sets out the objectives of the proposed purchase in terms which would permit reliance on the general power of competence, in that the primary purpose is economic development and the regeneration of York.

In addition, 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 also 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 established 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 sets out the factors that demonstrate compliance with these duties as does the specialist advice already obtained.

**Information Technology (IT) – N/A**

**Crime and Disorder – N/A**

**Property – All property implications are covered in the report.**

**Risk Management**

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.

## Contact Details

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**Chief Officer Responsible  
for the report:**

Neil Ferris – Director of  
Economy and Place

**Report approved**

√ 13/11/19
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## Specialist Implications Officer(s)

Financial – Debbie Mitchell  
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Head of Finance

Legal – Suzan Harrington  
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**Wards Affected:** All

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

## Background Papers:

Confidential - Pre Acquisition Valuation Report with Details of the Asset –  
available on request

## Annexes

Confidential Appendix 1 – Location Plan

Confidential Appendix 2 – Photographs of Property & Strategic Summary

Confidential Appendix 3 – Outline Business Case

Confidential Appendix 4 – Executive Summary Pre Acquisition Valuation Report

**List of Abbreviations**

None