

**Brighton & Hove
City Council**

**CABINET
ADDENDUM**

**OVERVIEW & SCRUTINY
COMMISSION REPORT**

4.00PM, THURSDAY, 12 MARCH 2009

COUNCIL CHAMBER, HOVE TOWN HALL

ADDENDUM

ITEM	Page
185. REPORTS FROM OVERVIEW & SCRUTINY COMMITTEES	1 - 74
185A Report of the Overview & Scrutiny Commission in regard to the Cabinet decision made on 12 February in respect of the former ice rink in Queens Square, Brighton.	
1) Report of the Overview & Scrutiny Commission	1 -3
2) Draft minutes of the Overview & Scrutiny meeting 3 rd March 2009	5 -10
3) The request for Call-in.	11- 16
4) Letter from Councillor West requesting Call-in	17-18
5) Extract from the Cabinet meeting held on 12 February	19 - 21
6) Decision Record of Cabinet 12 February	23- 26
NOTE. Items 7 - 10 were previously confidential (Part Two) items. They were brought into the public domain either at Overview & Scrutiny Commission (OSC) meeting 3 rd March or afterwards by the agreement of the Chairman of OSC.	
7) Additional Information from the Director of Finance & Resources to Scrutiny	29 - 34
8) Annexe One to the additional information provided by the Director	35 - 36
9) E-mail exchanges with Councillors (with attached documents and a map)	37 - 50
10) Informal Planning Guidance Note	51 - 58
11) Original Part One report to Cabinet 12 February	59 - 64
CONFIDENTIAL ITEMS (copies circulated to Members only)	
12) Original Part Two report to Cabinet 12 February	65 - 68
13) E-mail and correspondence between officers and community representatives	69 - 78

CABINET MEETING

Agenda Item 185A

Brighton & Hove City Council

Subject:	Call-In of Cabinet Decision to Dispose of Ice Rink, Queen Square		
Date of Meeting:	12 March 2009		
Report of:	The Director of Strategy and Governance		
Contact Officer:	Name:	Tom Hook	Tel: 29-1110
	E-mail:	Tom.hook@brighton-hove.gov.uk	
Key Decision:	Yes	CAB 7173	
Wards Affected:	St Peter's and North Laine		

FOR GENERAL RELEASE

Note: The Special Circumstances for non-compliance with the council Procedure Rule 23, access to information and Section 100B(4) of the Local Government Act as amended (items not considered unless the agenda is open for inspection at least 5 days in advance of the meeting) are that it was not possible to compile and gain approval for information germane to this report (specifically the draft minutes of the 03 March Overview & Scrutiny Commission meeting) in time for the despatch of the agenda.

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report relates to the special meeting of the Overview & Scrutiny Commission on 03 March 2009, convened to consider the call-in of the Cabinet decision in relation to disposal of the Ice Rink, Queen Square site (12 February 2009)
- 1.2 This report sets out the draft minutes from the 3 March OSC meeting at Appendix A and re-prints all the papers made available at that meeting excluding Part 2 items (Appendix B). Appendix C is the 12 February Cabinet report on the disposal.

2. RECOMMENDATIONS FROM OVERVIEW AND SCRUTINY COMMISSION:

- 2.1 That the Cabinet, in accordance with Part 6, paragraph 16.10 of the Council's constitution and having regard to the resolutions of the Overview and Scrutiny Commission set out below,
 - a) Consider whether to amend their decision of the 12th February or not, before reaching a final decision on the disposal of the Queens Square Ice Rink site.
 - b) Consider the further recommendations of OSC set out in paragraphs 2.3 (b) – (d) and 2.4
- 2.2 **Resolution of the Overview and Scrutiny Commission**
 - 2.2 (a) That the decision taken by Cabinet on 12 February 2009 in relation to the disposal of the Ice Rink, Queen Square, be noted

(b) That the subsequent call-in request be noted

(c) That the additional information supplied by the Interim Director of Finance and Resources be noted

2.3 (a) That the decision be referred back to Cabinet for reconsideration taking into account the following recommendations.

(b) That the Planning Department be requested to draw up a robust Planning Framework for this site that would include consultation with the local community before any subsequent decision is taken

(c) That this Planning Framework be appended to any future cabinet report pertaining to the disposal of this site

(d) That relevant extracts from the Hotel Futures Supplementary Planning Guidance be appended to any future Cabinet report if it is decided to pursue the option of an hotel for the site

2.4 (a) That Cabinet be asked to ensure that the Council consults properly with Ward Councillors

(b) That in consultations with Ward Councillors it is made clear that their views are being sought and that relevant information will be available to them to form a view. A reasonable timeframe for requesting further information and for replies to be made be clearly indicated

3. RELEVANT BACKGROUND INFORMATION

3.1 Details of the 12 February 2009 Cabinet decision in regard to disposal of the Ice Rink, Queen Square site and of the subsequent request by Councillor Pete West and his colleagues on the Green Group plus papers considered by 3 March Overview and Scrutiny Commission in determining the call-in request, are attached at Appendices B and C.

3.2 A draft minute of the 3 March Overview & Scrutiny Commission meeting is also included as Appendix A to this report.

4. CONSULTATION

4.1 None has been undertaken in relation to this report

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 None in relation to this report; but members should be aware of the implications to the 12 February Cabinet report and the 03 March Overview & Scrutiny Commission report (both re-printed in the papers accompanying this report).

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 The Overview and Scrutiny Commission evaluated whether or not to send the original decision back to Cabinet for reconsideration.

7. REASONS FOR REPORT RECOMMENDATIONS

7.1 Recommendations are based on the resolution of the Overview and Scrutiny Commission of the 3rd March.

SUPPORTING DOCUMENTATION

Appendix A: Draft minutes of the 3 March 2009 Overview and Scrutiny Commission (OSC) meeting

Appendix B: All papers submitted to 3 March OSC (with the exception of the cabinet report) including those printed on pink paper in the confidential part of the OSC agenda that were subsequently brought forward into Part 1 open session. Papers remaining exempt from disclosure are listed below at Part 2.

Appendix C: Report to 12 February Cabinet on Disposal of Ice Rink Part 1

PART 2:

Appendix D: Report to 12 February Cabinet on Disposal of Ice Rink Part 2

Appendix E: Exchanges with interested parties and community groups

Documents in Members' Rooms/Background Documents

None

BRIGHTON & HOVE CITY COUNCIL
OVERVIEW & SCRUTINY COMMISSION
4.00PM 3 MARCH 2009
COUNCIL CHAMBER, HOVE TOWN HALL
DRAFT MINUTES

Present: Councillors Mitchell (Chairman); Alford, Bennett, Mrs Cobb, Elgood, Meadows, Pidgeon (Deputy Chairman), Smart, Randall and Wakefield-Jarrett

PART ONE

80. PROCEDURAL BUSINESS

80A Declarations of Substitutes:

Councillor Smart declared that he was attending as substitute for Councillor Older

80B Declarations of Interest:

Councillor Fallon-Khan declared a prejudicial interest as Cabinet Member for Central Services and a member of the Cabinet that made the original decision in relation to the disposal of the Ice Rink, Queen Square (12 February 2009).

80C Declarations of Party Whip:

There were none.

80D Exclusion of Press & Public:

Part 2, Appendix 6 to Item 91 comprises 4 annexes, of which 3 have since been released for publication.

80E Chairman's Communications

The Chairman welcomed members of the public to the meeting which had been called to determine whether or not to refer back the 12 February 2009 Cabinet decision on disposal of the Ice Rink, Queen Square.

Councillor Mitchell stated that proceedings were being webcast and explained the order of the agenda. Some papers had been marked as confidential, but it was intended that the meeting should be as open as possible, with members of the public not excluded unless absolutely

necessary. To this end, the informal planning guidance note on the Ice Rink site which had originally been published as a confidential (Part 2) annex to the call-in meeting papers had been brought into Part 1, the public part of the meeting.

Councillor Mitchell asked members to note that the extract from the 12 February Cabinet meeting proceedings (Appendix 2 of the call-in report) was in draft form and had not been agreed by the Cabinet as an accurate record of its 12 February 2009 meeting. Councillor Mitchell also noted that Appendix 6 of the call-in report (p31) was incorrectly titled 'Appendix 5' in the call-in papers.

The Council's lawyer was then asked to make some comments on what information could or could not be heard in public session. The lawyer explained that there should be a general presumption in favour of taking evidence in public, but that discussion likely to reveal the identity of an individual, information relating to the financial and business affairs of the Council or correspondence to and from members of the public might necessitate moving into closed session.

81. REQUEST FOR CALL-IN OF THE 12 FEBRUARY CABINET DECISION ON THE ICE RINK, QUEENS SQUARE

Evidence from Councillor Pete West

- 81.1 Councillor West thanked the Commission for establishing the call-in meeting and for giving interested parties the opportunity to address the committee. He then gave details of his call-in request (as set out in Appendix 1 to the call-in report).
- 81.2 Councillor West informed members that the matter of the disposal of the ice rink had first been brought to his attention when it was included in the Council's Forward Plan. Although there had been a subsequent exchange of e-mails with officers in Property & Design, and the 12 February 2009 Cabinet report had stated that ward councillors had been consulted, at no stage had the three ward councillors in fact been asked for their views on this issue.
- 81.3 Neither had interested parties been consulted on the development of the informal planning guidance note, a document which he had seen only 2 days before the Cabinet meeting. Councillor West felt that this approach to the disposal of a sensitive site had been unhelpful and was disrespectful of the roles of elected representatives.
- 81.4 Councillor West also pointed out that the informal planning guidance note drawn up in relation to the Ice Rink site had not been included with the Cabinet report papers. In his view some passages in the report were incorrect, other information was incomplete, and Cabinet had been asked to decide on the disposal on the basis of flawed information.
- 81.5 As Cabinet had been unable to make an impartial and informed decision, Councillor West believed that the matter should be re-considered with all the pertinent information made available.
- 81.6 In response to members' questions, Councillor West stated that he had initiated dialogue on the Ice Rink disposal with Property & Design; that he did not consider this

contact with the relevant council department to amount to 'consultation' on the issue; that he had not known of the existence of the informal planning guidance note until shortly before the Cabinet meeting; and he had not been involved in the report to Cabinet until it had been published in advance of the 12 February Cabinet meeting.

Evidence from Mr Sean Kiddell, Chair of St Nicholas Green Spaces Association

- 81.7 Mr Kiddell appraised members of his concerns with regard to the way in which the decision to dispose of the Ice Rink site had been made. He expressed particular concern that the informal planning guidance note had not been included in the 12 February Cabinet papers, and that the Cabinet decision had not been made with reference to details such as the proposed height and shading of any new build, the implications of proposed foot/cycleways and access to Churchill Square. Mr Kiddell argued that these considerations should have informed the disposal decision as well as forming part any subsequent planning decision.
- 81.8 In response to Members' questions, Mr Kiddell stated the report to Cabinet was the first information he had seen on the proposals. Local and national policy on protecting green spaces was not referred to in the Cabinet report. Given the Council's commitments under the Community Engagement Framework, Mr Kiddell would have expected his association, which is an official 'Friends of' group, to have been consulted prior to any decision on disposal. Relations with the council had been very positive thus far and the Association wanted to be a good neighbour.

Evidence from Mr Fisher, Secretary of Wykeham Terrace Residents' Association

- 81.9 Mr Fisher told members that he was concerned that he had known nothing in advance of the proposed disposal of the ice rink and that neither he nor his ward councillors had been consulted on the issue. He said that he had not seen the informal planning guidance note prior to this call-in meeting. Mr Fisher also told members that his association had received assurances in 2005 about consultation and on the maximum number of storeys and height of roofline to be permitted on the Ice Rink site.
- 81.10 Mr Fisher felt the Council had conflicting interests as both landowner and planning authority, and that a number of covenants affecting the area should be made known to the prospective purchaser.
- 81.11 Some Members commented that the report to Cabinet gave the impression that 5-6 floors was the preferred option for a development of the site.

