
Executive

15th March 2005

Report of the Director of Environment & Development Services

Planning issues on Foss Islands

1. Purpose of Report

- 1.1 This report outlines the work undertaken to bring the Foss Islands area forward for redevelopment. The proposals involve the redevelopment of a brownfield site, the provision of new infrastructure to serve the wider Foss Basin area and the funding of a new sustainable depot, contributing to the aims of the community strategy. Planning permissions for the development of the retail scheme (outline), the provision of the link road and the relocation of the Council depot have now been granted. This report seeks members agreement to commence compulsory purchase action to secure a part of the site on which negotiations have, so far, been unsuccessful to enable the development to proceed.

2. Executive summary

- ❑ A development brief for part of the site was produced in 1998 outlining the intention to bring the site forward for redevelopment.
- ❑ Outline planning permission has been secured to facilitate this comprehensive development.
- ❑ The developer has option agreements with all landowners within the site, with the exception of Kwik Fit.
- ❑ There are a number of regeneration benefits that will arise from the redevelopment of this site, including: enhancement of a run down underused and unsightly area directly fronting the inner ring road, the city walls and in close proximity to the historic city centre; and the development of a depot to a sustainable design which will contribute to the aims of the community strategy and is supported by Yorkshire Forward.
- ❑ To ensure the project is progressed within a reasonable timescale it will be necessary to commence compulsory purchase proceedings to secure the land owned by Kwik Fit.
- ❑ Kwik Fit would be compensated for the loss of this land by the provision of new replacement premises within the development and a financial contribution to reflect any 'disruption'.
- ❑ The funding for this will be provided by the developer by means of an Indemnity Agreement and in return the Council will transfer the Kwik Fit land to the Developer.

3. Background

- 3.1 The site comprises a Council depot, civic amenity facility, an area of old railway sidings and motorised workshop uses. Previous uses of the area have included use for landfill and a stone yard, with possible contamination sources from the depot use by the presence of fuel tanks and an incinerator. The site is relatively level and has a long frontage to Foss Islands Road. This road forms part of the main vehicular route around the city centre, the inner ring road.
- 3.2 To promote the development of the area the Council produced a development brief for part of the site (shown hatched on the attached plan) in 1998. This sought the development of the area for retail or a mix of retail and leisure purposes, in accordance with policies in the draft Local Plan.
- 3.3 A development of the area for retail purposes would be in accordance with the draft Local Plan which identifies the site for edge of centre retail use. It is one of the few large 'unconstrained' sites on the edge of the city centre which can provide for the scale and type of retailing needed by residents within this area. This edge of centre provision will also reduce leakage to the out of centre stores from the city catchment area. This approach accords with the sequential analysis of sites outlined in government guidance (Planning Policy Guidance note no 6, Town Centres and Retail developments. There are no suitable sites of this scale and type within the City Centre itself. It also accords with Planning Policy Guidance note no 13, Transport, which directs developments involving a high trip generation to more accessible central locations.
- 3.4 The area is in a number of different ownerships, the largest of which is the depot site, owned by the Council. This was marketed for sale in January 1998 and a developer was selected to take forward the redevelopment of this site and the adjoining area as shown on the attached plan.
- 3.5 A number of proposals have been progressed to facilitate the comprehensive development of the Foss Islands area, involving the relocation of the Council depot to an alternative site, the provision of a new link road and the development of the Foss Islands site. Planning permission for all these developments has been granted and are detailed below.
- On 2nd April 2004 Planning Committee resolved to grant outline planning permission for the redevelopment of the area to provide a superstore, non-food retail units, petrol filling station, restaurant and replacement unit for Kwik Fit subject to the completion of a Section 106 agreement and the application being referred to the Secretary of State (due to the development being a departure from the 1956 Development Plan, sited on Council owned land and by virtue of its size). A decision was received on 10th August 2004 that the Secretary of State did not wish to call in the application. The S106 agreement was signed and planning permission was granted on the 9th December 2004.

