

<b>Agenda Item No:</b>	<b>13</b>	
<b>Committee:</b>	<b>CABINET</b>	
<b>Date:</b>	<b>11 July 2022</b>	
<b>Report Title:</b>	<b>24 High Street, Wisbech Contract Award</b>	

**Schedules 1, 2 and 3 of this item comprise exempt information which is not for publication by virtue of paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).**

### **1. Purpose / Summary**

To provide Cabinet with an update on progress related to the 24 High Street Project and for Cabinet to consider recommending to Full Council increased funding within the capital programme to fund the project and to recommend to Full Council that the Council enters into a construction contract for 24 High Street.

### **2. Reasons for Exemption**

Schedules 1, 2 and 3 of this Report are not for publication in accordance with paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the financial and business affairs of the Council and 3<sup>rd</sup> parties and legal advice in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The public interest test has been applied to the information contained within this exempt report and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

### **3. Progress to Develop the Gap at 24 High Street**

- 3.1 The project to redevelop 24 High Street continues, with pre-contract archaeological assessment work now completed whilst the Council carries out due diligence work with a preferred bidder following a procurement process.
- 3.2 The results of the procurement exercise carried out using a framework agreement for the construction of 24 High Street reflects the difficulty of development on this site given its position in the High Street, as well as a volatile construction market at present. Costs continue to rise, with material costs, particularly steel, not held for any significant period of time. Whilst the Council has selected a preferred bidder, the bid value was caveated with several terms. The commercially sensitive detail regarding the procurement exercise and financing options are as set out in exempt Schedules 1, 2 and 3. Further, the Council has employed a firm of quantity surveyors to assess the preferred supplier's bid to ensure that Members can be presented with a clear expectation of costs that construction of 24 High Street may incur the Council. Their report may be found in Schedule 2.

- 3.3 The Council has been in contact with the Heritage Lottery Fund (HLF) in regard to increasing the potential grant available for 24 High Street. Currently the grant available for the 24 High Street construction project is £238,000. When this was determined several years ago this was 35% of the expected construction costs. It now represents a significantly smaller proportion of construction costs than 35%.
- 3.4 Council officers have discussed the necessity to increase the grant value and have been advised by HLF that until some certainty regarding work at 11-12 High Street is available no change in grant funding will be possible. Since the private developer pulled out of the 11-12 High Street Project, the Council has sought interest from several other developers with little success. Another firm is currently assessing the site for development and whilst this work is ongoing the Council has commissioned a further piece of work to finalise options should the third-party firm not take development forwards. It is anticipated that a further paper will be brought to Cabinet in August to consider the future of 11-12 High Street. This may then inform flexibility regarding the grant to 24 High Street – with any change dependent on HLF.
- 3.5 It is important to recognise that 24 High Street is a regeneration project and forms an integral part of the Wisbech High Street NLHF scheme. Wisbech has a wealth of heritage assets but unfortunately, due to a combination of factors many historic buildings in the town have suffered, particularly on the High Street. A number remain ‘at risk’ or ‘vulnerable’ and there are gap sites following demolition including at 24 and 11-12 High Street. This was the basis of the grant funding award by NLHF. Residential and commercial properties values are low within the town centre in part as a result of the multitude of deprivation and infrastructure challenges that Wisbech faces. Without market intervention through public sector subsidy there is very little prospect of vacant High Street sites being developed and brought back into use to benefit the local economy. Development of 24 High Street is not viable without public sector subsidy. The return on investment for a commercial developer – the cost of construction set against the resultant capital value and rental income stream that can be achieved – is likely to be negative in both the short and medium term. A much longer return period coupled with identifiable socio-economic outcomes has to be considered to demonstrate best value for that public sector subsidy (this is considered further later in this report). There are tangible benefits to delivering the 24 High Street scheme including:
- the physical regeneration of the site itself
  - avoiding the holding costs of a site which includes structural support of adjacent buildings and ensuring the long-term protection of those adjacent heritage assets which have exposed walls following demolition
  - improving the attractiveness of the High Street for local residents and visitors to the town, thereby helping to drive footfall and support local businesses
  - protecting and enhancing the character and appearance of the Conservation Area