Evidence from Councillor Ayas Fallon-Khan, Cabinet Member for Central Services, and from Council officers

- 81.12 Councillor Fallon-Khan asked for clarification on what information he could refer to without going into confidential session (Part 2). The lawyer stated that correspondence in general terms could be referred to, but commercial information and personal details should not be dealt with in open session.

- 81.13 Councillor Fallon-Khan pointed out that the Cabinet decision related only to the site disposal and not to the planning process which would be subsequent to any decision relating to disposal.
- 81.14 Councillor Fallon-Khan explained that, at the 12 February Cabinet meeting there had been some confusion over whether Councillor West had been consulted about the Ice Rink proposal, but that it was now evident that he had in fact been consulted. When Councillor Mary Mears had spoken at Cabinet she had not acknowledged that Councillor West was not consulted, but rather had said *if* Councillor West had not been consulted it would have been regrettable.
- 81.15 Addressing the concerns of Mr Kiddell and Mr Fisher about consultation, Councillor Fallon-Khan stated the developer, once selected, would be obliged to consult with the local community at level 2 of the property disposal procedure (i.e. the stage preceding an application for planning consent)
- 81.16 Councillor Fallon-Khan also informed members that ward councillors had been informed of the proposed property transaction and invited to query it. There was nothing more that Council officers ought to have done and the Council did nothing that ought not to have been done.
- 81.17 A member pointed out that one reason for the call-in was that: '*In compiling* the report presented at Cabinet and the informal planning guidance note, no consultation took place with ward councillors nor other affected parties' (see Appendix 1 to the call-in report). The Assistant Director of Property and Design responded, explaining the process of property disposals and setting out some of the general issues around shortlisting bidders. She stated that consultation with Ward Councillors had taken place and had included an e-mail sent on 16 January with the Ice Rink marketing brochure attached (this email also made reference to the informal planning guidance note).
- 81.18 Asked to elaborate on common law principles of consultation, the Council's lawyer noted there were three basic elements: a genuine invitation to the other party to give advice; adequate time for the consultee to tender advice; and proof that the consulting body had seriously considered any advice tendered.
- 81.19 Councillor Fallon-Khan told the committee that the ward councillors had been sent a good deal of information (as set out in e-mails reprinted in the confidential appendices to the call-in report). On 4 February, the date of its publication, the Part 1 report to Cabinet on the Ice Rink disposal was sent to all three Ward Councillors. Further phone calls, e-mails and a meeting followed and this information could have been shared with residents and interested parties. Officers also offered to go through the property evaluation and proposed scheme in detail with Councillor West.
- 81.20 In response to queries, Councillor Fallon-Khan told members that a draft report had not been ready before 4 February, but that Ward Councillors had been supplied with enough information to share with residents and interested parties.
- 81.21 Councillor Fallon-Khan also stated that proposed number of storeys of any build on the Ice Rink site was not pertinent to the Cabinet decision, but was rather a matter to be

debated upon application for planning consent. The Cabinet had been presented with all the information it required to make an informed disposal decision.

- 81.22 The Assistant Director and Case Surveyor gave the committee further details of the marketing and short-listing process in relation to disposal of the Ice Rink site, and answered members' queries. Members were informed that, in another city development where an informal planning guidance note had been drawn up, a ward member had been invited to comment on the brief. However, only the ward member with a long-standing and local concern in the site had been involved in this process; other ward members had not been invited to participate.
- 81.23 At this point Councillor Fallon-Khan left the room while the Commission considered the call-in request.

Further discussion and questioning of officers

- 81.24 Some Members stated they did not think that ward councillors had been properly consulted in this instance. Other members expressed the view that because the informal planning guidance note was not attached to the Cabinet report, Cabinet approved the site disposal without the benefit of full information. Members also discussed whether the Local Development Framework supported the development of approximately 85 hotel rooms in the city centre.
- 81.25 Other Members argued that Cabinet had all the information needed to decide on the disposal and that ward councillors had been adequately consulted.
- 81.26 The point was made by some Members that the business case by the developer was based on a 5/6 story hotel, not 4 stories as in the informal planning brief. Given that this information was in the public papers and central to the site disposal brought forward to Cabinet it was impossible to have an informed debate without discussing it.
- 81.27 The Planning Project Manager answered questions from the Commission on the Local Development Framework Document and the background study as noted by Councillor Kemble at Cabinet (minute 172.12 of the draft extract, refers).

81.28 RESOLVED:

81.28 (a) That the decision taken by Cabinet on 12 February 2009 in relation to the disposal of the Ice Rink, Queen Square, be noted

81.28 (b) That the subsequent call-in request be noted

81.28 (c) That the additional information supplied by the Interim Director of Finance and Resources be noted

81.29 RESOLVED:

81.29 (a) That the decision be referred back to Cabinet for reconsideration taking into account the following recommendations.

81.29 (b) That the Planning Department be requested to draw up a robust Planning Framework for this site that would include consultation with the local community before any subsequent decision is taken

81.29 (c) That this Planning Framework be appended to any future cabinet report pertaining to the disposal of this site

81.29 (d) That relevant extracts from the Hotel Futures Supplementary Planning Guidance be appended to any future Cabinet report if it is decided to pursue the option of an hotel for the site

81.30 RESOLVED:

81.30 (a) That Cabinet be asked to ensure that the Council consults properly with Ward Councillors

81.30 (b) That in consultations with Ward Councillors it is made clear that their views are being sought and that relevant information will be available to them to form a view. A reasonable timeframe for requesting further information and for replies to be made will be clearly indicated

The meeting concluded at 6.30pm

Signed

Chair

Dated this

day of

Subject:	Request for Call-in of the 12 February 2009 Cabinet Decision on the Disposal of the Ice Rink, Queen Square		
Date of Meeting:	03 March 2009		
Report of:	The Director of Strategy and Governance		
Contact Officer:	Name: Tom Hook	Tel: 29-1110	
	E-mail: Tom.hook@brighton-hove.gov.uk		
Wards Affected:	St Peters & North Laine		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To determine whether to ask the Cabinet to reconsider its decision in relation to the disposal of the Ice Rink, Queen Square, which was taken at the 12 February 2009 Cabinet meeting.
- 1.2 The following information is contained in the appendices to this report:
 - (a) **Appendix 1** to the report contains the Call-In request;
 - (b) **Appendix 2** to the report contains an extract from the draft minutes from the Cabinet meeting of 12 Feb 2009;
 - (b) **Appendix 3** to the report contains the official record of the Cabinet's decision on this matter;
 - (c) **Appendix 4** to the report contains the report from the Director of Finance and Resources which was agreed at the 12 February 2009 Cabinet meeting (including a map of the site appended to the original report);
 - (d) **Appendix 5** to the report contains confidential material presented to the 12 February Cabinet meeting;
 - (e) **Appendix 6** to the report contains further information on this issue supplied by the Director of Finance and Resources.

2. RECOMMENDATIONS:

- 2.1 (a) To note the decision taken by the Cabinet on February 12 2009 in relation to the disposal of the Ice Rink, Queen Square;
 - (b) To note the subsequent Call-In request;
 - (c) To note the additional information supplied by the Director of Finance and Resources.
- 2.2 Having regard to the grounds for Call-In, to determine whether to refer the decision back to the Cabinet for reconsideration.

3. BACKGROUND INFORMATION

- 3.1 On February 12 2009, the Cabinet agreed a report on plans for the disposal of the former Ice Rink, Queen Square. (This report is reprinted in **Appendix 4** and confidential elements of the report in **Appendix 5**. An extract from the draft minutes is printed as **Appendix 2** to this report, and the official record of the Cabinet's decision is printed as **Appendix 3**).
- 3.2 Further information relating to this matter has been provided by the Director of Finance and Resources (this is contained in **Appendix 6** to this report).
- 3.3 On February 17 2009, Councillors Pete West, Amy Kennedy, Ian Davey, Georgia Wrighton, Jason Kitcat, Keith Taylor, Sven Rufus, Bill Randall, Rachel Fryer, Vicky Wakefield-Jarrett, Paul Steedman and Ben Duncan wrote to the Chief Executive, requesting that the Cabinet Decision be called in. (The Call-In request is reprinted as **Appendix 1** to this report.)
- 3.4 The Chief Executive accepted the Call-In request on 20 February 2009 and asked for a Special Meeting of the Overview & Scrutiny Commission to be called within seven working days.
- 3.5 Call-In is the process by which Overview & Scrutiny Committees can recommend that a decision made (in connection with Executive functions) but not yet implemented be reconsidered by the body which originally took the decision.

- 3.6 Call-In should only be used in exceptional circumstances, for instance where there is evidence that an important decision was not taken in accordance with the Council's constitution.
- 3.7 An Overview & Scrutiny Committee examining a decision which has been Called-In does not have the option of substituting its own decision for that of the original decision. The Overview & Scrutiny Committee may only determine whether or not to refer the matter back to the original decision making body for reconsideration.
- 3.8 In determining whether to refer a decision back to its originating body for reconsideration, the Overview & Scrutiny Committee should have regard to the criteria for Scrutiny reviews, as set out in the Council's constitution (Part 6.4.2). In addition, the Committee should take into account:
- Any further information which may have become available since the decision was made
 - The implications of any delay; and
 - Whether reconsideration is likely to result in a different decision.
- 3.9 More information about the Call-In process is contained in the Council's constitution (Part 6.16).

4. CONSULTATION

- 4.1 No formal consultation has been undertaken in regard to this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 TBC

Legal Implications:

- 5.2 TBC

Equalities Implications:

- 5.3 There are no direct equalities implications to this report, although the 12 February 2009 Cabinet decision was made with regard to the equalities implications contained within the original report of the Director of Finance and Resources (see **appendix 4**).

Sustainability Implications:

- 5.4 There are no direct sustainability implications to this report, although the 12 February 2009 Cabinet decision was made with regard to the sustainability implications contained within the original report of the Director of Finance and Resources (see **appendix 4**).

Crime & Disorder Implications:

- 5.5 There are no direct crime & disorder implications to this report, although the 12 February 2009 Cabinet decision was made with regard to the crime & disorder implications contained within the original report of the Director of Finance and Resources (see **appendix 4**).

Risk and Opportunity Management Implications:

- 5.6 The Call-In procedure seeks to provide a system via which important decisions can be re-examined in a timely fashion, so as to ensure that the Council is not unnecessarily exposed to risk associated with taking decisions contrary to established procedure, whilst also minimising risk inherent in unduly delaying the decision making process.

Corporate / Citywide Implications:

- 5.7 The decision on how to dispose of the Ice Rink is a significant one as the appropriate disposal/development of this important city centre site could serve to boost the city's economy.

SUPPORTING DOCUMENTATION

Appendices:

1. The request for Call-In;
2. An extract from the draft minutes of the 12 February 2009 Cabinet meeting;
3. The official record of the Cabinet decision in relation to this report;
4. The Director of Finance and Resources report (to the 12 February 2009 cabinet meeting): Ice Rink, Queen Square - Update on Disposal;
5. Confidential information relating to the Ice Rink, Queen Square - Update on Disposal report;
6. Additional information on this matter from the Director of Finance and Resources, with Annexes.

Documents in Members' Rooms:

There are none.

Background Documents:

1. The Council's constitution (May 2008).

Alex Bailey
Acting Chief Executive
Brighton & Hove Council
King's House, Hove

17th February 2009

Request for Call-in of Cabinet decision Ice Rink, Queen Square

Dear Mr Bailey,

Please consider our request for a Call-in for scrutiny by the relevant Overview and Scrutiny Committee, of the decision taken by Cabinet on 12th February 2009 regarding the Ice Rink, Queen Square, Brighton.

