

EAST HERTS COUNCIL

COUNCIL - 19 DECEMBER 2018

REPORT BY EXECUTIVE MEMBER FOR FINANCE AND SUPPORT  
SERVICES AND LEADER OF THE COUNCIL

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OLD RIVER LANE

WARD(S) AFFECTED:        ALL

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**Purpose/Summary of Report**

To update Council on progress made with respect to Old River Lane (ORL) and Northgate End development sites in Bishop's Stortford, including the key milestones reached or required with respect to:

- An emerging Heads of Terms which will form the basis of the Development Agreement (the latter is legally binding) with our preferred development partner for ORL and an update on the process of selection (through the competitive dialogue route);
- A final brief and estimated budget for the Arts and Entertainment Centre;
- The estimated budget and final business case for the Multi Storey Car Park and attached residential and commercial units at Northgate End and an update on the procurement of the design team, surveys and investigations; and
- The land required that is currently in the ownership of Hertfordshire County Council and Bishop's Stortford Town Council.

**RECOMMENDATIONS FOR COUNCIL: That Council:**

<b>(A)</b>	<b>Notes</b> the update on: <ul style="list-style-type: none"><li>i. the competitive dialogue procurement process for Old River Lane</li><li>ii. the latest brief (ERP B), estimated budget and likely funding partners for the Arts and Entertainment Centre</li><li>iii. the draft Heads of Terms for the Development Agreement at Exempt ERP C</li></ul>
<b>(B)</b>	<b>Approves</b> the capital allocation of £19.03m for the Multi Storey Car Park and adjoining residential/commercial units at Northgate End (Exempt ERP D), known as the 'Northgate End Developments' and authorises construction of the development, subject to planning conditions and the conditions listed under recommendation (C) below being discharged;
<b>(C)</b>	<b>Notes</b> that the commencement of construction of the Northgate End Developments is conditional upon the following: <ul style="list-style-type: none"><li>i. planning permission</li><li>ii. A preferred developer for the main ORL site is approved by Council on 5 March 2019.</li></ul>
<b>(D)</b>	<b>Approves</b> the purchase of land owned by Hertfordshire County Council and Bishop's Stortford Town Council (as set out in 6.2 of this report), using LEP funding granted for this purpose.

## **1.0 Background**

1.1 Old River Lane (ORL) is an ambitious town centre scheme which replaces a dated office building and sizeable surface car park in the middle of Bishop's Stortford with a vibrant new

quarter for the town, featuring a modern multi-purpose arts and entertainment venue, commercial/retail space, enhanced public realm including a new town square, and residential units.

1.2 Members will recall that decisions were taken by Council to:

- a. Approve the land use for ORL (on **13<sup>th</sup> December 2017**); and
- b. Approve the delivery models for the developments at Northgate End and the main ORL site, and to proceed with procurement (on **25<sup>th</sup> July 2018**).

1.3 This report presents the next phase of the project, and will be followed in **March 2019** by a report recommending that Council confirm the selection of a development partner and proceed to sign a legal agreement committing both parties to the ORL scheme – in other words, the final approval stage for Council. By this stage, the funding partners for the arts centre should be clearer in terms of which partner will contribute and how much.

1.4 Members of the joint Overview & Scrutiny and Performance, Audit and Governance committee met on 20 November, and scrutinised the following parts of the project:

- the latest brief for the Arts and Entertainment Centre (**Essential Reference Paper B**), the estimated budget for the centre and the likely funding partners
- the draft Heads of Terms for the Development Agreement on the ORL main site (**Exempt Essential Reference Paper C**)
- the final business case for the Multi Storey Car Park and adjoining residential/commercial units at Northgate End (**Exempt Essential Reference Paper D**), known as the

'Northgate End Developments', the estimated capital allocation for the build costs of these developments and the proposal to procure a contractor

1.5 Views from the joint scrutiny committee are set out after each section of this report. It was agreed that a member briefing in advance of the March 2019 Council meeting would be useful.

## **2.0 Procurement process on the main site (ORL)**

2.1 Following approval to proceed by Council on 25<sup>th</sup> July 2018, an EU (European Union) procurement process was launched. The process is undertaken in two stages, the first stage (complete) was a written exercise to demonstrate suitability in a number of areas and the second stage (currently underway) is a 'competitive dialogue' which takes place over a series of meetings with those bidders who were shortlisted from stage one.

2.2 Competitive Dialogue enables the developers and the council to work collaboratively on three key areas:

- i. A draft masterplan for ORL;
- ii. a viability assessment; and
- iii. a Heads of Terms setting out key legal issues that both parties will eventually sign up to by way of a Development Agreement.

2.3 The competitive dialogue phase will be completed in December 2018, after which bidders have until 28<sup>th</sup> January 2019 to submit their final bids, which will include draft masterplans and financial submissions. A single developer will be selected on the basis of these submissions in February, and a report will be presented to Council on March 5<sup>th</sup> 2019 recommending the council enters into a legal agreement (the 'Development Agreement') with this developer to proceed.