- On 17th December 2004 an application was received for the approval of reserved matters to this outline planning permission in relation to design, external appearance and landscaping and an application for the variation of conditions on the outline planning permission. On 24th February Planning Committee resolved that delegated authority be granted to the Assistant Director, Planning and Sustainable Development in consultation with the Chair, Vice Chair and Opposition spokesperson to approve the planning application subject to amendments requested and conditions. Planning permission was granted for the variation application subject to the completion of a S.106 agreement and a number of conditions.
- On 17th February 2004 planning permission was granted for a new Council depot with associated workshops, office building, access, parking and landscaping at Hazel Court, James Street. The location of this site is shown on the attached plan. On 3rd November 2004 planning permission was granted for amendments to the design and materials for the new office block element of this development to incorporate sustainable design features.
- On 1st October 2004 planning permission was granted for the provision of a Link Road, known as the James Street/Layerthorpe Link Road, shown on the attached plan. This forms part of the Foss Basin Master Plan for the area. This master plan was agreed by the Planning Committee in February 2004 to ensure the impact of development proposals in the area were viewed together and a number of measures were agreed to offset the impact of developments in the area. The new road is intended to alleviate congestion on the inner ring road, improve accessibility within the area and includes cycling facilities as part of a wider cycling network into the city centre. It also provides an alternative access to the proposed household waste site at Hazel Court as the proposed replacement for the Foss Islands Road facility.

4. Detailed considerations

- 4.1 Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) outlines the powers of local planning authorities to compulsorily purchase land in circumstances where it thinks that this will 'facilitate the carrying out of development, redevelopment or improvement', providing this will promote or improve the economic, social or environmental 'well being' of their area. Circular 6/04 gives further guidance on the justification for making an order and makes it clear that land should only be taken compulsorily where there is clear evidence that there is a compelling case in the public interest.
- 4.2 In this case the land comprising the application site is in a number of different ownerships. The developer has acquired or has an option to purchase land identified on the attached plan with the exception of the land currently occupied by the Kwik Fit premises. The acquisition of this land is necessary in order to implement the development outlined in paragraph 3.5 above. If the land is not secured the development cannot

go ahead and the wider public benefits arising from the regeneration of this area will not be achieved.

- 4.3 The developer has an agreement with the Council (known as the Development Agreement) whereby work will commence on the building of a replacement depot when the conditions contained in the Agreement are fulfilled. When the replacement depot is completed the depot use will be transferred to the new site and the development of the application site can commence. It is anticipated that the development of the Foss Islands site could commence on site in March 2006.
- 4.4 In May 2000 Gregory Properties Limited, now one of the parties to the joint venture company (the developer), commenced negotiations with Kwik Fit via their agents Hill Woolhouse and Donaldsons. Terms were agreed and concluded in February 2003 and solicitors were then instructed for Gregory Properties Limited to progress the sale documentation. In 2002 however a private equity company firm purchased the Kwik Fit chain. The company have since indicated that they are willing in principle to sell but wished to re-negotiate the terms of the sale.
- 4.5 Under the terms of the current offer to Kwik Fit the company is provided with replacement premises and ancillary parking areas as part of the new non-food retail development. These are identified on the approved plans and shown located at the southern end of the site. Vehicular access to the premises is separate from the superstore and other non food units. The developer would build the new premises as the first element in the development of the non-food premises and on practical completion would exchange sites with Kwik Fit and allow time for their relocation to the new premises. The company would also be paid a financial consideration.
- 4.6 Without the land currently occupied by Kwik Fit the development outlined in para 3.5 above cannot be implemented. The Council has promoted the comprehensive development of this area for some time and a number of key benefits will arise from its redevelopment, which provide economic and environmental improvements to the area. These include,
- Contribution to the wider regeneration proposals taking place in the Foss basin area and provision of a significant level of funding towards a key phase of the James Street Link Road and improvements to the existing road network
 - The redevelopment of a brownfield site, currently occupied by rundown commercial buildings and a council works depot which would bring commercial and employment benefits to the city and greatly improve its edge of centre retail offer
 - The appearance of the area would be upgraded with the removal of unsightly buildings surrounding a grade II Listed chimney. A key stretch of the inner ring road around the city centre, would be enhanced through a landscaped frontage.

- Commitment by Yorkshire Forward to funding and supporting the scheme for the new depot on the basis of its sustainable design and building features which include a green roof, grey water recycling and innovative building design using straw bale construction. Yorkshire Forward consider that the design will be an exemplar model for such development
- Inclusion within the new depot of training facilities on sustainable building design thereby contributing towards the aims of the community strategy (the sustainable city is one of the themes of the strategy)
- Provision of convenience retail facilities on the edge of the city centre which will improve the accessibility of such retailing for residents within the central area
- Contribution to the cultural assets of the city by providing a green corridor through the site and facilitating a wider cycle route into the city centre (also contributing to the aims of the community strategy by maximising opportunities for sport and leisure)

4.7 It is recognised that the Council should only use compulsory purchase powers as a last resort. This proposal however offers the opportunity to secure significant public benefits for the City. Negotiations have been ongoing for a number of years between the developer and landowners to secure all the necessary land for the scheme to go ahead. Whilst Kwik Fit have indicated they are willing to sell their property and relocate in the new development the terms for sale have not been agreed.