In requesting a Call-in we believe that the Cabinet have failed to follow the expectations of Article 13.01 of the Council's Constitution on two accounts: a) in regard to due consultation and b) presumption towards openness.

a) failure to consult

In compiling the report presented at Cabinet and the informal planning brief, no consultation took place with ward councillors or other effected parties (eg. the SNCGSA, Wykeham Terrace Residents Association Ltd or St Nicholas Church PPC). At the meeting, the Leader of the Council, Cllr Mary Mears, admitted that ward councillors had not been consulted, and while making an apology stated how seriously she regards the importance of consulting with ward councillors and others.

b) failure to be open

In failing to involve the ward councillors and the other effected parties in the development of the report and the informal planning brief for the proposed development site, the Cabinet has failed the presumption towards openness.

There was also a failure on the part of Cllr Mears, as Chair of the Cabinet, to ensure that the Cabinet made the decision with full knowledge of the relevant background information - including the planning brief which is cited but not appended to the papers considered (nor is this even listed as a background document, and so wasn't made available to members).

This is especially important as we feel the summary of the planning brief as laid out in the main body of the report is not correct on a number of accounts.

Of particular relevance is the failure of the report to accurately reflect all the reasons given in the planning brief for the failure of a previous proposed development. No reference is made to the important statement: "... the

preferred developer eventually withdrew from the scheme. This was partly on account of the need to scale back the size of their proposed scheme to meet the concerns of the local planning authority's officers in respect of visual impact on nearby Grade II listed buildings on Wykeham Terrace, ...". Readers are therefore left with the false impression that the only reason the previous proposal failed was because the scheme didn't overcome the D2 designation - a matter which the current proposal, we are amply informed, will successfully address.

Moreover, the report notes that the proposed development is "... for a high quality hotel scheme of approximately 85 rooms arranged over 5/6 floors...", yet fails to mention the planning brief's extensive arguments for limiting the highest point of the development to just 4 storeys.

We do not therefore believe Cabinet were in a position to make an informed and impartial decision.

We believe that our request satisfies the criteria for Call-in in that the decision by Cabinet was not taken in accordance with Article 13 of the Constitution (Para. 16.2, Part 6.1 Overview and Scrutiny Functions and Procedures).

If our Call-in request is accepted we would like to suggest that when the relevant Overview and Scrutiny Committee is considering whether or not to refer the decision back (Para. 16.7, Part 6.1 Overview and Scrutiny Functions and Procedures), then it may wish to take account of the possibility for a fresh decision following consultation on the planning brief and Cabinet report. In particular that fresh decision could include the recommendation to formalise the planning brief, with for example, a strict limit of 4-storeys placed upon the maximum height of any development.

Yours sincerely,

1. Cllr Pete West
2. Cllr Amy Kennedy
3. Cllr Ian Davey
4. Cllr Georgia Wrighton
5. Cllr Jason Kitcat
6. Cllr Keith Taylor

7. Cllr Sven Rufus
8. Cllr Bill Randall
9. Cllr Paul Steedman

For general release

**EXTRACT FROM THE PROCEEDINGS OF THE CABINET MEETING HELD ON
12 FEBRUARY 2009**

Present: Councillors Mears (Chairman), Mrs Brown, Caulfield, Fallon-Khan, Kemble,
K Norman, Simson, Smith and Young

Also in attendance: Councillors Kennedy (Green Party Spokesperson), Mitchell
(Opposition Spokesperson) and Watkins (Liberal Democrat
Spokesperson).

Other Members present: Councillor Cobb

PART ONE

172 ICE RINK, QUEEN SQUARE, UPDATE ON DISPOSAL

172.1 The Cabinet considered a report of the Interim Director of Finance & Resources that sought approval for the disposal of the Ice Rink Site and the adjoining office building at 11 Queen Square, Brighton (for copy see minute book).

172.2 The Chairman invited Councillor West to address the meeting.

172.3 Councillor West spoke as a Ward Councillor and on behalf of concerned residents in the neighbourhood. He recognised the need for development in the city, but was concerned that residents had not been consulted at this stage. He appreciated that the majority of concerns raised were pertinent directly to the Planning Committee but felt that, given the sensitive nature of the area and the number of existing community groups, that consultation at this stage would have been beneficial.

172.4 Councillor West noted that the report contained reference to a proposed five or six storey building. This, he stated, was contrary to the council's own planning guidance. He felt that a proposal of this type would struggle to obtain planning consent and could have deleterious consequences for future proposals for the site. Councillor West requested that that the recommendations made in the report not be approved.

172.5 Councillor West noted that the report stated that Ward Councillors had been consulted; he explained that this was not the case.

172.6 Councillor Fallon-Khan apologised for the erroneous information contained within the report as regards consultation with Ward Members. He accepted that this had not happened.

172.7 Councillor Fallon-Khan noted that the recommendation to dispose of the long leasehold interest did not pre-judge the outcome of the planning process, or fetter planning officers in assessing the merits of the proposed scheme in making their recommendation to the planning committee. The sale was subject to planning consent which had to be obtained following consultations by the developer with interested parties.

172.8 Councillor Fallon-Khan understood that all of the interested parties had copies of the informal planning brief and understood the factors constraining the development of the site. He appreciated the concerns expressed about a possible 6 storey development, noting that none of the sketch proposals envisages 6 storeys above ground level.

172.9 Councillor Mitchell welcomed the development of the site, but questioned the lack of consultation with local groups. She was also concerned about the sensitivity of the location, noting the church and churchyard in the immediate vicinity.

172.10 Councillor Mitchell asked which background documents had been referenced to support the provision of additional hotel bed spaces in the city.

172.11 Councillor Fallon-Khan appreciated the need for sensitive development in the area and the specific issues relating to the church and its environs. He ensured Members that there would be proper consultation at the appropriate time.

172.12 Councillor Kemble noted that a Local Development Framework document contained reference to the number of bed spaces designated for the city. He requested that officers provide the information to Councillor Mitchell.

172.13 **RESOLVED** - That, having considered the information and the reasons set out in the report, the Cabinet accepted the following recommendations:

(1) That Cabinet approve and authorise

(a) the disposal of the Ice Rink site and 11 Queen Square on a 150 year lease to the successful bidder for a premium and a peppercorn rent, following the full evaluation of informal bids and recommendations by the council's appointed agents, Oakelys, as outlined in item 3.9 of this Agenda and detailed in the part two report.

(b) the detailed terms to be settled by the Director of Finance & Resources, Assistant Director Property & Design and the Solicitor to the

Council provided the terms are certified by the valuer to be the best consideration reasonably obtainable.

- (2) Should the disposal to the preferred party not be completed, to approve and authorise the disposal to either of the short listed parties, or other bidders on similar terms with an agreed target premium.

Decision No: CAB – 73

KEY

Forward Plan No: CAB 7173

This record relates to Agenda Item 172 on the agenda for the Decision-Making

RECORD OF CABINET DECISION

DECISION-MAKER:	CABINET
PORTFOLIO AREA:	FINANCE & RESOURCES
SUBJECT:	ICE RINK, QUEEN SQUARE, UPDATE ON DISPOSAL
AUTHOR:	ANGELA DYMOTT

THE DECISION

- (1) That Cabinet approve and authorise
 - (a) the disposal of the Ice Rink site and 11 Queen Square on a 150 year lease to the successful bidder for a premium and a peppercorn rent, following the full evaluation of informal bids and recommendations by the council's appointed agents, Oakelys, as outlined in item 3.9 of this Agenda and detailed in the part two report.
 - (b) the detailed terms to be settled by the Director of Finance & Resources, Assistant Director Property & Design and the Solicitor to the Council provided the terms are certified by the valuer to be the best consideration reasonably obtainable.
- (2) Should the disposal to the preferred party not be completed, to approve and authorise the disposal to either of the short listed parties, or other bidders on similar terms with an agreed target premium.

REASON FOR THE DECISION

- (1) To regenerate this area of the City, opening up the site to the north allowing more permeability to the site and enabling environmental improvements to create a lively south facing square.
- (2) To make best use of an existing asset and provide employment opportunities for the City encouraging local small businesses and apprenticeship training opportunities in construction.
- (3) The level of interest in the site has been good and the offers encouraging in the present economic climate. By initiating the development process now there is potential for the scheme to take advantage of an improving market when it comes. There is unlikely to be any higher price to be achieved in the near future from residential or office developers as these markets have some way to go before recovering.
- (4) Delay in disposing of the site will leave the Council with on going security and safety problems with the buildings and postpone the opportunity to improve safety and the general environment of the Square and Church yard.

DETAILS OF ANY ALTERNATIVE OPTIONS

- (1) The bids that have been submitted have been encouraging despite the impact of the credit crunch and the poor economic background. Due to the uncertain current property market the council asked its agents to carry out thorough due diligence before making their recommendations.
- (2) With the backdrop of the 'credit crunch' market conditions have been extremely difficult during 2008 and have resulted in a whole sale withdrawal from the development market in most property sectors, perhaps with exception in the hotel, restaurant and entertainment sectors. This is a reflection of the fall in the demand for both residential property and the lack of confidence in the business sector, whether this be commerce or retail, resulting in significant falls in value through 2008.
- (3) If the disposal falls through the alternative options available to the Council are :-
 - (a) Negotiate with short listed parties: Re-visit the other short listed parties bids and explore the possibilities of negotiating acceptable terms with other bidders with a target premium over a similar range.
 - (b) Submit a Planning Application for the site: this would remove some uncertainty for the successful developer but would not be appropriate for every party. There is the likelihood that a further planning application would be made varying the planning permission negating the time saved. The estimated cost for a full planning application with an Environmental Assessment is £100,000 which may not be fully recovered by any increase in the price.
 - (c) Set up Joint Venture to deliver planning permission and potentially develop: this would be undertaken by approaching selected parties of sufficient standing. It would involve a more complicated legal structure and documentation. There would be a share in the potential upside to compensate for a lower current price but the Council would not receive 100% of the uplift in land values if market conditions improve.
 - (d) Wait until the economy improves before going back to the market: This may not be until late 2009 /2010 and this option remains open if the current disposal does not proceed. There is no guarantee that a higher price would be achieved nor that market conditions will improve in the near future. In the meantime the property would remain vacant and vulnerable to vandalism and security problems.

OTHER RELEVANT MATTERS CONCERNING THE DECISION

None

CONFLICTS OF INTEREST

None

CONFIRMED AS A TRUE RECORD:

We certify that the decision this document records was made in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and is a true and accurate record of that decision

Date:

12 February 2009

Decision Maker:

Councillor Mary Mears
Leader of the Council

Signed:



Proper Officer:

12 February 2009

Mark Wall, Head of Democratic Services

Signed:



SCRUTINY

Note: This decision will come into force at the expiry of 5 working days from the date of the meeting at which the decision was taken subject to any requirement for earlier implementation of the decision.

Or: This decision is urgent and not subject to call-in (date of CE's agreement to urgency of decision).

Call-In Period

12-19 February 2009

Date of Call-in *(if applicable) (this suspends implementation)*

Call-in Procedure completed *(if applicable)*

Call-in heard by *(if applicable)*

Results of Call-in *(if applicable)*

The four items following this page were previously Part Two Items. They were bought into the public domain either at Overview and Scrutiny Commission Meeting 3rd March or afterwards by agreement of the Chairman.

APPENDIX 5

Additional information from the Director of Finance & Resources

Introduction

The site of 0.2 acres (0.08 Hectares) comprises the former indoor Ice Rink which has been vacant for over 5 years and an adjoining office building which will be vacated shortly. The tenants of the office building at 11 Queen Square will be relocated to nearby Council premises. Following marketing of the site and disposal recommendations by the council's appointed local agents, a preferred bidder was selected to redevelop the site and approval was sought for the property disposal at the 12th February Cabinet meeting.

a) Failure to Consult

The report to Cabinet of 12th February is seeking approval to a property transaction and recommending the disposal of a site on a long lease.

