

CABINET	AGENDA ITEM No. 8
21 February 2022	PUBLIC REPORT

Report of:	Adrian Chapman, Executive Director: Place and Economy	
Cabinet Member(s) responsible:	Councillor Steve Allen, Cabinet Member for Housing, Culture and Communities	
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BUDGET APPROVAL FOR THE CONSTRUCTION OF PETERBOROUGH CITY MARKET AND FOR THE DISPOSAL OF LAND AT NORTHMINSTER
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RECOMMENDATIONS
<p>It is recommended that Cabinet recommend that Full Council:</p> <ol style="list-style-type: none"> 1. Note the indicative costs in relation to the creation of a new city market as set out in exempt Appendix 1 and delegate final approval of those costs to the Director of Resources subject to the Financial Assessment. 2. Approve funding from reserves for the revenue costs to achieve vacant possession of the Northminster site and to meet costs associated with decanting market traders to a temporary location whilst the permanent market is under construction if necessary. 3. Approve the transfer of capital budget from Strategic Property of up to £450,000 for the construction of the Peterborough City Market. 4. Approve the proposed sale of the land at Northminster to the Peterborough Investment Partnership (PIP), as set out in exempt Appendix 3, with phased completion dates of 31 March 2022 and 30 June 2022, subject to final valuation and compliance with best consideration requirements in line with the joint venture agreement with the PIP and with final terms delegated to the Director of Resources and Director of Law and Governance in consultation with the Cabinet Member for Finance.

1. PURPOSE AND REASON FOR REPORT

- 1.1 The report is presented to Cabinet to recommend to Council the transfer of capital budget of up to £450,000 from Strategic Property and the funding of the revenue costs from reserves for the construction of the Peterborough City Market and decant of Northminster in order to enable the Council to dispose of its land at Northminster to facilitate the development of new homes on this site as part of the Council's ambition for regeneration and growth of Peterborough. The indicative costs are set out in exempt Appendix 1.
- 1.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.9, to make 'recommendations to Council about proposed changes to the Council's major policy and budget framework.'
- 1.3 The report also seeks Cabinet approval to the sale of land at Northminster to Peterborough Investment Partnership (LLP) to meet deadlines for the start of the proposed development on that site, with final terms to be agreed with the PIP, subject to a Red Book valuation as set out in the PIP Members Agreement.

- 1.4 The attached Appendices 1 - 3 are NOT FOR PUBLICATION in accordance with paragraph (s)3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that they contain commercially sensitive information relating to the business affairs of the Council. The public interest test has been applied to the information contained within the three exempt annexes and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as it contains information that is commercially sensitive and to do so would prejudice the Council in its negotiations and fetter the Council in discharging its statutory duties and obligations.
- 1.5 With the agreement of the Chair of the Communities Scrutiny Committee, the requirement to provide notice of the need to meet in private to take a decision that involves exempt information has been waived. This is due to the need for Cabinet to be in a position to discuss this detail in order that appropriate delegations can be approved to finalise the land sale. This is time critical as, described in the main report, there is an urgent requirement to achieve partial vacant possession by the end of March in order to secure the grant funding from the Combined Authority.

2. BACKGROUND AND KEY ISSUES

- 2.1 Peterborough is one of the fastest growing cities in the UK and the Council has ambitious plans to encourage and support this growth through improvements to the city. The Northminster development will result in new homes and much needed improvements to this area of the city. As part of this, moving the market to a new location will provide a market more suited to demand with improved facilities in a better location. The project has reached a critical point in order to deliver to planned timescales, in particular due to the availability of a £14m Combined Authority grant to support the viability of the overall scheme.
- 2.2 The Northminster development is being led by the Peterborough Investment Partnership (PIP) which, in partnership with the Council, will see the site developed for over 300 new homes. The Council will receive a capital receipt from the sale of the land to the PIP. As a partner in the PIP any profits from the development will be distributed in accordance with the Northminster project business case.
- 2.3 As part of the Northminster development, the City Market site (the old Cattle Market adjacent to Northminster Car Park, Peterborough), which is too large for current needs, needs to be vacated in order to facilitate the construction works. A condition of the £14m Build to Rent Combined Authority funding towards the Northminster development is for a start on site by 31 March this year. Making plans now to move the market as well as finalising the land transaction will enable the land to be sold to the PIP and a substantial start on site by 31 March. The proposal is to dispose of the land in two tranches to enable a start on site on the majority of the site whilst allowing the time for the market move to take place, planned for 30 June 2022 at the latest.
- 2.4 The final terms of the sale will need to be amended to reflect this as the current option agreement identifies Laxton Square specifically as a possible separate tranche. The land transaction needs to take place by the 31 March 2022, but the market move due to its complexity cannot be completed until later. Therefore, it is proposed to split the transaction into further phases such that completion of the majority of the disposal takes place by 31 March 2022 with the remainder taking place at a later point. This change, along with others to be agreed with the PIP, will need to be made and reflected in final agreement and sales contract.
- 2.5 The Cabinet Member Decision Notice FEB20/CMDN/82 set out the proposal to support the collaboration between the Council and the PIP to take forward the regeneration of council-owned land and assets at Northminster, including providing the PIP with an option agreement to draw down the land. The report delegated to the Executive Director of Place and Economy and the Director of Law and Governance authority to finalise and agree necessary legal and related documents and delegated to the Corporate Director of Resources the authority to transfer the land at Northminster to the PIP.