4.8 If terms are not agreed or negotiations become prolonged there is a serious risk that the current agreements and financial arrangements between the developer and other landowners may expire and funding and financial arrangements set out by the Council to assist with financing the new depot may need to be reviewed with the risk that funding may be lost. In these circumstances there is a real possibility the project may have to be abandoned.

4.9 Hammonds, the Council's Solicitors who specialise in compulsory purchase, have advised the Council that in order to create certainty and control the timetable for this project, the Council is advised to resolve to make a compulsory purchase order to acquire the outstanding interest of Kwik Fit. Negotiations with Kwik Fit will continue and it is hoped a satisfactory deal is concluded. However, the Council will progress the compulsory order to ensure the project timetable is not prejudiced.

5. Legal Implications

5.1 On 4th January 2005 the Council served a notice under S330 of the Town and Country Planning Act 1990 requiring information on the ownership of the subject land and the purposes for which the land is used. The covering letter to Kwik Fit outlined that the Council were considering the possibility of making a compulsory purchase order for the land.

- 5.2 On 7th February 2005 Eversheds solicitors acting for Kwik Fit informed the Council by way of a pre application protocol letter for judicial review that Kwik Fit intend to apply for permission to challenge by way of judicial review the grant of outline planning permission. The Council has responded that it intends to resist any such application for judicial review.

6. Financial implications

- 6.1 The developer has agreed to be responsible for the costs of the compulsory purchase order, including both professional fees and compensation to the landowner. Written confirmation of such agreement would be provided in an 'indemnity' agreement which would be pursued if members resolve to proceed to compulsory purchase the land. Officers will seek to ensure that the risk of default by the developer is minimised to an acceptable level before further work is progressed on the process. In return for the indemnity the land would be transferred to the developer once acquired under the CPO. Hammonds would be employed to undertake the legal work associated with the compulsory purchase proceedings.

- 6.2 Yorkshire Forward have agreed to fund £569,460 for the 'eco' elements of the design of the sustainable depot at Hazel Court. The majority of this funding is available in the next financial year, when the depot is due to be built, with a proportion available this year to cover fees.

7. Human Resources and other implications

- 7.1 There are no staffing considerations arising from this report.

8. Human rights considerations

- 8.1 When considering a compulsory purchase order, local authorities must have regard to the impact of such an order on the human rights of those persons with interests in the land which is the subject of the compulsory purchase order. The relevant provision in this case is Article 1 of the first protocol of the European Convention on Human Rights. This provides that

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

- 8.2 Article 1 has been enacted into UK Law under the Human Rights Act 1998. In deciding whether to proceed with the compulsory purchase order the Council must consider whether the acquisition of the interests in the land, are in the public interest.

The Council must also consider whether the exercise of the compulsory purchase powers in this case are proportionate to the ends being pursued. It is considered that the compulsory purchase order seeks to acquire only those interests which are necessary to secure the redevelopment of this area, is proportionate to the ends being pursued and is in the public interest.

9. Recommendations

9.1 It is recommended to Members:-

- a) That subject to prior completion of an appropriate indemnity agreement the Council makes a Compulsory Purchase Order under Section 226(1)(a) of the Town & Country Planning Act 1990 for the acquisition of the land within the area shown on the plan attached and situated adjacent to Foss Islands Road for the purpose of securing a mixed use development including retail, petrol filling station restaurant replacement unit for Kwik Fit, a new Council depot and associated workshops office building access and parking, and a link road between James Street and Layerthorpe Road.
- b) That the Acting Director, Development and Environment Services be authorised to:
 - i. take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order, consultation with the Council's solicitors including the publication and service of all notices and the presentation of the Council's case at Public Inquiry;
 - ii. to acquire interest in land within the Compulsory Purchase Order whether by agreement or compulsorily and then transfer the land under the terms of the Indemnity Agreement to the developer to allow the development to be carried out.
 - iii. approve agreements with land owners setting out the terms for the withdrawal of objections to the Order.

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Background Papers

Legal	
Financial	
Human Resources	
Crime and Disorder	N/ a
Sustainability	