Standard Consultation Procedures on a Property Disposal

Consultations are undertaken at three separate levels for a property disposal;

Level 1. Property & Design

The Property Team consult other internal departments, the client, the agents and relevant parties prior to Cabinet approving a decision to sell. As part of this procedure, Ward Councillors are informed of the proposed property transaction and invited to query or obtain any further information and seek clarification by Property & Design. This is standard property procedure that was undertaken regarding this disposal.

Level 2. Developer

Once Cabinet have approved the disposal (and terms have been settled, a process which inevitably takes some time) the selected developer and his team would then be in a position to progress their design against the background of the planning and pre-application process. It is the developer's role to consult with the local community and other interested parties on their particular scheme as the design develops and evolves. Schemes are almost invariably refined or amended in the light of those consultations.

Level 3. Local Planning Authority

When the developer has concluded consultation with the local community, other interested parties and the Local Authority planning team and amended or refined the design scheme it would then be in a position to make a formal planning application. There are statutory procedures for the Local Authority planning team to consult with neighbours and local communities. At this stage planning officers can take account of the local community's comments and objections in a more meaningful way in relation to the specific scheme which is presented to them.

Level 1

Consultations undertaken by Property & Design in respect of the 12 February 09 Cabinet decision

It is standard procedure with potential property transactions and property related matters, for Property & Design to inform the relevant Councillor/s and Ward Councillors of the specific issues. These briefings may be of a commercially and financially sensitive nature and need to be undertaken in an appropriate manner and time. It is also standard practice for developers to not want certain confidential information to be released into the public arena. For commercial confidentiality reasons officers do not consult with local interest groups on standard property transactions.

Specific Consultations with Ward Councillors

Property & Design did consult with Ward Councillors prior to the 12th February Cabinet meeting. A chronological list of information and consultations with Ward Councillors is attached at Annexe 1. E-mails are attached at Annexe 2.

In summary:-

Prior to the Cabinet meeting Ward Councillors were sent information by email, had telephone conversations and in one instance a meeting on the property disposal and the following information exchange occurred.

- The Assistant Director for Property & Design was contacted by email on 13 January and outlined in a response by email on the same day the improvements proposed to St Nicolas churchyard by incorporating a pedestrian/cycle route linking it with Queen's Square as highlighted in the Informal Planning Guidance Note.
- This was followed up in an email to all 3 Ward Councillors by the Case Officer on 16 January. This email provided further information and a briefing on the proposals and attached the agent's marketing brochure and a site plan. The brochure referred to the Informal Planning Guidance Note and the Councillors were invited to contact the Case Officer if they had any further queries.
- The part one report was forwarded to all 3 Ward Councillors by the Case Officer on 4 February, the earliest date on which it could be released to the public.
- The Assistant Director for Property & Design spoke over the telephone and corresponded by email on 6 February with the Ward Councillor Pete West (copied to the other 2 Ward Councillors on 6 February). This confirmed that the recommendation was for a property disposal and that specific matters he raised, related to planning issues and consultation which would be addressed through the planning process by the developer. The Assistant Director offered to take the Ward Councillor through the property evaluation model and proposed

scheme and confirmed that the case officer or manager of the section would contact him to arrange a meeting in the week commencing 9 February in her absence.

- A meeting was arranged between the Case Officer and the same Ward Councillor on 11 February where further information was provided on the proposed development, including a copy of the Informal Planning Guidance Note. However as the name of the developer and the financial details were confidential information contained within part two of the report it could not be revealed. The Councillor advised at that meeting that he had not been consulted and requested that the Report be amended to this effect. The case officer had sent the briefing to the Councillor on 16 January as set out above.

The Case Officer further reviewed the amount of information, correspondence and contact with Ward Councillors prior to the Cabinet decision and verified that this is the normal level of information and briefings that constitute a consultation for the property transaction stage of such a project (level 1).

Consultations with interested parties and community Groups

Although Property & Design would not usually undertake consultations with external parties and community groups at level 1, the queries raised following the release of the Report to the public were addressed as follows:-

St Nicholas Green Spaces Association

In this case Property & Design had a dialogue with interested parties and community group representatives prior to the 12th February Cabinet meeting. A chronological list of information and discussions is below and correspondence is attached at Annexe 3.

In summary:-

- The Assistant Director emailed the Chair of St Nicholas Green Spaces Association on 21 January advising that the Case Officer will contact him at the relevant point in the process prior to planning submission to talk through the proposals as they evolve.
- The Chair contacted the Assistant Director on 6 February to express concern on planning matters and was advised that the Case Officer would contact him to talk through the issues. The Case Officer did speak over the telephone with the Chair and explained that the Recommendation to Cabinet was for a property disposal and that the planning issues would be fully addressed during the planning process when the developer had worked up the scheme.

Wykeham Terrace Residents Association

- The Case Officer emailed the Chair of the Wykeham Terrace Residents Association Ltd on 9 February advising that the

Recommendation to Cabinet is a property decision and that points raised in his letter of 8 February relate to the planning process that will need to be undertaken by the developer and team.

- The Case Officer emailed the Chair of the Wykeham Terrace Residents Association Ltd on 10 February confirming that the disposal does not pre-judge the outcome of the planning process nor does it fetter the planning officers in making their recommendation to the planning committee.

Parish Church of St Nicholas of Myra

- The Case Officer emailed the Reverend Chavner at the Parish Church of St Nicholas of Myra on 9 February advising that the Recommendation to Cabinet is a property decision and that points raised in his letter of 6 February relate to the planning process that will need to be undertaken by the developer and team.

b) Failure to be open

The Ice Rink disposal update report to Cabinet of 12th February relates to a property recommendation seeking approval to the disposal of a site on a long lease. The financial aspects of the transaction are commercially sensitive and confidential. Care has to be taken to ensure that such information does not leak to possibly nullify the bidding process or create dispute between bidders. All of the relevant information relating to the property transaction was available in both part one and two of the report.

Status of Informal Planning Guidance Note

The purpose of the Informal Planning Guidance Note (attached here as Annexe 4) is set out in the first paragraph of that Note. It is informal and does not constitute formal planning policy. It refers to existing policies and provides some suggestions to prospective developers but does not formally commit the Local Planning Authority to accept any of these suggestions. Notes of this nature have been prepared on a non prejudicial basis on other development sites. The wording of the Informal Planning Guidance Note is heavily caveated and phrased in a way that makes clear its informal status. It is not a Planning Policy Document with the status of a Supplementary Planning Document which would have entailed widespread consultation.

The Informal Planning Guidance Note was prepared at the request of Property & Design to assist the marketing process and to enable developers to make their bids on the same information. It essentially replaces the individual discussions that developers would have had with individual planning officers and ensures that consistent advice and guidance is given.

Prior consultations with residents informed the Note but it did not constitute formal Council policy. The Note advises that four storeys would probably be

the maximum acceptable height and for the avoidance of doubt this would be from ground level in Queen Square.

Points relating to the decision making process

As the Report was not about a planning decision the Informal Planning Guidance Note was not appended to the Report and it is standard practice not to include notes of this nature in a report dealing with property transactions. However the Informal Planning Guidance Note was freely available with the marketing pack sent out by agents and given to the Ward Councillor at the meeting with the Case Officer on 11 February.

It should be noted that the planning aspects were a small part of the evaluation of the bidder's property proposals. They accounted for 15% of the evaluation model, the other criteria as set out clearly in the report were track record 10%; deliverability 15%; price 15%; funding 15%; quality 10%; added value 10% and timing 10%. A key part of the assessment at the property stage is to ensure that bids are realistic and the bidder is capable of delivering their scheme, subject to planning. The report set out information on the background history and key events, planning, marketing, the bidding process, evaluation model and agents recommendations aiming to present a rounded picture of the proposal to inform the decision. The Cabinet decision was therefore based on the full rounded knowledge of the relevant information which put the property transaction into context and perspective.

The summary of the Informal Planning Guidance Note was accurately reflected in the report. The main reason for the failure of the previous application was, as outlined in the report and as the Informal Planning Guidance Note states, due to a lack of success in finding a user for the D2 Assembly and Leisure use. Other reasons related to a problem of discrepancy of levels on the site in the developers proposals where windows at the rear of the site faced the churchyard wall. The developers at that time would therefore have had to raise the building for the windows to overlook the churchyard. These issues have been taken into account by the prospective developers in their current proposals as a level survey was provided as part of the marketing information pack.

All of the 3 short listed developers in the latest marketing exercise made their own interpretation of the informal planning guidance, taking into consideration the large slopes in the site and the height of the neighbouring buildings. They all proposed initial feasibility schemes with massing proposals of 5 storeys above ground. Some used the slopes of the site, others used set back features at roof levels. However these are merely speculative sketch proposals for the purposes of the property bid evaluation. All of these initial feasibility schemes would need to be worked up in more detail by the developer and team. This would happen once the Cabinet decision and approval had been made to select the successful developer and then it is up to the developer and his design team to enter into dialogue and consultation with the local community, interested parties and Local Authority planning

teams to work up his scheme and submit a formal planning application. It is in the developer's interests to modify their plans in the light of those consultations in order to obtain a successful planning consent which could mean a scheme of probably 4 storeys maximum. However this would be resolved through the planning consultation process by the developer and his team.

As set out above it can be seen that officers undertook the normal and established procedures at the relevant stage of the transaction (Level 1).

ANNEXE 1 TO APPENDIX 6

Chronological list of information and consultation prior to the 12 February Cabinet

- 13/1/09 E-mail from Assistant Director to Ward Councillor advising of updated informal planning guidance note and potential link from Queen Square to the Churchyard (copied to other 2 Ward Councillors).
- 16/1/09 E-mail from case officer to all 3 Ward Councillors explaining the proposed hotel scheme in more detail attaching a copy of the agent's brochure and referring to the informal planning guidance for the site.
- 16/1/09 Acknowledgement of receipt of e-mail from a Ward Councillor and request for a copy of the Report (copied to other 2 Ward Councillors)
- 16/1/09 E-mail from Assistant Director to a Ward Councillor confirming that Report is not finalised and will be forwarded to them when it becomes public.
- 21/1/09 E-mail from Assistant Director to Chair of St Nicholas Green Spaces Association advising that the case officer will contact him at the relevant point in the process prior to planning submission to talk through the proposals as they evolve.
- 4/2/09 Copy of part 1 Cabinet Report sent to 3 Ward Councillors by case officer.
- 6/2/09 E-mail from Assistant Director to Ward Councillor following a telephone conversation confirming this is a property decision and that his issues will be considered through the planning process (copied to other 2 Ward Councillors)
- 9/2/09 E-mail from case officer to Chair of the Wykeham Terrace Residents Association Ltd advising that the Recommendation to Cabinet is a property decision and that points raised in his letter of 8 February relate to the planning process that will need to be undertaken by the developer and team.
- 9/2/09 E-mail from case officer to the Parish Church of St Nicholas of Myra advising that the Recommendation to Cabinet is a property decision and that points raised in his letter of 6 February relate to the planning process that will need to be undertaken by the developer and team.
- 10/2/09 E-mail from case officer to Chair of the Wykeham Terrace Residents

Association Ltd confirming that the disposal does not pre-judge the outcome of the planning process nor does it fetter the planning officers in making their recommendation to the planning committee.

11/2/09 Meeting between case officer and Ward Councillor at which the sketch perspective for the hotel scheme was tabled showing that there were potentially 5 storeys above ground level and advising that all 3 short listed hotel schemes were 5 storeys above ground level. Further information was provided on the proposed development, including a copy of the Informal Planning Guidance Note. However as the name of the developer and the financial details were confidential information contained within part two of the report it could not be revealed. The Councillor advised at that meeting that he had not been consulted and requested that the Report be amended to this effect. The case officer had sent the briefing to the Councillor on 16 January as set out above.

