

Growth Committee

7 February 2017

Leasehold Disposal of Canbury Car Park

Report by Director of Place

Purpose

To approve the proposed leasehold disposal of the property known as Canbury Place Car Park, Walter Lane, Kingston Upon Thames, KT2 5AA, to facilitate the delivery of the North Kingston Development Brief.

Recommendations of the Portfolio Holder for Regeneration

To **resolve** that -

1. the leasehold of the property known as Canbury Place Car Park is disposed of on a subject to planning basis, in line with the draft Heads of Terms attached at Annex 1 of this paper; and that
2. the Director of Place is granted delegated authority, in consultation with the Portfolio Holder for Regeneration, to finalise and complete the contract for sale and associated lease.

Key Points

- A. The Growth Committee adopted the North Kingston Development Brief at its meeting of 13th October 2016. The North Kingston Development Brief illustrates a comprehensive vision for transformational change for this inefficiently used and under performing part of Kingston Town Centre. The brief sets out the principles and framework to unlock this development area in a responsive, comprehensive and integrated way.
- B. Canbury Place Car Park is recognised as a key site within the North Kingston Development Brief. This is because it is one of the largest individual plots, and also because it is owned by the Council. On this basis the site can be used by the Council as a catalyst to bring forward the integrated, holistic development envisaged in the brief.
- C. The proposed disposal will facilitate the integration of the Canbury Car Park site with two other key sites within the development brief. These are the Kingsgate Road site and the former Kingsgate Business Centre site.
- D. The proposed disposal is to the owners of the current Kingsgate Business Centre site. This party, Kingston Gate Properties Limited / Apache Capital Partners ("Kingston Gate / Apache") can be regarded as a 'Special Purchaser' because they are in a unique position to bring forward a comprehensive development across the three sites in question. By contrast any other purchaser of the Council's land would also have to purchase Kingston Gate / Apache's site in order to bring forward an integrated development across both sites. Kingston Gate / Apache have no plans to dispose of their site in this respect and it has therefore been concluded that the proposed disposal is the most likely means of facilitating the delivery of the development brief.

- E. It is important to note that the proposed disposal also requires the stopping up of the existing Kingsgate Road. This will be subject to a separate and parallel process under either s247 of the Town and Country Planning Act 1990 or s116 of the Highways Act 1980. This assumption was also made explicit in the North Kingston Development Brief.
- F. It is proposed to grant Kingston Gate / Apache a leasehold of 250 years to the Canbury Car Park Site. The leasehold disposal will be subject to Kingsgate / Apache obtaining a satisfactory planning consent for a development across the sites within 15 months of entering into the contract for sale with the Council. The associated lease will restrict development on site to residential use, with ancillary supporting commercial use. By entering into the contract for sale, the purchaser also agrees not to develop and / or market units on site for student residential purposes for a period of ten years.
- G. Kingston Gate / Apache will pay a premium of twelve million, six hundred thousand pounds, (£12,600,000) to the Council in return for this leasehold. This price has been independently verified by external property advisors as representing best consideration. A copy of the independently produced ('Red Book') valuation report is attached as Annex 2 to this report. Please note that this material is considered commercially sensitive and therefore Annex 2 is included in the exempt part of the Committee Agenda.
- H. A red line drawing indicating the precise area to be disposed of in the lease is included as Annex 3 of this report.