- 2.6 The legal implications of the 2020 report also referenced s123 of the Local Government Act 1972 in relation to best consideration. As the site was not marketed, this requires a market valuation. Clause 35 of the Membership Agreement of PIP dated 24 December 2014 expressly states that nothing in the Agreement shall prejudice or affect the Council's rights, powers, duties, and obligations in the exercise of its function as a local authority and the rights of the Council under all public and private statutes, order and regulations may be as fully and effectively exercised by the Council in relation to any Site as if the Council was not a party to the agreement. Therefore, the Council will need to evidence best value at point of sale. This can be evidenced by a red book evaluation by an independent surveyor or referred to RICS for an independent Site Valuer. This needs to take place before sale and RICS best practice would require a Red Book valuation to be carried out close to the point of sale as valuations have with a maximum 3-month validity.
- 2.7 The February 2020 report did not indicate the proposed sale price or include any valuation information. The report included in its legal implications that the Council would receive a capital receipt based upon an independent valuation of the site. Given the scale of the decision the proposed transaction figure, it needs to be updated and approved by Cabinet close to the point of sale.
- 2.8 A valuation was carried out in April 2020. An option agreement was signed in December 2020 based on this valuation. The April 2020 valuation report was based on material valuation uncertainty (in particular in relation to Covid-19). These figures were used in the signed option agreement in December 2020, after the delegation decision. That original valuation is no longer valid, and a new Red Book valuation has been commissioned in line with RICS guidelines.
- 2.9 Since March 2020, the PIP has developed its proposal and applied for outline planning permission which is currently subject to a number of reserved matters. It has contracts or agreements in place for ground works, demolition, and construction and CIL costs cannot be calculated. The material valuation uncertainty relating to the Covid-19 circumstances of the March 2020 valuation are not the issue it was at that time. The scheme now includes £14m grant towards its costs. Construction costs have increased over this period and the costs and value of the scheme need to be re-assessed in order to verify that the land disposal is at market value and the Council can demonstrate that it has received best consideration.
- 2.10 All of these factors have an impact on the development and therefore the Council needs to satisfy itself that the proposed sale is at market value and subsequent development is deliverable. Therefore, it is proposed that the approval of the disposal is subject to finalisation and a market valuation as per the PIP Members Agreement, in order to demonstrate compliance with best consideration legislation, with details included in exempt Appendix 3 of this report.
- 2.11 In January 2022, the Cabinet Member for Housing, Culture and Communities took the decision to close the city market at Northminster and develop a new city market within Bridge Street (JAN22/CMDN/70). The Cabinet Member noted that the Northminster market has been declining for a number of years due to its location, the changing environment of the wider Northminster area and changes in consumer shopping habits. In addition, Covid has had a further impact on traders' ability to successfully run a business from that location.
- 2.12 The Bridge Street market will comprise a new food hall in a shop unit (the former council customer service centre building) and initially 12 market kiosks located on Bridge Street. Planning permission was granted for the kiosks at the Planning and Environmental Protection Committee meeting on 25 January 2022.
- 2.13 Bridge Street is at the heart of the city centre and will generate much higher footfall to the traders and reverse the decline of business that the current market suffers from. It is envisaged that existing traders located in Bridge Street will also benefit from the increased customer flow that the market will attract to this location. Whilst the market will initially host the traders moving from the existing site, there is the potential to increase the number of permanent kiosks and

supplement occasional pop-up stalls for temporary events e.g., Christmas and other cultural/religious celebrations, food, and drink festivals, subject to planning permission.