12/2/09 Cabinet meeting

Ralph Long

From: Angela Dymott [Angela.Dymott@brighton-hove.gov.uk]
Sent: 06 February 2009 13:08
To: Pete West
Cc: Ian Davey; Keith Taylor; 'snkiddell@yahoo.com'; Charlotte Woodworth; Georgia Wrighton; Amy Kennedy; Ralph Long; Richard Butler
Subject: RE: Ice Rink, Queen Square

Pete,

Further to our 'phone conversation, I confirm that this is essentially a property decision and a lot of your questions below relate to the planning process that will need to be undertaken by the successful developer and their architectural team. Their bid is subject to planning, contract and preliminary timetable.

The proposal from the developer's team is at the very earliest stages and will evolve as it is developed through the planning process and associated consultations with the community.

As mentioned I do not feel I can send you the pink paper that your convenor would have received.

We will be happy to take you through the evaluation model and proposed scheme and the contact officer Ralph Long and or Richard Butler, Estates Manager will contact you to arrange a convenient meeting next week.

Regards,

Angela Dymott
Assistant Director
Property & Design
Tel: 01273 291450

-----Original Message-----

From: Pete West [mailto:Pete.West@brighton-hove.gov.uk]
Sent: 06 February 2009 11:48
To: Angela Dymott
Cc: Ian Davey; Keith Taylor; 'snkiddell@yahoo.com'; Charlotte Woodworth
Subject: Ice Rink, Queen Square

Dear Angela,

Thank you for forwarding the report regarding the proposals to be discuss at cabinet next week.

I have place a request with the Leader of the Council that I might address Cabinet on behalf of constituents and fellow ward councillors. I will also be meeting the SNCGSA on Wednesday to discuss and receive their views and have today received contact from the Wykeham Terrace Residents Association too.

I would therefore very much appreciate a chance to meet with yourself and other officers early next week to get a briefing. I would also appreciate receiving a copy of the pink papers which I presume set out the financial case.

In particular I am keen to know the following:

- the supporting evidence of crime and disorder figures that indicate that there is a problem in the church yard;
- supporting evidence that increasing passive surveillance from both foot/cycle traffic and overlooking from the new development will reduce those problems;
- what planning policy is applicable and what rationale supports such a tall development being permissible at this location;
- the details of the financial case options;
- what public and internal consultation has been conducted;
- what the envisaged S106 arrangement would encompass. Would it include a new path across the churchyard and supporting improvements to the existing infrastructure, monies for restoration works of monuments, for example?

Looking forward to your early reply.

Pete West

Cllr Pete West
Green City Councillor for St Peter's & North Laine Ward
Green spokesperson for Enterprise, Employment,
Major Projects and the South Downs

Ralph Long

From: Ralph Long
Sent: 04 February 2009 10:36
To: Ian Davey; Keith Taylor; Pete West
Cc: Angela Dymott
Subject: Disposal of former Ice Rink site
Attachments: Ice Rink disposal - Cabinet 12th Feb 09 pt 1.doc; Plan - Ice Rink Report.doc

Dear Councillors,

I attach for your information the part 1 report and plan for the disposal of the former Ice Rink site going to Cabinet on 12th February.

Yours Sincerely
Ralph Long
Property & Design

01273 291442

Ralph Long

From: Angela Dymott [Angela.Dymott@brighton-hove.gov.uk]
Sent: 16 January 2009 11:45
To: Keith Taylor
Cc: Ian Davey; Pete West; Ralph Long
Subject: RE: Ice Rink site and 11 Queen Square - Report to Cabinet on Disposal 12th Feb

Keith,

The report is not finalised and will not become public until end of Jan/early Feb. We have already promised Pete West that we would send it out to you all then.

Regards,

Angela Dymott
Assistant Director
Property & Design
Tel: 01273 291450

From: Keith Taylor [mailto:Keith.Taylor@brighton-hove.gov.uk]
Sent: 16 January 2009 11:18
To: Ralph Long
Cc: Angela Dymott; Ian Davey; Pete West; Richard Butler
Subject: Re: Ice Rink site and 11 Queen Square - Report to Cabinet on Disposal 12th Feb

Dear Ralph Long

Please can you forward the report to cabinet?

Thanks
Keith Taylor

City Councillor for St Peters & North Laine Ward
Convenor of Green Councillors Group
tel/fax 01273 291165

Ralph Long@Exchange
16/01/2009 10:15

To: Ian Davey@Exchange, Keith Taylor/CLLR/NAB/BHC
cc: Angela Dymott@Exchange, Richard Butler@Exchange
Subject: Ice Rink site and 11 Queen Square - Report to Cabinet c

Dear Councillors,

In advance of the Cabinet meeting on the 12th February please note that there is a report recommending the disposal of the old Ice Rink in Queen Square. The preferred party is proposing a high quality hotel on the site with restaurant facilities/bar/café on the lower floors. As part of the scheme the developers will be providing a pedestrian and cycle access through the site linking Queen Square to St Nicholas churchyard. This would make a considerable improvement to the environment and make St Nicholas Churchyard a safer, better used and more attractive location.

The disposal will be on a long lease at a premium and subject to obtaining planning consent. In this connection the planners have given their indicative approval in an informal planning brief to an hotel

use and are supportive of improvements to St Nicholas churchyard and the local environment. The developers are aware of the sensitivities surrounding the site, in particular the Grade 11 listed buildings in Wykeham Terrace, the Grade 11 listed church and boundaries and the historic churchyard within the Clifton Hill Conservation Area and will be consulting local residents and communities about their proposals.

I attach a copy of the agent's particulars and a site plan which for clarification includes the office premises at 11 Queen Square. The occupiers there, the Youth Advocacy and Participation service (YAP) will be relocated to other Council premises nearby.

If you have any queries please contact me.

Yours Sincerely
Ralph Long
Property & Design

01273 291442

<< File: ICE RINK BROCHURE PDF.pdf >> << File: Appendix to Ice Rink Report.doc >>

Ralph Long

From: Ralph Long
Sent: 16 January 2009 10:15
To: Ian Davey; Keith Taylor; Pete West
Cc: Angela Dymott; Richard Butler
Subject: Ice Rink site and 11 Queen Square - Report to Cabinet on Disposal 12th Feb
Attachments: ICE RINK BROCHURE PDF.pdf; Appendix to Ice Rink Report.doc

Dear Councillors,

In advance of the Cabinet meeting on the 12th February please note that there is a report recommending the disposal of the old Ice Rink in Queen Square. The preferred party is proposing a high quality hotel on the site with restaurant facilities/bar/café on the lower floors. As part of the scheme the developers will be providing a pedestrian and cycle access through the site linking Queen Square to St Nicholas churchyard. This would make a considerable improvement to the environment and make St Nicholas Churchyard a safer, better used and more attractive location.

The disposal will be on a long lease at a premium and subject to obtaining planning consent. In this connection the planners have given their indicative approval in an informal planning brief to an hotel use and are supportive of improvements to St Nicholas churchyard and the local environment. The developers are aware of the sensitivities surrounding the site, in particular the Grade 11 listed buildings in Wykeham Terrace, the Grade 11 listed church and boundaries and the historic churchyard within the Clifton Hill Conservation Area and will be consulting local residents and communities about their proposals.

I attach a copy of the agent's particulars and a site plan which for clarification includes the office premises at 11 Queen Square. The occupiers there, the Youth Advocacy and Participation service (YAP) will be relocated to other Council premises nearby.

If you have any queries please contact me.

Yours Sincerely
Ralph Long
Property & Design

01273 291442

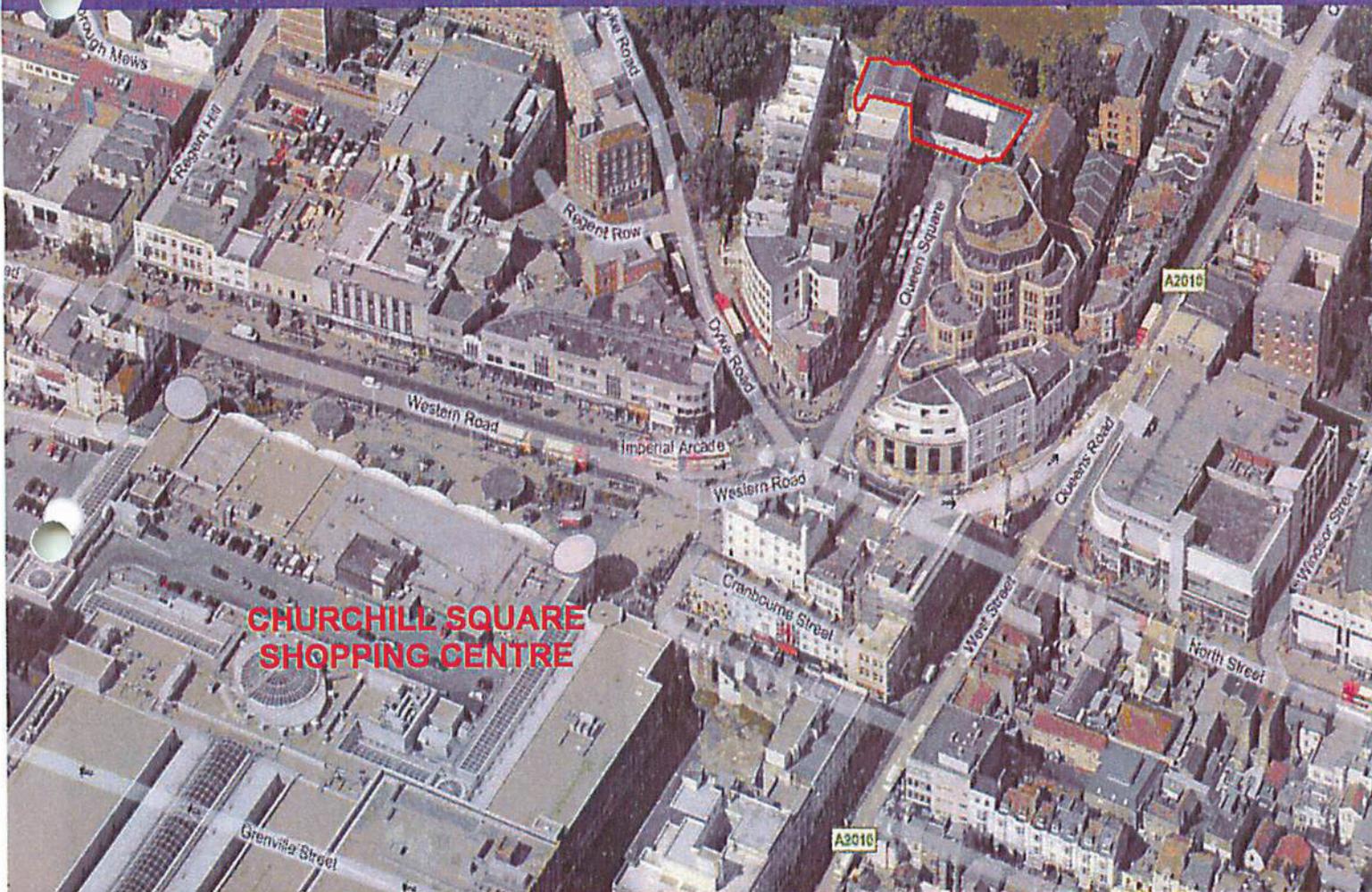
City centre mixed use
DEVELOPMENT OPPORTUNITY

0.2 Acres (0.08 Hectares)

Planning guidance for Residential, Hotel,
Office, Retail, Restaurant, Bar & Leisure Uses

FOR SALE

Best & final offers **12 NOON FRIDAY 7th NOVEMBER 2008**



**Former Brighton Ice Rink
& 11 Queen Square, Brighton**

BRIGHTON

The city of Brighton has a resident population of approximately 250,000 people and as a regional centre draws upon an extensive and affluent catchment population, which extend from Hastings in the east to Chichester in the west and as far north as the M25.