- delivering new apartments in a sustainable location
- stimulating further investment in the town as the town centre is Wisbech's 'shop window'
- the use of available NLHF grant to help subsidise the scheme

#### 4 Recommendations

- 4.1 That Cabinet notes the current position in relation to the Council's redevelopment plans for 24 High Street, Wisbech; and
- 4.2 Following consideration of the information in Schedules 1 and 2 regarding the preferred bidder's submission:
- Notes the anticipated total value of redeveloping 24 High Street capped in accordance with the terms and conditions of the Crown Commercial Services Government Construction Framework RM6088;
  - Recommends that Full Council considers and approves the options available for funding the redevelopment of 24 High Street based on the value anticipated by the preferred bidder and as set out in Schedule 3 and delegates to the Chief Finance Officer, in consultation with the Leader, authority to identify and utilise the most appropriate combination of funding having regard to the Council's wider budgetary duties and obligations; and
  - Subject to the above, recommends that Full Council approves the negotiation and entry into a contract with the preferred bidder in accordance with the requirements of the Code of Procurement and the legal advice and due diligence requirements set out in Schedule 1 seeking at all times to ensure that the Council maintains its best value obligations.

Wards Affected	Medworth Ward	
Forward Plan Reference	KEY21APR22/01	
Portfolio Holders	Cllr Chris Seaton Cllr Ian Benney Cllr Chris Boden	Portfolio Holder for Social Mobility and Heritage Portfolio Holder for Economic Growth Leader of the Council and Portfolio Holder for Finance
Report Originator	Phil Hughes Acting Assistant Director	
Contact Officers	Paul Medd Matt Wright Peter Catchpole Amy Brown	Chief Executive High Streets Project manager Corporate Director and S151 Officer Monitoring Officer and Chief Legal Officer

Background Papers	<p>Quantity Surveyor's report regarding preferred bidders bid contained within Schedule 2</p> <p>20 February 2020 Cabinet Report</p> <p>1 July 2021 Cabinet Report</p> <p>2022 Cabinet reports</p> <p>Planning documentation- application reference F/YR21/0680/FDC</p>
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## **5 Capital Programme Project Update – 24 Wisbech High Street**

- 5.1 Since the previous Cabinet update regarding the Wisbech High Street Programme, there has been positive progress relating to 24 Wisbech High Street.
- 5.2 The preferred bidder has been notified of their status and a quantity surveyor has assessed the bid documentation and caveats contained therein. Details of this work and a report from the quantity surveyors is included in Schedules 1 and 2.
- 5.3 Party wall investigations continue through our private sector partners. Currently we are not aware of any risk to the project programme as a result of this work.
- 5.4 Officers are engaged with the National Lottery Heritage Fund (NLHF) to align the funding agreement. This will allow the funds to be allocated from the external funding body in readiness for delivery of the project and subject to entry into a standard grant funding agreement.

## **6 Legal Implications**

- 6.1 The procurement has been carried out in accordance with Fenland District Council's Code of Procurement which allows the use of Government Buying Contracts. The Council has used the Crown Commercial Services Government Construction Framework RM6088.
- 6.2 Whilst ordinarily the executive has delegated authority to approve entry into contractual arrangements, as one of the options for funding the redevelopment requires the use of funds which are not provided for within the capital programme, Full Council would ultimately be required to determine whether or not the current funding allocated to this project should be increased. In particular, the Council's Constitution prescribes that only Full Council will be responsible for *"making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to policy framework or contrary to/or not wholly in accordance with the budget"* (Article 4) and *"the Cabinet, committee of the Cabinet, individual members of the Cabinet and any officers or joint arrangements discharging executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly*

*in accordance with the budget approved by full Council, then that decision may only be taken by the Full Council (Budget and Policy Framework Procedure Rules, paragraph 3).*

- 6.3 In view of the deadline for publishing the Agenda for the Council meeting on 11 July 2022, it has not been possible to include information about the tender assessment process within this report due to information that remains outstanding from a third-party assessment of the preferred bidder's submission. It is essential that the accuracy of the financial information and financial impact of caveats contained within bid documents submitted by the preferred bidder are accurately assessed to allow an informed decision to be taken. Regulation 7 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 permit an exception to the requirement for reports to be published 5 clear days in advance of a meeting in circumstances where the information is not available at the time of publication.

