

<b>Subject:</b>	<b>Pelham Street</b>
<b>Date of Meeting:</b>	<b>16 December 2014</b>
<b>Report of:</b>	<b>Joint report of Executive Director Finance &amp; Resources, Executive Director Environment, Development &amp; Housing and Head of Legal Services</b>
<b>Contact Officer:</b>	<b>Name: Bob Bruce/Martin Randall Tel: 29-3451/2257</b>
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<b>Ward(s) affected:</b>	<b>St Peters &amp; North Laine</b>

**FOR GENERAL RELEASE**

Note: By reason of the special circumstances, and in accordance with section 100B(4)(b) of the 1972 Act, the Chair of the meeting has been consulted and is of the opinion that this item should be considered at the meeting as a matter of urgency for the following reason. Time is of the essence in respect of the proposed City College development referred to in the report and in particular rights to light and funding issues need to be resolved promptly.

The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the relevant information relating to on-going negotiations on the provisions of the report was awaited.

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The recommendations in this report are to assist the major redevelopment and regeneration of City College Brighton and Hove's buildings at its Pelham Street campus, by ensuring that the development can progress notwithstanding any third party rights affecting the property which could otherwise impede or prevent implementation of planning permission.

**2. RECOMMENDATIONS:**

It is recommended that the Committee

- 2.1 Agree to the council entering into an agreement with City College Brighton and Hove ("City College") on the terms set out in Appendix 2 for the grant of a lease of the land comprised in City College's campus (subject to such amendments to those terms as the Head of Law and Head of Property Services agree with City College to give effect to these proposals) so that if the lease referred to is granted the council will hold such land for planning purposes ("the transaction") to facilitate the redevelopment of such land in accordance with planning

permission reference BH2013/01600 in order to improve the economic social and environmental wellbeing of the area;

- 2.2. note that the lease will only be entered into if City College are unable to reach satisfactory terms with adjoining owners regarding release of rights to light or other easement affecting the land based on statutory levels of compensation;
- 2.3. note that in the event of the lease being granted any third party rights will be overridden by S237 of the Town and Country Planning Act 1990 and that compensation will be payable by City College or its developers; and
- 2.4 authorise the Head of Law in consultation with the Head of Property Services to complete the necessary agreements, the lease and all other documentation necessary to complete the transaction and facilitate the implementation of the planning permission BH2013/01600 on the basis that any compensation payable and all other costs associated with the transaction will be borne by City College or its developers.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1. City College Brighton and Hove (“CC”) is a key partner in the City Employment and Skills Group (“CESG”). The objective of the CESG is to support the creation of at least 6,000 new jobs by 2014 and to support Brighton & Hove residents in obtaining the skills required to be able to fill the jobs created. The CC buildings at its Pelham Street campus are no longer fit for purpose and the area is ripe for regeneration. CC aim within the next 10 years to increase student numbers from a total of 10,549 (part time and full time) in 2013/14 to 12,469 by 2023. In December planning permission was agreed to be granted for a scheme comprising 11,800 square metres of new facilities on the existing CC car park, the demolition of Pelham Tower, which will be replaced with new student housing for the University of Sussex and demolition of buildings to the east of Pelham Street, which will be redeveloped for a mix of general and affordable housing. A S106 Agreement has been entered into. The planning report included a detailed assessment of the daylight, sunlight and overshadowing issues connected with the proposed development undertaken on behalf of the local planning authority by the Building Research Establishment.
- 3.2 Appendix 1 is a site plan, Appendix 3 is the planning permission and Appendix 4 is a summary of the s106 Agreement.
- 3.3 The development will provide significant educational benefits and support the London Road Central regeneration by introducing additional footfall for the London Road businesses and bringing forward public realm improvements. In addition the new student housing may remove some students from housing needed to house families.
- 3.4. The development will be financed by a long term loan from a major annuity fund in addition to the proceeds from the sale of the land for residential and student accommodation.
- 3.5 CC has established that some of its neighbours may have acquired rights to light over its land, which if enforced could significantly delay or prevent the

development taking place. To prevent this happening CC has proposed that if necessary the council take an interest in the land and apply s237 of the Town and Country Planning Act 1990 (“S237TCPA”) to that land.