Drive time analysis indicates that Brighton has a core 30 minute catchment population of 450,000, with 1,300,000 people within a 60 minute drive time of the city (CACI). Brighton is a highly affluent area with a high proportion of wealthy achievers, affluent urbanites, prosperous professionals and better off executives, all being above the national average. Both leisure and business tourism make a valuable contribution to the local economy.

Local Authority research shows that there are on average 8,000,000 visits per year to the city, generating an annual spend approaching £400,000,000. Spending is further boosted by Brighton's two Universities which have over 25,000 students. These factors help to support over 400 restaurants in the town which is the largest number outside London. Additionally, there is strong night time economy with the UK's largest number of clubs and theatres per head. The City is acknowledged as a centre for culture, arts and entertainment.

Travel times by train to London Victoria and Gatwick airport are 50 minutes and 26 minutes respectively. The A23/M23 corridor provides fast access to the M25 and national motorway networks.

THE SITE

The site extends to approximately 0.2 acres (0.08 hectares) and comprises the former indoor Brighton Ice Rink which has been vacant for a number of years and is now generally derelict. The adjoining office building at 11 Queens Square is currently let on a short term tenancy but will also be offered with vacant possession.

The site is situated in the heart of Brighton immediately to the north of Western Road and Churchill Square, the core retail area in the City centre. Major multiple retailers nearby include Marks and Spencers, Boots, BHS, Waterstones, Starbucks and Costa Coffee.

Queens Road, the core office centre in the City, is within 200 yards and Brighton main line railway station is within 600 yards. The site is also within 200 yards of West Street which forms the principal night time hub of the City with many clubs and bars located there, including Wetherspoons, Yates and Walkabout.

Queen Square offers a mixture of commercial, residential and office properties. The western side of Queens Square is characterized by a terrace of older style properties in mixed office and residential use. On the eastern side is a modern six storey office building. To the rear of the site, and at a higher level, is the St Nicholas churchyard which provides a tranquil and important public open space in the centre of the City.



St Nicholas Churchyard at rear of the Ice Rink



The Ice Rink viewed from Western Road

PLANNING GUIDANCE

The property is being sold by Brighton & Hove City Council, who have issued planning guidance intended to assist the disposal and subsequent development of the former Ice Rink and adjoining building at 11 Queen Square. The planning guidance is prepared upon an informal basis and does not constitute formal council policy.

The current use of the ice rink falls within Use Class Category 'D2' as Leisure. 11 Queen Square is occupied as offices within Use Class 'B1'.

Prior to the issue of this planning guidance the City Council had previously attempted to market the site for a mixed 'D2' Leisure and residential scheme. The previous sale became abortive, principally because of unsuccessful attempts to secure a 'D2' leisure operator.

Consideration will now be given to other uses, subject to demonstrating that there is no demand for 'D2' use (in part demonstrated by the previous abortive marketing) and the collective weight of other factors surrounding new development proposals for the site.

Of particular interest to the Council is a scheme that helps redefine St Nicholas Churchyard as a safe, accessible and well used public space, possibly achieved by a link through to the churchyard from Queen Square. Weight will also be given to schemes that offer the opportunity to improve the public realm within Queen Square.

Other uses that may now be favourably considered for the Ground Floor of the scheme would include Use Classes A1, A3, A4 and A5 or entertainment type uses. The upper floors could provide residential units, office space and sheltered housing. Comprehensive office or hotel development may also be suitable.

A full copy of the Planning Guidance Note is available within the Information Pack.

INFORMATION PACK

An information pack is available upon request which includes the Planning Guidance Note, Asbestos Survey (Ice Rink), Environmental Risk Assessment (preliminary), Ordnance Survey Extract, Levels Survey and Legal Searches.

GUIDE PRICE

Upon application



BASIS OF SALE

Brighton & Hove City Council are seeking to dispose of the site to a developer who will work within the constraints of the planning guidance note. As such the preferred developer will be expected to enter into a contract, conditional upon receipt of planning permission, for a development which, following consultation with the Council, will meet their aspirations for regenerating this important town centre site.

Best offers should be received no later than **12 noon 7 November 2008**

Accordingly, offers are invited for the site, subject to receipt of planning consent, on the following basis:-

- Offers should be submitted with a proposal for the development of the site in accordance with the planning guidance note. Indicative layout plans, elevations and/or illustrations of the proposed development, to include a summary of the accommodation to be provided, will assist us in evaluating offers.
- State the amount offered for the premises, subject to receipt of the proposed planning consent and contain evidence of the ability to fund the purchase at the proposed price
- Offers should be accompanied with a statement of the Purchasers development experience, details of other successfully completed developments and the professional team to be employed.
- Offers should be submitted within a sealed envelope, marked "Ice Rink Offer" and addressed to Mr C Oakley, Oakley Commercial, 23/24 Marlborough Place, Brighton, East Sussex, BN1 1UB. Faxed or emailed offers may be discounted from the selection process. Offers made with reference to other offers or formulas will not be considered.

VIEWINGS

The site can be viewed externally although for internal access appointments should be made through Oakley Commercial.

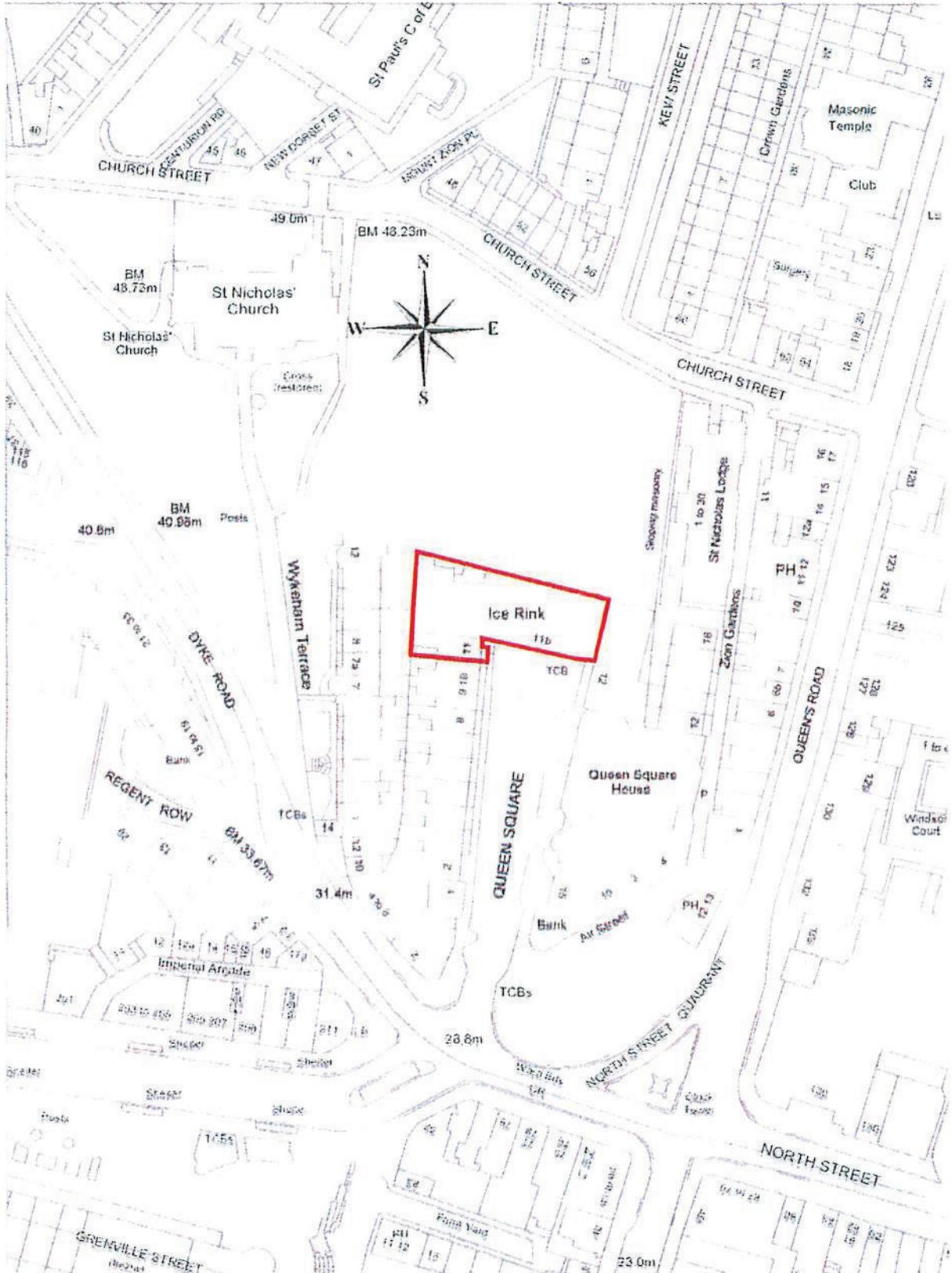
Chris Oakley
chriso@oakleycommercial.com
Tel: 01273 645 776

Simon Forrest
simonf@oakleycommercial.com
Tel: 01273 627 411.

Brighton and South Coast 23 & 24 Marlborough Place, Brighton, East Sussex BN1 1UB
Telephone 01273 688882 | Fax 01273 688884



Queen Square Ice Rink & 11, Queen Square



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Date: 06/06/07

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Ralph Long

From: Angela Dymott [Angela.Dymott@brighton-hove.gov.uk]
Sent: 13 January 2009 10:29
To: Pete West
Cc: Ralph Long
Subject: RE: Ice Rink Queen Square

Pete,

Yes – this is part of the informal planning brief and hence a condition of the sale.

Before marketing the site we worked with the planning team to widen brief to enable and support larger market interest.

The updated informal planning brief includes environmental improvements to offset the loss of leisure use of the ice rink. These include a scheme to help redefine St Nicholas Churchyard as a safe, accessible and well used public open space for the City and local residents. This is being achieved in all short listed schemes by incorporating a pedestrian/cycle route through the Ice Rink site and linking the Churchyard and Queen Square.

I believe the proposed scheme will regenerate this area of the City, opening up the site to the North and allowing more permeability whilst enabling environmental improvements to create a lively south facing square.

The reports are in draft form at the moment but once they go through the process and are ready for public circulation I will send you a copy if you wish.

Regards,

Angela Dymott
Assistant Director
Property & Design
Tel: 01273 291450

From: Pete West [mailto:Pete.West@brighton-hove.gov.uk]
Sent: 12 January 2009 16:56
To: Angela Dymott
Subject: Ice Rink Queen Square

Dear Angela,

I see from the forward plan that a decision is expected by the Cabinet on disposal of the Ice Rink at its meeting on 12 February. I also note that consultations have concluded.

As you may be aware there is great interest in the prospect of opening a right of way from the church grounds to Queen Square. It is expected this would become a popular pedestrian route and through its use raise passive surveillance and public safety levels in the park.

Can you tell me if permitting a right of way could be made a part of the condition of sale.

Many thanks

Pete West

Cllr Pete West
Green City Councillor for St Peter's & North Laine Ward
Green spokesperson for Enterprise, Employment,
Major Projects and the South Downs

Ice Rink building and 11 Queen Square, Brighton



Above: Aerial view. Site highlighted in red

Purpose of this note

This note has been prepared in order to provide some planning guidance intended to assist the disposal and subsequent development of the former ice rink and the adjacent no 11 Queen Square site. The guidance has been prepared on an informal basis by the City Council's Planning Projects Team on behalf of the council's Property Services team. It does not constitute formal council policy but is based on the Council's policies as set out in the Local Plan and Supplementary Planning Policies.

Site and surroundings

The site itself measures approximately 0.08 ha and comprises:

- the former ice rink building; and
- 11 Queen Square, currently in office/community use but part of a residential terrace.