### **3.0 Arts and Entertainment Centre Brief, Budget and Funding**

- 3.1 Members will recall the extensive consultation process undertaken with local interested arts groups and the public to develop a design brief for the arts and entertainment centre. The Arts Centre Steering Group (consisting of two members/trustees each from East Herts, Bishop's Stortford TC, and Rhodes Trust, and three recently appointed independent members) has led the process of the brief's development. The latest draft of the brief is attached at **Essential Reference Paper B**.
- 3.2 The new venue has the potential to be a game-changer for the centre of Bishop's Stortford, creating a public space which will bring new life and vibrancy to the town centre. Open 14 hours a day, seven days a week, high footfall is expected throughout the day by visitors of the library, cinemas and café, while the theatre, studio and cinemas will also create a night time destination that will bring added value and diversity to the town's night time economy. The professional artistic programme will be mixed, appealing to a wide and varied audience, and the new centre will also offer the opportunity for young people and amateur groups to perform in state of the art facilities, whether in the main or studio theatres. Incorporating the library into the Arts and Entertainment Centre is an exciting opportunity to create potential new audiences for both the arts centre and the library, and the concept is fully supported by Hertfordshire County Council (represented on the Arts Centre Steering Group by a senior library service officer).
- 3.3 At this stage the council's cost consultants estimate that the cost of the Arts and Entertainment Centre will be £28m (excluding professional fees but including everything as set out in the brief at **Essential Reference Paper B**).
- 3.4 Members will recall that Heads of Terms have been signed with Bishop's Stortford Town Council and the Rhodes Birthplace Trust which commits East Herts Council and BSTC to

elements of capital and revenue funding of the Arts and Entertainment Centre (subject to various conditions). The Heads of Terms can be found on the council's website here:

<https://www.eastherts.gov.uk/oldriverlane>

- 3.5 This report only deals with the capital budget for the Arts and Entertainment Centre. A detailed revenue business case will be brought to members in early 2019, although at this stage members are reminded that East Herts has committed to provide £250k annually to fund the revenue costs of the arts centre, and that Bishop's Stortford Town Council has committed similarly, subject to a number of conditions (set out the in the Heads of Terms referenced at 3.4 above).
- 3.6 An initial approach has been made to the town council to request a capital contribution of £5m. This request was noted at a meeting of the town council's Finance and General Purposes Committee on 5<sup>th</sup> November 2018, and a number of questions were raised to which officers are now in the process of responding. Any capital contribution by the town council would entitle it to a proportionate share of the ownership of the Arts and Entertainment Centre (as per the Heads of Terms agreement referred to previously). Funding from Hertfordshire County Council could either come as a one off capital contribution (with a peppercorn rent for the library for a defined period of time) or a revenue stream by way of an annual rental charge for the library's use of space in the Centre. Since this has yet to be agreed with HCC, for the purposes of this report the latter has been assumed (revenue rather than capital contribution). This does not preclude the capital option for HCC but simply does not rely on it currently.

**Table 1: Current indicative funding sources for the Arts and Entertainment Centre**

<b>Funding source</b>	<b>£m</b>
East Herts DC S106	1.4
East Herts DC	21.3

Herts CC S106	0.2
Bishop's Stortford Town Council	5.0
National Lottery	0.1
<b>TOTAL</b>	<b>28</b>

3.7 A funding bid for £3m was submitted to the Arts Council in September 2018, but unfortunately was unsuccessful. This bid was submitted because the Arts Council announced a short window of opportunity for a 'Cultural Development Fund' in towns. Further funding bids will be submitted to other bodies (including the town centre funding pots recently announced as part of the Chancellor's budget) once a more defined scheme is in place, but these should be viewed as reducing the overall cost to the Council, rather than as a precursor to the scheme going ahead (given the uncertainty of success).

### **3.8 *Views from Joint Scrutiny***

3.9 Scrutiny raised the fact that running costs, capital investment etc., are currently all estimated and are dependent on the final investment by EHC, HCC, BSTC, and the winning developer's design and bid. The Chief Executive confirmed that these details will become clearer over the next few months, and will all be in place for the final Council decision in March 2019. It is at this stage that East Herts Councillors will be asked to commit capital and revenue allocations to the Arts Centre.

## **4 ORL Main Site Draft Heads of Terms with Developer**

4.1 As referred to in 2.2 above, the process of competitive dialogue with the developers entails, amongst other things, agreeing a Heads of Terms document which will eventually form the basis of the Development Agreement between the selected developer and the council. The draft Heads of Terms document is attached at **Exempt Essential Reference Paper C**. The document will continue to develop over the next few weeks, until a final version is agreed with each developer

which will form the basis of their final submissions. Once a preferred bidder is selected and recommended to Council in March 2019, the Heads of Terms will form the basis of a 'Development Agreement' a legally binding contract to be signed between the Council and the developer.

