

**Vale
of White Horse**
District Council

ICMD - April 12 -
Redactions post-tribunal
decision 150617

Local Government Act 2000 and the Local Authorities
(Executive Arrangements) (Access to Information) (England)
Regulations 2000

RECORD OF DECISION OF CABINET MEMBER OR KEY DECISION OF OFFICER			
1	Name of decision maker	Councillor Elaine Ware	
2	Type of decision (Please ? as appropriate)	Key Yes	Other
3	Date of decision (This should be the same as the date form signed)	30 April 2012	
4	The decision	<p>1) That, following a change in circumstances, the cabinet member reconfirms the authority previously given for the strategic director with responsibility for property, in consultation with the portfolio holder, to declare as surplus and approve the proposed sale of part of the Vale Council-owned Westway Shopping Centre (WSC) in Botley in conjunction with other adjoining landowners and with the aim of delivering a new development of a major food store and car parking together with the relocation of the existing community hall and Baptist Church.</p> <p>2) That the cabinet member confirms that the Vale Council would be minded to use compulsory purchase powers in circumstances where there was no other reasonable option available to ensure vacant possession and thereby delivery of the scheme, where it was clear that the use of those powers was lawful, that the Vale Council had received the necessary indemnities as to its costs and subject to cabinet considering a detailed report and formally confirming approval of the use of such powers.</p>	
5	Reasons for decision	<p>This matter was considered by the executive at its meeting on 5 November 2010. In addition, a cabinet member decision was made on 3 August 2011. The cabinet member's decision gave authority for a disposal of this Vale Council-owned property to Asda/Bride Hall (a partnership between the food retailer and an established developer). However, since that decision, the proposed disposal terms and the identity of the purchaser have changed and, as a consequence, officers are requesting the cabinet member to consider the matter afresh.</p> <p>The original executive report in 2010 set out the background,</p>	

Including details of the original purchase of the WSC, the current rental income and highlighted its rather tired and dated appearance. The report also contained details of the proposed partnership arrangements between the Vale Council, other landowners and a developer, Stockdale Land Limited (Stockdale), to jointly market a site for a major food store development. The Vale Council's contribution to the overall site would comprise of the shoppers car park off Chapel Way (adjoining the Co-op), the Seacourt Hall site (leased to North Hinksey Parish Council at £1 a year expiring in 2024) and part of the Co-op store. The head of economy, leisure and property, in consultation with the strategic director and portfolio holder, was authorised to agree and complete a joint venture sale agreement and this document, termed a marketing co-operation agreement (MCA), was completed in February 2011. The thrust of the agreement was that the parties would jointly market the overall site with a view to achieving certain common objectives, these being a sale on the best terms, including a price that meets the Vale Council's statutory obligations, and delivering a comprehensive development within five years that complements the existing WSC. The MCA provided that in the event of a sale then the capital receipt would be split in accordance with stated percentages. The Vale Council would receive 30.96 per cent of the sale receipt up to £16.5 million, 0 (zero) per cent between £16.5 million and £20 million, and 25 per cent over £20 million. When previously reported, it was anticipated that the Vale Council would receive a figure in the region of £3.7 million for its land as part of the scheme. The budget figures contained in the MCA included a substantial allowance (approximately [REDACTED] [REDACTED] to achieve vacant possession,

The MCA provides that in the event that settled heads of terms are provisionally agreed with a prospective purchaser representing the best available offer then Stockdale will issue a 'sale notice' proposing that a sale of the site proceeds on that basis. Each of the parties is able to serve a dissatisfaction notice in the event that those terms are not acceptable. If a party does not serve a dissatisfaction notice it is intended that the sale will proceed. Non-service of the notice would not mean the Vale Council is contractually bound to a sale, but it is required to act in good faith at all times towards the other parties to the agreement and so it should treat the sale notice procedure effectively as a final decision on the matter, assuming circumstances do not change.

Following completion of the MCA, the site was subsequently marketed by the Vale Council's strategic property advisers, Cushman & Wakefield, and this produced 13 firm offers ranging from £6 million to £16 million from a mixture of developers and food retailers. Six bids were shortlisted and these were analysed further, including input obtained from planning officers, and each of the parties were interviewed jointly by the agents and landowners. Having regard to the level of the bid and the suitability of the schemes, two parties emerged as frontrunners and these were Asda/Bride Hall (a partnership between the food retailer and an established developer) and Doric Properties, a

developer with no end user identified.