The site is located at and comprises the northern end of Queen Square. Immediately to the north of the site is the historic churchyard of St Nicholas.

Queen Square lies within the city centre of Brighton & Hove, immediately to the north of Western Road and Churchill Square (the core area of the Brighton regional shopping centre). The highway is used for controlled on-street parking and as a taxi rank.

Recent background

The City Council has previously marketed the site as having potential for a mixed D2 and housing development. Following pre-application discussions with the City Council's Development Control section and its property agent,

however, the preferred developer eventually withdrew from the scheme. This was partly on account of the need to scale back the size of their proposed scheme to meet the concerns of the local planning authority's officers in respect of visual impact on nearby Grade II listed buildings on Wykeham Terrace, but principally due to a lack of success in finding a user for the ground floor D2 use.

Planning considerations

The established land use of the former ice rink site is D2 Assembly and Leisure. For planning purposes this building would be affected by Local Plan policy SR21 which resists the loss of indoor recreation facilities unless the following conditions can be met:

- it can be demonstrated that there is an excess of provision within the catchment area of the facility;
- the facilities are to be replaced by improved facilities that meet the aims of the City Council's sport and recreation strategy; and
- replacement facilities are in a location as close as practicable to existing and potential users, and readily accessible by a choice of transport modes.

The St Nicholas churchyard falls within the Clifton Hill Conservation Area, the boundary of which abuts the northern and western edges of the site. The church itself is Listed Grade II* and some of the surrounding tombs and monuments are also Listed Grade II in their own right. Other tombs and the flint boundary walls are listed by virtue of being pre-1947 structures within the curtilage of the Listed church.

Local Plan policy HE6 requires proposals within or affecting the setting of the conservation area to preserve or enhance the character or appearance of the area and sets out a list of design requirements including "where appropriate, the removal of unsightly and inappropriate features or details".

Policy HE3 states that development will not be permitted where it would have an adverse impact on the setting of a Listed Building through factors such as its siting, design, height, bulk, scale, materials, layout, design or use.

Other material considerations

Environmental and social issues

Queen Square itself is in essence more a cul-de-sac than the urban square suggested by its name. Vehicular activity, nevertheless, is fairly constant during the day and evening due to the presence of the taxi rank, with regular U-turns being undertaken within the street by taxi drivers. With the closure of the ice rink there is nothing to attract pedestrian activity into the northern end of the street. The former ice rink building acts as a physical boundary to the northern end of Queen Square and prevents the through movement of pedestrians to and from the churchyard.

The historic St Nicholas churchyard immediately to the north of the ice rink fails to meet its potential in functioning as a valuable area of public open space. Despite its proximity to the busyness of the city centre, the south eastern arm of the St Nicholas churchyard adjacent to the former ice rink suffers from a general sense of remoteness and isolation. This is due to the absence of pedestrian through-routes and its 'walled in' nature caused by the blank rear elevations of buildings forming its southern and eastern boundaries. The resultant lack of active or passive surveillance results in a range of anti-social activities being carried out in the churchyard including youth disorder, night time noise and disturbance, alcohol related antisocial behaviour, drug use and dealing, vandalism of monuments, disrepair of monuments, rough sleeping and litter and debris.

In order to address the above problems and resolve general issues regarding the maintenance, management and use of the spaces, the City Council's Environment Improvement Team has recently facilitated meetings with local residents and organisations, resulting in the formation of the St Nicholas Church Green Spaces Association, an action group with the aim of seeking a range of improvements to the safety, security, maintenance and usability of the area. The south eastern corner adjacent to the boundary with the former ice rink/Queens Square has been identified as a particularly vulnerable area of the churchyard in need of attention.

Proposed solutions to development issues

Local Planning Authorities are duty bound under Section 38(6) of the Planning & Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. The key land use policy of the development plan in respect of the former ice rink site is policy SR21 as referred to above. This policy, therefore, would be the first and primary consideration of the local planning authority in assessing a proposal to redevelop the former ice rink building. Redevelopment of the site involving the loss of a D2 use would obviously act as a negative consideration in the local planning authority's deliberations.

Any such 'non-compliant' development proposal would need to incorporate material considerations of significant weight to justify a departure from local plan policy. The submission of sufficiently detailed information demonstrating the lack of marketability for a D2 use might go some way towards constituting such material considerations. This alone, however, would probably be insufficient as a lone factor. It is recommended that the following factors might collectively provide additional material considerations of sufficient weight.

- A scheme that helped redefine St Nicholas churchyard as a safe, accessible and well used public open space for the city centre and local residents.

- Redevelopment of the former ice rink site could help to achieve this through provision of the following:
- A pedestrian/cycle route through-route between the churchyard and Queen Square

This would encourage activity through the churchyard to and from the city centre. Such movement would be further encouraged via provision of a new pedestrian and cycle pathway allowing north/south movements through the churchyard and the West Hill Conservation Area to the north. This would necessitate the minor demolition of a small section of the flint wall on the northern boundary of the churchyard in order to allow pedestrian access/egress to and from Church Street.

Relevant planning policies:

QD2 Design – key principles for neighbourhoods

QD7 Crime prevention through environmental design

QD15 Landscape design

Ground floor uses acting as a ‘magnet’ to visits from the south and the north

Retail or café/food and drink type uses could provide this role. The site is close to and visible from the regional shopping centre, although does not adjoin the nearby retail frontage. An entertainment type use could be an alternative possibility.

Relevant planning policies:

QD5 Design – street frontages

SR1 New retail development within or on the edge of existing defined shopping frontages

SR12 Large Use Class A3 (restaurants and cafes) and Use Class A4 (pubs and bars)

Ground floor uses providing active frontage to the churchyard

This would assist with passive surveillance for users of the churchyard. An A3 use might be the most obvious contender. An outdoor elevated terrace or balcony giving views over the flint wall of the churchyard might serve to further assist, although this would be north facing so would not receive direct sunlight.

Relevant planning policies:

QD7 Crime prevention through environmental design

Upper floor uses providing passive surveillance of the churchyard

This could be provided by residential or office uses or a mixture of both. Sheltered housing for older people might be a suitable option, given the site's proximity to city centre shops and amenities. This would also reduce (but not remove) the need for private amenity space which could, in any case be provided via balconies which would further reinforce passive surveillance of the churchyard. The site lies within the core area for hotels as identified in the Local Plan, so development for a hotel use would be an alternative option that could provide similar benefits.

Relevant Local Plan policies:

QD7 Crime prevention through environmental design

HO12 Sheltered and managed housing for local people

EM4 New business and industrial uses on unidentified sites

SR14 New hotel and guest accommodation

Improved public realm in Queen Square

Development proposals that also included environmental improvements to the public realm in Queen Square may further contribute to achieving a critical mass of 'other material considerations' for a scheme that failed to meet the land use requirements of Local Plan policy SR21. Despite the presence of the taxi rank, there may be potential to create a more pedestrian friendly environment where vehicular traffic and pedestrian activity can share the same area or to widen the pavements. This could involve removal of the parking spaces in front of the building. This would accord with the City Council's public realm aspirations as set out in its 'Public Space, Public Life' publication, approved by the Environment Committee in 2007. Any improvements to the public realm should also serve to reinforce the legibility of the pedestrian link to the churchyard as proposed in this advice note.

Other policy considerations

Development proposals should be of a high quality design and have due regard to the need to provide an appropriate setting to the adjacent conservation area and the nearby listed buildings of St Nicholas Church and Wykeham Terrace.

Attention would need to be paid to the visual relationship of any development with the existing buildings within Queen Square in respect of height, scale and massing. Four storeys would probably be the maximum acceptable height for the development at its highest point. The height would need to connect with existing building heights to the eastern and western sides of the square (nos. 11 and 12 Queen Square) and scaled down further towards the listed buildings on Wykeham Terrace. No. 11 should be retained

and refurbished. The site is not appropriate for a tall building as defined in the Council's Supplementary Planning Guidance Note SPGBH11 on Tall Buildings.

Care should be taken with the height, massing, detailing and articulation of any new buildings, which should provide an appropriate silhouette, rhythm and scale as part of the backdrop to long views of St Nicholas church and Wykeham Terrace from the north and west.

The effect on the residential amenities of Wykeham Terrace will also need to be safeguarded. This means that the treatment of the western boundary of any new development would have to be carefully considered in respect of its proximity to the Wykeham Terrace properties as well as its height, detailing and any fenestration.

Relevant Local Plan policies:

QD1 Design – quality of development and design statements

QD2 Design – key principles for neighbourhoods

QD3 Design – efficient and effective use of sites

QD4 Design – strategic impact

HE3 Development affecting the setting of a listed building

HE6 Development within or affecting the setting of conservation areas.

Note: QD2 (f) and (g) are particularly relevant.

Land uses that contributed towards strategic planning objectives

Any development proposal that did not incorporate assembly and leisure use would do well to include land uses that contributed positively towards other Local Plan objectives such as local employment needs (e.g. office, hotel use) and housing needs.

Relevant Local Plan policies

HO2 Affordable housing – 'windfall sites'