- 3.6 CC’s intention is to negotiate releases with neighbouring property owners as required. However to prevent delay or CC being held to ransom, it is proposed that the council acquire the land for planning purposes. S237TCPA allows rights of light and other rights to be interfered with in order that a scheme with the benefit of planning permission can be built out, provided that the land has been acquired by the council in order to facilitate the redevelopment of the site in such a manner as is likely to contribute to the environmental, social or economic wellbeing of the area.
- 3.7 S237TCPA requires payment of compensation to those persons whose rights are overridden and in the event of the level of compensation not being agreed the Lands Tribunal can determine the amount payable.
- 3.8 As the council does not own the land it would have to acquire an interest in it from CC. There will be an indemnity in favour of the council in relation to any compensation payable as well as any associated professional and legal fees.
- 3.9 The original request from CC regarding S237TCPA is the confidential Part II appendix 5 to this report. The Part II confidential appendix 6 details the particular compensation claims of concern to CC.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 As noted in section 3 of this report, the proposed CC development has the potential to provide significant beneficial impact to the city. The proposed new CC facilities are key to CC maintaining and improving its education offer and CC say that there will £79M of inward investment, 141 FTE construction jobs and up to £1M additional local spending per year. CC will only be able to proceed with the development if the overall project is viable.
- 4.2 If the council decline to assist in the way proposed there is a real risk that the scheme will not be implemented. No major development of the site has occurred since the 1960s and previous schemes have not been built as they were not viable. Unless CC achieve the values it has discussed with potential developers it will not be able to afford to proceed. Delay and uncertainty could result in much needed educational facilities and housing not being developed.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 There are no legal requirements to consult about the proposal set out in section 2 of this report. However there was much community engagement and consultation in relation to the planning application. The report to the Planning Committee noted objections to the application from Councillors West and Deane, 155 representations of objection and 30 individual and 217 standard representations of support to the proposed development. The report also noted that Brighton & Hove Business Forum and Brighton & Hove Economic Partnership were in favour of the proposed development, but that North Laine

Community Association and the Brighton Society were against it and that CAG recommended refusal.

- 5.2 CC have I been negotiating with individual owners of properties regarding any rights of light and potential compensation packages. The confidential Appendix 6 gives an indication regarding the potential rights to light issues to be overcome by CC.
- 5.3 The S106 Agreement requires as part of the Construction and Environment Management Plan that there are monthly meetings with residents during the construction phase.
- 5.4 CC has clearly stated that the recent negotiations with staff about redundancies and reorganisation have not been triggered by the proposed redevelopment. They are two separate strands of ensuring that CC is in the best position possible to meet its education objectives on an ongoing basis.

## **6. CONCLUSION**

- 6.1. As noted in the Planning Committee report, the proposed mix of uses on the site is acceptable and is compliant with the Local Plan and the Submission City Plan and would bring about substantial public benefits to the City.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 To facilitate the granting of the S237 of the town and County Planning Act 1990 the City College and the Council will enter into a Lease arrangement for a 99-year term to acquire the land for planning purposes. The lease will be at a peppercorn. Potential compensation claims for loss of rights will be settled jointly by the council and CC and the Council will be indemnified against all liabilities arising from these claims. Any legal costs that the Council incurs will be met in full by the CC.

*Finance Officer Consulted: James Hengeveld Date: 10.12.14*

### Legal Implications:

- 7.2 A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner to enjoy light across an affected adjoining site. Any development which interferes with that right could constitute a breach of the easement that would entitle the neighbouring owner to claim an injunction preventing development or compensation for the effect of the light lost as a result of the interference.
- 7.3 The way in which the injunction risk (but not the compensation) can be overcome is by using S237TCPA if CC is unable to negotiate settlements with all relevant neighbouring owners. The proposed resolution to use these powers will focus negotiations with relevant owners. If the land is acquired for planning purposes the land can subsequently be disposed of under S233TCPA to CC or its developers, who will be able to rely on the S237TCPA power to interfere with

third party rights. Appropriate indemnities will be provided in favour of the council. The council has utilised this power to facilitate other developments, such as Jubilee Library and the Keep and future developments at Circus Street and Preston Barracks.

- 7.4 In deciding whether to acquire the land by agreement the council needs to have regard to the human rights of the owners of adjoining properties whose rights may be affected if the planning permission is implemented. The relevant rights are set out in Articles 1 and 8.
- 7.5 Article 1 provides for peaceful enjoyment of possessions and prohibits any deprivation of those possessions unless it is in the public interest and subject to reasonable conditions. In making a judgement as to whether owners should have their rights to light interfered with and converted to a right to compensation, the council will need to strike a fair balance between the competing interests of individuals and the community as a whole.
- 7.6 Article 8 provides for the right to respect for private and family life. This is a qualified right, with interference allowed if permitted by law and in the interest of economic wellbeing.
- 7.7 Whilst the acquisition of the land would lead to a situation where third parties could not obtain injunctive relief, parliament clearly envisage that converting rights to compensation was appropriate in certain circumstances and given the background referred to in this report, it is considered reasonable to enter into the transaction proposed.

*Lawyer Consulted: Bob Bruce Date: 10/12/14*

Equalities Implications:

- 7.8 No further equalities implications have been identified at this stage of the process.

Sustainability Implications:

- 7.9 The Planning Committee report refers to various sustainability aspects of the proposals and various provisions are included in the S106 Agreement e.g. in relation to sustainable transport and district heating.

Any Other Significant Implications:

- 7.10 None at this stage.

## **SUPPORTING DOCUMENTATION**

### **Part 1 Appendices:**

1. Site plan
2. Summary of Heads of Terms for lease of the site.
3. Planning Permission BH2013/01600 – Decision Notice
4. Summary of S106 Agreement

### **Part 2 Appendices**

5. Original request from City College – Exempt Category 3
6. Rights to Light information – Exempt Category 3

### **Documents in Members' Rooms**

None

### **Background Documents**

11 December 2013 report to and minutes of Planning Committee relating to application BH2013/01600