Further negotiations developed with the intention of clarifying and, where possible, improving the terms on offer. The initial consensus of the parties was that the Asda/Bride Hall bid offered the best deal and, therefore, this was highlighted in the earlier cabinet member decision report as being the preferred bid. However, progress with that party subsequently slowed and issues arose about the design and some of the detailed contract terms and ultimately Asda/Bridehall reduced their bid to an uncompetitive level. However, the agents had maintained contact with Doric throughout the process with a view to keeping its interest alive and, therefore, it was possible to restart discussions with them over the terms. Doric indicated a willingness to exchange contracts for a sale of the site in the sum of [REDACTED], but subject to a number of conditions, these being the grant of planning consent, that the vendors are capable of delivering vacant possession, completion of a stopping up order in relation to the section of highway required and a maximum allowance of £250,000 for highway works.

Further discussions with Doric focussed on the issues around achieving vacant possession (VP). In this respect, the Vale Council would need to deliver VP of Seacourt Hall, the Co-op store, the public conveniences and car park. The Vale Council controls the latter two and this is straightforward, but there are leases in relation to the other two. The Co-op's lease would need to be terminated and the relevant notices have been served so that possession can be obtained subject to proving (in court if need be) that a redevelopment is proceeding. The lease of the hall to New Hinksey Parish Council (NHPC) is for a term of 35 years expiring in November 2024 and, whilst it has indicated its willingness to co operate over a relocation, understandably NHPC will want to be satisfied that the new facility puts it in a better position than at present. A new facility is expected to provide a significantly better building than the present, being more flexible and making more efficient use of the space, as well as being more economical in terms of outgoings.

Stockdale had undertaken to relocate the Baptist Church to achieve VP of that site, and this cost is a substantial part of the [REDACTED] allowance stated earlier. Another party to the MCA (Willow Property) owns Elms Court, which includes the library, NatWest (which has now closed), a local dry cleaner and in the upper floors, a firm of surveyors.

As discussions unfolded it became clear that Doric wished to have an active involvement in achieving VP and instead of the onus being on the parties to the MCA to deliver VP it was proposed that Doric take on this role. It was subsequently agreed that [REDACTED] would effectively be deducted from the purchase price on the basis that there would no longer be a condition in the contract requiring VP to be provided by the members of the consortium. Doric would therefore be responsible for reprovion of the church and community facilities as well as negotiating termination of the business tenancies.

Following the recent cabinet briefing, members are also aware of Doric's wish to extend the development to take in the WSC and potentially additional land as well. The Vale Council owns the remainder of the shopping centre and this would involve an additional agreement if it was to proceed. Officers are currently awaiting a financial offer and development appraisal before considering further.

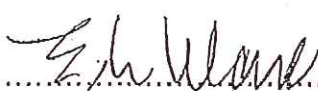
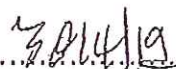

Completion of a disposal of the original food store site to Doric would be conditional on grant of a satisfactory planning permission. However, given Doric's aspirations for a wider development, Doric's view of a satisfactory planning permission will relate to the wider scheme, not just the original site. Doric has had pre-application discussions with planning officers over its proposals and early indications are broadly positive but it is an ambitious scheme so there will be many issues to be resolved.

The original proposal for the sale of part of the site under the MCA has therefore become complicated by Doric's wish to include the remainder of the WSC in the overall development proposal. There are advantages to a comprehensive, integrated scheme, but at the present time there is no financial proposal to consider and this report does not seek any decision in connection with the major part of the WSC, only with the original site. In this connection, Stockdale has now issued a sale notice proposing a sale to Doric in the sum of [REDACTED], based on a gross price of [REDACTED] but subject to a [REDACTED] allowance for the cost of achieving vacant possession (which otherwise would have fallen on the parties collectively). The breakdown of the purchase price shown in the statement attached to the sale notice indicates the Vale Council's share of the proceeds is estimated at [REDACTED], albeit this could be subject to minor variation dependent on certain costs that are incurred in the sale process. This compares to previous estimates which have been put in the range of £3.7 million to £3.9 million.