HO3 Dwelling type and size

HO7 Car free housing

HO12 Sheltered and managed housing for older people

HO19 New community facilities

EM4 New business and industrial uses on unidentified sites

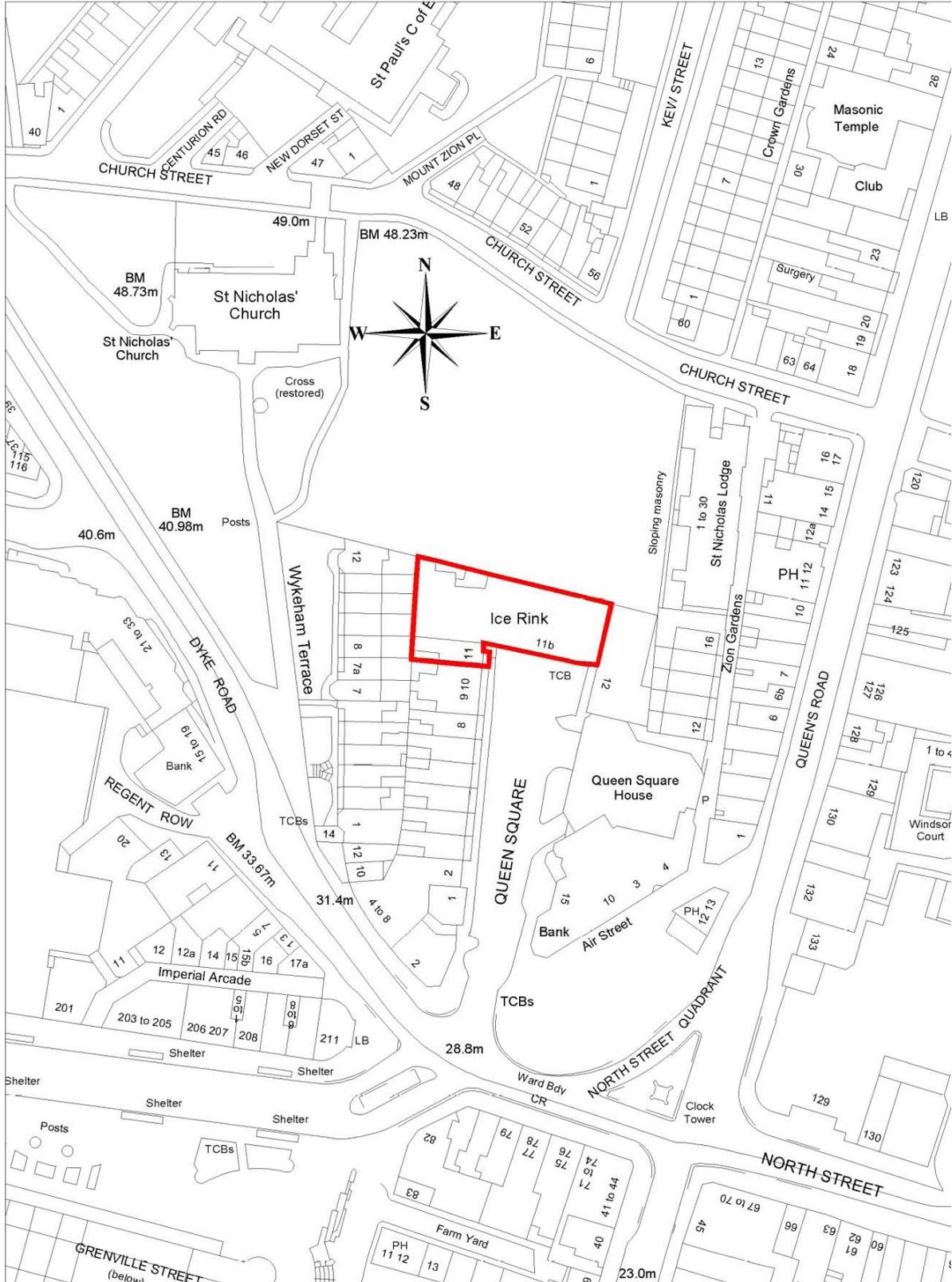
EM9 Mixed uses and key mixed uses sites

SR14 New hotel and guest accommodation



Brighton & Hove
City Council

Queen Square Ice Rink & 11, Queen Square



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Brighton & Hove

Date: 06/06/07

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CABINET

Appendix C

Agenda Item 172

Brighton & Hove City Council

Subject:	Ice Rink, Queen Square - Update on Disposal	
Date of Meeting:	12 February 2009	
Report of:	Director of Finance & Resources	
Contact Officer:	Name:	Angela Dymott
		Ralph Long: 291442
	E-mail:	Ralph.long@brighton-hove.gov.uk
Key Decision:	Yes	CAB 7173
Wards Affected:	St Peters & North Laine	

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To advise Cabinet on the present position and seek approval for the disposal of the Ice Rink Site and the adjoining office building at 11 Queen Square, Brighton. The site has remained vacant and derelict for some years and this proposal will regenerate a critical City centre site encouraging ways through to the North of the site and affording substantial opportunities for environmental improvements to this south facing square. The report is complemented by a report in Part Two of the Agenda.

2. RECOMMENDATION:

- 2.1 That Cabinet approve and authorise
- a) the disposal of the Ice Rink site and 11 Queen Square on a 150 year lease to the successful bidder for a premium and a peppercorn rent, following the full evaluation of informal bids and recommendations by the council's appointed agents, Oakelys, as outlined in item 3.9 of this Agenda and detailed in the part two report.
 - b) the detailed terms to be settled by the Director of Finance & Resources, Assistant Director Property & Design and the Solicitor to the Council provided the terms are certified by the valuer to be the best consideration reasonably obtainable.
- 2.2 Should the disposal to the preferred party not be completed, to approve and authorise the disposal to either of the short listed parties, or other bidders on similar terms with an agreed target premium.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The site of 0.2 acres (0.08 Ha) is located at the end of Queen's Square in the City Centre, immediately to the north of Western Road and Churchill Square. The site is shown by bold outline on the attached plan. The Ice Rink has been vacant since 2003 and was marketed for disposal on a long lease in 2004. The previous planning requirement for the ground floor limited to D2 purposes (Assembly and Leisure) has imposed constraints on developers. Consequently previous attempts at disposal of the site in 2004 -2006 ended in developers being unable to secure a D2 use on the ground floor and withdrawing from the deal, thus leaving the ice rink site vacant and derelict.

Planning

3.2 The established land use of the former ice rink site is D2 (Assembly and Leisure). The adjoining building at 11 Queen Square is occupied as offices within Use Class B1. For planning purposes the ice rink would be affected by Local Plan policy SR21 which limits the loss of indoor recreation facilities. To the west of the site are Grade II listed buildings on Wykeham Terrace. To the north of the site is the historic Churchyard of St Nicholas within the Clifton Hill Conservation Area and the Church itself is Grade II Listed. Other tombs and the flint boundary walls are Listed by virtue of being pre-1947 structures within the curtilage of the listed church.

3.3 Since the previous unsuccessful marketing, Property & Design have been working with the Planning team exploring a definitive use for the site. The council owns the adjoining office building at 11 Queen Square and following an asset management review it was decided to include this building in the marketing package thus affording a mixed use redevelopment of the site and further increasing the possible options for the site.

3.4 An updated informal planning brief has been developed with the planning team to support the re-marketing of the site. In this, the planning team have indicated improvements to the environment to offset the loss of leisure use of the ice rink. These include a scheme to help redefine St Nicholas Churchyard as a safe, accessible and well used public open space for the City centre and local residents which could be achieved by incorporating a pedestrian/cycle route through the Ice Rink site linking the churchyard and Queen Square.

3.5 The brief has been further broadened to include retail or café/food and drink type uses on the ground floor that could act as a magnet for pedestrian flow through Queen Square and provide passive surveillance for users of the Churchyard. The upper floors could be developed for hotel, residential or office use and again this could provide passive surveillance of the Churchyard.

Marketing

- 3.6** In April 2008 local and London agents were approached for their interest in acting for the Council in marketing the site and local agents Oakleys were appointed. Following a period of conducting surveys and assembling information the marketing campaign was launched on the open market in September 2008. The property was offered for sale by way of an informal tender and interested parties were requested to put forward their financial and development proposals by 7th November 2008.
- 3.7** A total of 10 submissions were made and the majority of the bids and the 5 highest were for hotel schemes. Other uses included residential office and medical clinic all of which were in the bottom half of the bids.
- 3.8** From the 10 submissions a short list of 3 were identified by an assessment of the merits of the proposals and the price offered against the evaluation model. The short-listed bidders were invited for interview on 8th December 2008 with a panel comprising Council officers and the agents Oakleys. The interview process involved a question and answer session using the criteria of the evaluation model with a matrix of scoring based on the 8 criteria weighted as follows :track record 10% ; deliverability 15% ; price 15% ; funding 15% ; planning15% ; quality 10% ; added value 10% ; timing 10%.
- 3.9** Following evaluation of the bids and interviews the council's agent's recommendation is to proceed with highest scored developer as the preferred purchaser for the site with the bid being subject to planning, contract and a preliminary timetable. The timetable has ambitious milestones for exchange of contract - March 2009, submission of Planning application - May 2009 with completion of sale to take place on receipt of planning permission within 2009/10. A separate Section 106 contribution will be paid by the developer.
- 3.10** The proposal is for a high quality hotel scheme of approximately 85 rooms arranged over 5/6 floors with restaurant facilities/bar/café on the part lower ground and ground floors. A walkway is proposed providing pedestrian and cycle access to St Nicholas Churchyard and providing a link through to Queen Square converting it from a cul de sac into a thoroughfare. The architects for the scheme are an international firm of architects who have a local office in the City. They are considering both a pre-let to a high quality restaurant operator or running the restaurant as part of their business.
- 11 Queen Square, Brighton**
- 3.11** 11 Queen Square is currently occupied as offices by Youth Advocacy and Participation (YAP) a CYPT/ Council service who provide advice and support to young people. The premises are let to YAP on a full repairing lease and have recently had structural and heating problems with the building which also does not have suitable access requirements. CYPT and Property & Design have been working together to relocate this function to more suitable premises and a letting has been agreed on the first floor of Ovest House, West Street with an anticipated relocation date of February 2009.

4 CONSULTATION

- 4.1** Consultations have been held with our appointed agent Oakley, the potential bidders, the planning team, economic development and CYPT and local Ward Councillors.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1** The disposal on long leasehold will generate a significant capital receipt, less associated fees, in connection with the disposal of the site. The council currently receives rent for the offices at 11 Queens Square, part of the capital receipt will be used to repay debt or generate interest to offset the loss of rent. The remaining net capital receipt will be needed to support the corporate Strategic Investment Fund for future years.

Finance Officer consulted: James Hengeveld Date: 15th January 2009

Legal Implications:

- 5.2** S 123 of the Local Government Act 1972 enables the Council to sell this property provided it achieves the best consideration reasonably obtainable. It is not considered that any individual's Human Rights Act rights will be adversely affected by the recommendation in this report.

Lawyer consulted: Anna Mackenzie Date: 15th January 2009

Equalities Implications:

- 5.3** The planners would require any development to incorporate improved access for all to include disabled access requirements, level and ramped access and cycle access.

Sustainability Implications

- 5.4** The site is in a sensitive location, within the City centre being close to St. Nicholas churchyard within the Clifton Hill Conservation Area and listed buildings in Wykeham Terrace.

Crime & Disorder Implications:

- 5.5** The site is vacant (apart from 11 Queen Sq) and there will be continuing issues of security and dereliction whilst the site remains undeveloped. The lack of public presence in St Nicholas churchyard will continue to be a problem and pose a risk to those who do use it.

Risk & Opportunity Management Implications:

- 5.6** The risks are dependant on the wider economic climate, property market conditions, the timing of the disposal, not achieving 'best consideration', obtaining planning consent, withdrawal of the developer selected and the site remaining vacant.

Corporate / Citywide Implications:

5.7 The disposal of properties is part of the corporate asset management process to ensure efficient and effective use of assets. This contributes to the regeneration of the City, the Council's strategic priorities and the increased opportunities for employment.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 The bids that have been submitted have been encouraging despite the impact of the credit crunch and the poor economic background. Due to the uncertain current property market the council asked its agents to carry out thorough due diligence before making their recommendations.

6.2 With the backdrop of the 'credit crunch' market conditions have been extremely difficult during 2008 and have resulted in a whole sale withdrawal from the development market in most property sectors, perhaps with exception in the hotel, restaurant and entertainment sectors. This is a reflection of the fall in the demand for both residential property and the lack of confidence in the business sector, whether this be commerce or retail, resulting in significant falls in value through 2008.

6.3 If the disposal falls through the alternative options available to the Council are :-

- a) *Negotiate with short listed parties* : Re-visit the other short listed parties bids and explore the possibilities of negotiating acceptable terms with other bidders with a target premium over a similar range.
- b) *Submit a Planning Application for the site*: this would remove some uncertainty for the successful developer but would not be appropriate for every party. There is the likelihood that a further planning application would be made varying the planning permission negating the time saved. The estimated cost for a full planning application with an Environmental Assessment is £100,000 which may not be fully recovered by any increase in the price.
- c) *Set up Joint Venture to deliver planning permission and potentially develop*: this would be undertaken by approaching selected parties of sufficient standing. It would involve a more complicated legal structure and documentation. There would be a share in the potential upside to compensate for a lower current price but the Council would not receive 100% of the uplift in land values if market conditions improve.
- d) *Wait until the economy improves before going back to the market*: This may not be until late 2009 /2010 and this option remains open if the current disposal does not proceed. There is no guarantee that a higher price would be achieved nor that market conditions will improve in the near future. In the meantime the property would remain vacant and vulnerable to vandalism and security problems.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1** To regenerate this area of the City, opening up the site to the north allowing more permeability to the site and enabling environmental improvements to create a lively south facing square.
- 7.2** To make best use of an existing asset and provide employment opportunities for the City encouraging local small businesses and apprenticeship training opportunities in construction.
- 7.3** The level of interest in the site has been good and the offers encouraging in the present economic climate. By initiating the development process now there is potential for the scheme to take advantage of an improving market when it comes. There is unlikely to be any higher price to be achieved in the near future from residential or office developers as these markets have some way to go before recovering.
- 7.4** Delay in disposing of the site will leave the Council with on going security and safety problems with the buildings and postpone the opportunity to improve safety and the general environment of the Square and Church yard.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan of site

Documents In Members' Rooms

1. None

Background Documents

1. None

Document is Restricted

Document is Restricted