- 2.14 Peterborough Limited have been commissioned to undertake the conversion of the former Customer Service Centre building into a food hall and to supply the market kiosks along Bridge Street. It is expected that the Food Hall should be open in late Spring 2022 and those traders will be able to operate their business from that time. In order to ensure that the Northminster scheme can start on time, it may be necessary to decant the traders to a temporary site whilst the new market is being constructed. This disruption should only be a matter of a few weeks and the council will work closely with the traders to mitigate disruption as much as possible. As part of the temporary decant and subsequent permanent move to Bridge Street, there will likely be additional costs which will be confirmed as part of the ongoing financial assessment.
- 2.15 Each trader will have unique circumstances, which may require a bespoke solution. Not all traders at the existing market will be transferring to the new location and the council could incur costs relating to ending the tenancies and achieving vacant possession of the Northminster site. These costs will be approved by either the Member for Finance via a Cabinet Member Decision Notice or the Director of Resources as per current delegated powers.
- 2.16 Should the Cabinet be minded to approve the recommended option 2 below, the Council's legal and property team will work with the PIP to agree a phased approach to vacating the Northminster site and decanting the market traders. The PIP has agreed in principle to the phased approach to the transaction. This complete decant of the market and the opening of the new Bridge Street market will need to be completed no later than the 30 June 2022.

2.19 **Alternative Options considered**

2.19.1 **Option 1: Do nothing and retain the market in its current form at Northminster.**

The Northminster project is at a critical stage delivering much needed new homes to the City Centre. The Council has already agreed to sell the land to the PIP, and the PIP has secured £14m of funding from the Combined Authority which supports the viability of this scheme. The Council could withdraw from the arrangement in agreement with the PIP, however this would prevent the development of this site in the near future, would carry a risk of costs to date being sought by the PIP which may exceed the costs associated with securing vacant possession as outlined in this report, and would mean the £14m grant available for this scheme would fall, making the future development of this site uncertain and potentially unviable for a number of years.

The market has been declining over several years due to its condition and location. Continuing to hold the market at Northminster does not provide residents, visitors, or traders the full opportunities that a market can offer a city. The number of traders at the market has declined over the years. It is understood that this is because there has been a significant reduction in the number of customers coming to the market. The Council has already taken the decision to close and move the market.

2.19.2 **Option 2: Proceed with closing the Northminster market and opening a new city market in Bridge Street and agreeing with the PIP to phase the land transaction such that completion of the majority of the disposal takes place by 31 March 2022 with the Food Hall and/or Laxton Square taking place at a later point targeted for 30 June 2022.**

This option has been considered in detail. The original option cannot be delivered on time by 31 March 2022 due to the complexity and time required to close and move the market. The significant advantage of this option is that the scheme is ready to proceed and will deliver much needed additional homes for Peterborough and secure Combined Authority funding of £14m. This option allows the Council to continue its arrangement with the PIP to develop the land in line with the terms of its agreement with the PIP. As the PIP already has an option to draw down the land,

subject to conditions, this option enables the Council to meet its obligations in relation to the option agreement provided the obligations are not in conflict with Clause 35 of the Membership Agreement. In the event of conflict, the Membership Agreement will take precedent.

Bridge Street will provide a significantly improved location for the city market, placing it in the heart of the city centre and with access to shoppers and visitors. This in turn, will increase the sustainability of market traders and offer a much richer experience for local residents. Proceeding now will give a significant kick-start to post-Covid growth of Peterborough and will help the Council meet its plans for regeneration of this area in a timely and viable way. Counsel's advice was sought prior to the Council decision to close the current market which indicates that taking the decision to close the current market and re-open at Bridge Street is a reasonable step for the Council to take with the risk of successful challenge likely to be low.

This option is recommended in this report.

2.19.3 **Option 3: Agree changes to the land transaction with the PIP to exclude the Food Hall and Laxton Square and reopen the market on this site instead of Bridge Street**

The Council could look to agree with the PIP to revise the area of the land disposal to the PIP and separate the site into two areas; the first containing the land enabling the homes to be built, the second which would include the footprint of the food hall and Laxton Square.