It is proposed that the Vale Council proceeds with the intended disposal of the original site on the terms set out to Doric and to this end does not serve a dissatisfaction notice. For the purposes of obtaining the necessary authority and to cover circumstances where there may be minor changes to the proposed terms, it is recommended that the cabinet member reconfirms the authority previously given for the strategic director with responsibility for property, in consultation with the portfolio holder, to approve the proposed sale of part of the Vale Council-owned WSC as envisaged in the MCA. It should be noted, however, that the proposed transaction appears to be firmly linked to the wider proposal and if terms cannot be agreed for that then the likelihood is that the arrangement with Doric for the original site may not proceed.

Whilst it is proposed that Doric take all necessary action to obtain VP by agreement, it is not inconceivable that if this cannot be achieved then the only remaining option to ensure delivery of the scheme would be the use of compulsory purchase (CP)

		<p>powers. Officers consider it would be premature to make a decision to commit to use of CP powers at this time. However, given that the proposed development contributes to a number of corporate priorities and having regard to the policy of the local plan in relation to this site, officers recommend that the Vale Council confirms at this stage that it would be minded to use such powers in circumstances where there was no other reasonable option available to ensure delivery of the scheme and where it was clear that the use of those powers was lawful and that the Vale Council had received the necessary indemnities as to its costs. However, the actual resolution to use such powers would be a full cabinet decision. Again, at this stage, the decision sought relates only to the original site, but if terms can be agreed provisionally with Doric for the wider site such that a further authority is sought relating to that, then it seems likely that CP will have to be considered in relation to VP issues for that site.</p> <p>Finally, it should be noted that the proposed deal with Doric is for the entirety of the site as marketed, which includes the back half of the Co-op store (this was not required by Asda / Bride Hall). This will mean that the Co-op store will need works to rebuild the rear elevation and reconfigure it into a lettable unit. Of course if the wider scheme happens, then this will not be necessary as it would encompass the entirety of the Co-op store.</p>
6	Alternative Options rejected	The Vale Council is not bound to enter into the sale agreement but if it wishes to pull out then the onus is on it to serve a dissatisfaction notice as detailed above. However, this would run contrary to the course that has been set and the Vale Council would forgo the potential for a substantial capital receipt.
7	Resource implications	None, apart from legal input into sale documentation and completion. As authorised in the last report, Pinsent Mason is acting on the Vale Council's behalf.
8	Legal implications	Pinsent Mason will act for the Vale Council, although some input will be required from the Vale Council's legal team.
9	Financial implications	The Vale Council's share of the proceeds has previously been estimated in the range of £3.7 million to £3.9 million, and the latest estimate attached to the sale notice is showing a receipt of [REDACTED]. However, there are a number of costs that will be incurred including professional and legal fees. Other costs will depend on whether the wider scheme proceeds, such as works to the retained half of the Co-op building or the cost of refurbishing the WSC, which was estimated at £1.5 million for the purposes of the November 2010 executive report.
10	List of consultees (See guidance below)	<p>Finance – agreed 26 April 2012</p> <p>Legal – (Margaret Reed) – agreed 25 April 2012</p> <p>Head of ELP (Chris Tyson) – agreed 19 April 2012</p> <p>Strategic Director (Matt Prosser) – agreed 27 April 2012</p> <p>S151 officer (Steve Bishop) – agreed 26 April 2012</p>
11	Reports and background	Previous executive report on 5 November 2010. Cabinet member report 3 August 2011.

	papers considered	
12	Date of receipt of reports	N/A
13	Declarations of interests	None
14	Dispensations	None
15	Is this decision confidential and if so, under which exempt category?	Yes, under paragraph 3, part one, schedule 12a of the Local Government Act 1972.
16	"Call in" waived?	
17	Signature and date	 Decision maker
		 Dated
18	This form must be physically handed to a member of the democratic services team	<p>Note: The date and time at which this form is received will be recorded by the head of democratic services. The decision will then be published and is subject to "call in".</p>  Date..30-4-12..Time..16:00 Head of democratic services Date and time form received YV
19	Details of publication on the web and date of expiry of "Call In" Note: This part of the form will be completed by democratic services	Date of expiry of "Call In"8 May 2012..... Date published.....30 April 2012..... Date hand delivered to chair of scrutiny.....30 April 2012.....