#### **4.2 *Views from Joint Scrutiny***

4.3 There was extensive discussion about the status of the Heads of Terms, and clarification was given that while not legally binding, the Heads of Terms sets out the broad terms of the agreement between the Council and the final developer which will form the basis of a legally binding document known as the 'Development Agreement'.

4.4 It was also noted that default and termination terms will need to be clarified, and officers confirmed that there will be a significant amount of detail to add to the final Development Agreement, such as these terms.

### **5 **Multi Storey Car Park (MSCP) & Residential/Commercial Building, Northgate End – the 'Northgate End Developments'****

5.1 Members will recall that the delivery model for the Northgate End Development (MSCP & Residential/Commercial units) is for the council to contract directly and separately from the main ORL site. This will allow the council to be delivering the MSCP & Residential/Commercial Units whilst the Development Agreement for the main ORL site is being worked up (April – June 2019) and the final masterplan and other associated issues are being developed by the selected developer in collaboration with the council (July – December 2019).

5.2 The funding strategy for the car park is entirely different from that for the ORL site, since it is a stand-alone asset which will effectively fund itself over the period of its lifetime (40 years), with a small residual surplus.



- 5.3 The funding strategy for the residential and commercial units is similar – this part of the scheme will fund itself, with a small return to the council and the *potential* for the council to own and manage some or all of the units (residential and commercial) through Millstream, the council's wholly owned housing company.
- 5.4 The indicative net cost of the Northgate End Developments (MSCP & Residential/Commercial Building) is £19.03m and the business cases which demonstrate how this cost will be funded is set out at **Exempt Essential Reference Paper D**.
- 5.5 The proposed procurement strategy for the main contractor of the MSCP & the Residential/Commercial Building is to use Multi-Disciplinary frameworks on a design and build contract, ensuring an OJEU compliant solution which offers good value by reducing the time and ultimately resources needed. The plan is to commence in mid- January 2019 when the Design team would have completed RIBA stage 3 with a main contractor appointed latest by March/April 2019. It has yet to be decided whether the Northgate End Developments will be procured as a single contract, or whether two separate contracts would be preferable. Either of these options is feasible and that decision can be made by officers once a capital allocation is made by Council.
- 5.6 It should be stressed that no major construction works will start on the Northgate End Developments until the following conditions have been achieved:
- i. Planning permission is granted and the pre-development & pre-commencement planning conditions have been discharged;
  - ii. A preferred developer for the main ORL site is approved by Council on 5 March 2019.

### 5.7 ***Views from Joint Scrutiny***

5.8 A concern was raised about the potential delay that could be caused by the Judicial review and the mitigation measures being undertaken to remove the risks posed by this process and the Chief Executive noted that in order to save time the proposed strategy is to request that the High Court quashes the original planning permission and that a variation to the planning application is submitted which should be considered by Development Management Committee early in 2019.

## **6.0 Final Land Assembly**

6.1 Members will recall the reports that referenced the land assembly required for the delivery of the wider Old River Lane scheme:

- i. Land use, Essential Reference Paper B - approved by Council on 13<sup>th</sup> December 2017;
- ii. Delivery method, Essential Reference Paper D – approved by Council on 25<sup>th</sup> July 2018; and
- iii. Exempt Report on Old River Lane Land assembly – approved by Council on 23<sup>rd</sup> October 2018.

6.2 The remaining land assembly required for the delivery of the wider scheme consists of:

- i. Hertfordshire County Council's land behind the Northgate Centre; and
- ii. Bishop's Stortford Town Council's land to the east of the existing Northgate End car park.

6.3 The green triangle adjacent and to the north of the Causeway Car Park; whilst ownership of this land is not necessarily required, there is potential to enhance this landscape as part of the development.

6.4 Valuations will be undertaken for each area of land prior to any offers to the respective councils.

6.5 The LEP grant covers the costs associated with the final land assembly, as per legal agreement signed between the council and the LEP.

### **6.6 Views from Joint Scrutiny**

6.7 A concern was raised about whether these pieces of land have effectively become ransom strips, but the council's property advisor, Malcolm Hewitt, noted that given the nature of the development being one that is in the public benefit of the whole of Bishop's Stortford, and the fact that the two pieces of land are both in public ownership, it is anticipated that all parties will work together to deliver fair value for any land in order to enable the delivery of the project.

## **7.0 Implications/Consultations**

7.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

### Background Papers

Council December 2017

<http://democracy.eastherts.gov.uk/documents/s42341/Old%20River%20Lane%20Land%20Use.pdf?j=5>

Council July 2018

<http://democracy.eastherts.gov.uk/documents/s45373/ORL.pdf?j=3>

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