This option could leave open to the Council to retain this land and the Food Hall. This option would require the PIP as it takes forward the reserved matters Planning requirements to amend its scheme to remove this area to leave the current food hall (not food court) in situ. There is a risk in this option in relation to the work to date and contracts that the PIP may have put in place in order to do the demolition work on the basis of the current proposal. Even if feasible, this approach would not deliver the step change for the market envisaged by the Council in the proposed move to its new location at Bridge Street. This option is not recommended at this stage given the impact on delivery of the regeneration scheme in this area and the complexity involved with making such changes at this stage.

3. **CONSULTATION**

- 3.1 A public notice to close the market has been published in the Peterborough Telegraph and on the market site which invited representations. In addition, parish councils, Opportunity Peterborough, The Civic Society, Chamber of Commerce and Members have all been notified of the proposal.

Market traders have been consulted throughout.

4. **IMPLICATIONS**

Financial Implications

- 4.1 The new market will require investment to develop the kiosks and food hall. In addition, there are associated costs from closing the market and contingencies required for developing the new site.

The indicative cost of the project is detailed in exempt Appendix 1 and are in the region of £1.1m. These costs are subject to a Financial Assessment which has been commissioned and once the costs have been confirmed will be authorised by the Director of Resources.

The Council will receive a capital receipt from the sale of the land to the PIP. Any resulting profit from the development will be distributed in accordance with the Northminster Project Case and as per Members Agreement.

The Council has commissioned Market Curators to undertake the detailed market designs, provide estimated project costs and projected future income for the Council. They have also undertaken liaison with market traders to ensure a smooth transition to the new location. The report is included as exempt Appendix 2.

The estimated project costs and projected future income provided by Market Curators will be subject, along with the Council's business case, to the Financial Assessment which has been commissioned.

Legal Implications

- 4.2 The city market has operated within Peterborough for many hundreds of years. However the Saturday market is a franchise market which allows PCC to remove it as PCC deems it fit, in order to move to a new place as long as the new place is within the limits of the grant. There are no charters relating to the market extant.

The Wednesday market is a statutory market and PCC is entitled to transfer it to any other place within the city limits that PCC deems fit.

As the markets have been moved previously prior to 1960 and in the sixties without challenge, this infers that the franchise is not limited to one specific place.

Provided due notice of removal and the new facilities are no less satisfactory than the old, the onus would then shift to anybody seeking to establish that the removal was unlawful and to prove the new place is outside the permissible limits.

The closure of the market at Northminster requires a formal notice of closure to be published so that the public and any other interested parties are aware of the move of the market and termination of any public market rights at the Northminster site. The notice will also establish market rights at Bridge Street and move the market to the Bridge Street location. The public require as much prior notice as possible of the move, but the notice must not be published before a decision is taken in favour of the move.

A contract to create the new Food Hall and supply the new market kiosks has been awarded to Peterborough Ltd.

Regulation 12 of the Public Contracts Regulations 2015, permits the Council to obtain services from a company as long as all of the following conditions are met, namely:

1. The Council exercises a level of control over Peterborough Limited which is similar to which it exercises over its own departments.
2. Peterborough Limited carries out more than 80% of its activities for the Council.
3. There is no private ownership of Peterborough Limited.

Peterborough Limited is fully owned and controlled by the Council without private ownership and essentially carries out its activities for the Council. Therefore, all the conditions are met for the exemption under the Public Contract Regulations to be applicable for this arrangement.

The Option Agreement with PIP

The Council will need to evidence best value under section 123 of the LGA 1972. A Red Book valuation is recommended by an independent surveyor. This is enshrined in Section 35 of the PIP Membership Agreement dated 24 December 2014 in that no Agreement arising from the Membership Agreement (in this instance) can fetter the Council in its course of discharging duties and obligations.

Equalities Implications

- 4.3 None identified

Carbon Impact Assessment

- 4.4 The market is being moved from its current location to Bridge Street and it is not anticipated that there will be any signification change to the environmental impact as a result.

5. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 5.1 Cabinet Member Decision Notice FEB20/CMDN/82
Cabinet Member Decision Notice JAN22/CMDN/70

6. APPENDICES

- 6.1 Exempt Appendix 1 – Summary of costs to move the market
Exempt Appendix 2 – Market Curators Report
Exempt Appendix 3 – Land Transactions

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