Proposal and Options

1. It is proposed to grant Kingston Gate / Apache a leasehold of 250 years to the Canbury Car Park Site. A draft set of Heads of Terms which outlines the key commercial assumptions in both the contract for sale and the lease is attached as Annex 1.
2. Kingston Gate / Apache will pay a premium of twelve million, six hundred thousand pounds (£12,600,000) to the Council in return for this leasehold. This price has been independently verified as representing best consideration. A copy of the independent valuation report is included as Annex 2.
3. In addition, the contract for sale will also include a mechanism for apportioning any 'overage' or 'marriage value' that might accrue as a function of any future development on site. This is reflected in the draft Heads of Terms attached as Annex 1.
4. The property has not been tendered for sale on the open market. This is because a sale to any party other than Kingston Gate / Apache is likely to result in a development solely on the Canbury Car Park Site in isolation from the other development sites. This piecemeal approach to the development of the sites within the North Kingston Development Brief is considered unlikely to deliver the integrated, holistic development envisaged in the brief.
5. By contrast Kingston Gate / Apache will commit, by way of a condition precedent to the contract for sale, to develop a scheme that conforms with the North Kingston Development Brief. On this basis, a sale directly to Kingston Gate / Apache is considered the best means of achieving the delivery of the vision articulated in the Development Brief.

6. It is important to note that the proposed disposal also requires the stopping up of the existing Kingsgate Road. This will be subject to a separate and parallel process, led by the Council, under either s247 of the Town and Country Planning Act 1990 or s116 of the Highways Act 1980. This assumption was also made explicit in the North Kingston Development Brief.
7. The Council will commit, by way of a condition precedent to the contract for sale, to complete the proposed stopping up of Kingsgate Road within 15 months of entering into the contract for sale.

Timescale

8. It is anticipated that the legal documentation required in support of the contract for sale and the lease will take approximately two months to agree and finalise.
9. The purchaser is required to submit a planning application not more than 12 months after the contract for sale has been entered into. A major planning application of this sort will take at least 13 weeks to determine. On this basis, it is likely that the lease will be formally entered into, and that development will commence on site, sometime in the third quarter of 2018.

Resource Implications

10. Canbury Car Park has generated average annual income, net of running costs, of £0.323m over the past 5 years. The disposal of this site will therefore cause this income stream to cease. However, the capital receipt generated from the disposal will enable a significant proportion of the proposed capital programme for 2017-18 to be funded from this receipt rather than resorting to borrowing. Additional revenue costs of borrowing in the form of minimum revenue provision (MRP) and interest could therefore be avoided.
11. By utilising capital receipts to finance shorter life assets first, it would be reasonable to assume an average 15 year asset life for the projects being funded and therefore MRP costs of £0.840m per year could be avoided. In addition to this, if new external debt had been required to finance capital expenditure to the value of this receipt, interest costs of around £0.340m would have been incurred and could therefore be avoided by this disposal. This is based on PWLB borrowing over 15 years at 2.7%.
12. The net effect of the lost income and costs avoided would generate an estimated revenue benefit of £0.857m per year.

Legal Implications

13. Local Authorities are given powers under the Local Government Act 1972 to dispose of land in any manner they wish, including sale of the freehold interest, granting a lease, and the granting of easements. There is no obligation upon Local Authorities to dispose of land via an open market tendering exercise.
14. Local Authorities are expected to obtain the best consideration reasonably obtainable for the disposal of their land. This is often arrived at by seeking to obtain the best offer in an open market tendering exercise. However, it is not uncommon for Local Authorities to seek to negotiate a land sale directly with a "special purchaser" and to verify that best consideration has been achieved by

comparing the proposed negotiated sale price with the results of an independently produced valuation of the land.

Risk Assessment

12. There is a risk that a better price for the Council's land could have been achieved had the site been tendered on the open market. However, this needs to be balanced against the risk that a purchaser other than Kingston Gate / Apache would be unlikely to deliver the type of integrated development envisaged by the Development Brief.

Equalities Impact Assessment

13. There are no Equalities issues arising from the recommendations in this report.

Road Network Implications

14. The proposed disposal also requires the stopping up of the existing Kingsgate Road. This will be subject to a separate and parallel process under either s247 of the Town and Country Planning Act 1990 or s116 of the Highways Act 1980. This assumption was also made explicit in the North Kingston Development Brief.

Environmental Implications

15. There are no environmental implications arising from the recommendations in this report. Any environmental implications arising from any proposed developments on the site will be dealt with under the Town and Country Planning Act 1990.

Background papers -

- None other than those referred to in this report