Additional information will therefore be published and circulated to Council Members as soon as possible after those processes have concluded in order to facilitate a timely decision in relation to a decision regarding the Council's preferred bidder.

- 6.4 The Council also has a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This applies to all functions of the Council, including activities related to regeneration. Members will need to consider the implications of this duty when weighing up the benefits of proceeding with the scheme as outlined in paragraph 3.5 against the costs of proceeding and any associated financial risks. The Council and members also have a fiduciary duty to tax payers in considering any significant expenditure. In effect this also requires members to carefully consider the benefits and costs of the proposed scheme. A decision will be lawful so long as it takes into account all relevant factors and is reasonable in all the circumstances.

## **7 Financial Implications**

- 7.1 The Council has allocated a capital budget of £1.35M to this project which includes a £238k contribution from the NLHF. This sum falls significantly short of the expected estimated total value of the preferred bidders bid. Due to the value of the increase, the authority of Full Council is required to increase the sum set aside in the Council's capital programme for this project. For the project to proceed Cabinet's recommendation to Full Council should seek an increase in the project's authorised capital programme cost to that detailed in Exempt Schedule 3, paragraph 6.
- 7.2 Details of the cost of financing the project are included in Exempt Schedule 3, paragraph 7 together with information regarding the net income which the Council anticipates it would receive on an annual basis after work on the building has been completed.
- 7.3 As noted above officers are continuing to negotiate with representatives from the National Lottery Heritage Fund (NLHF) to obtain the optimal amount of grant funding to support delivery of the project. However, at this stage there is no guarantee that the NLHF contribution will exceed £238k.

- 7.4 Officers are also in consultation with the Cambridgeshire and Peterborough Combined Authority regarding financial support for this project.
- 7.5 If other funding opportunities arise in the short term, Officers will also consider whether these are applicable to this project and apply for support if suitable.
- 7.6 It should be noted that this project is a regeneration one and not part of the Commercial and Investment Strategy as the investment criteria contained within the Strategy would not be met.

## **8 Alternative Options Considered**

- 8.1 It is important to recognise that 24 High Street is a regeneration scheme rather than a commercial investment proposal and that it is intended to support the wider Wisbech High Street NLHF grant funded project. The site is owned by the Council and forms a gap in a primary retail street in the heart of the town. It is considered that there are two potential alternative options to that recommended in this report.

### **8.2 Option 1 – To not proceed with the award of a construction contract and to review the situation in 12 months' time**

As set out earlier in this report, there is cost volatility in the construction sector. Materials and labour costs remain high, and many contractors have full order books following delays to construction caused by the Covid-19 pandemic. There could be some levelling off or cost reduction over time but equally the rising cost of inflation together with ongoing raw materials supply issues could see costs rise further rather than decrease. Delaying the project for 12 months could also risk loss of the NLHF funding contribution unless a time extension to the scheme can be agreed. This is a significant risk given that the scheme has already been extended beyond its original 3 years.

### **8.3 Option 2 – To dispose of the site to a third-party developer**

As set out above, this is a regeneration and not a commercial investment proposal and is intended to deliver transformational change to Wisbech through the NLHF scheme. It is not unusual for projects of this nature to face a 'conservation deficit' meaning that they require grant funding to bridge an identified financial viability gap. The Council can take a longer-term view about the cost of investment and the return on that investment, unlike a private sector developer who would need to achieve a developer profit and a shorter-term commercial return on investment, particularly where a scheme is subject to development finance. It is considered highly unlikely that a sale to a third-party developer could be achieved in these circumstances.

## **9.0 Schedules**

- 9.1 Schedule 1 – Procurement Update, Legal Advice and Due Diligence Implications.
- 9.2 Schedule 2 – Quantity Surveyor Assessment.
- 9.3 Schedule 3 – Overview of Financing Options and Implications.