

CABINET	AGENDA ITEM No. 7
25 SEPTEMBER 2017	PUBLIC REPORT

Report of:	Marion Kelly, Interim Corporate Director of Resources	
Cabinet Member(s) responsible:	David Seaton, Cabinet Member for Resources	
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LENDING FACILITY FOR FLETTON QUAYS HOTEL

R E C O M M E N D A T I O N S	
FROM: David Seaton, Cabinet Member for Resources	Deadline date: N/A
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> 1. Approve a facility of £15m for 24 months to provide funding for the construction of a Hotel on the Fletton Quays site by Norlin Hotels Holdings Limited and its subsidiary Fletton Quays Hotel Limited subject to recommendations 2. and 3. below. 2. Authorise the Interim Director of Law and Governance and Interim Corporate Director of Resources to exercise delegated authority to finalise and agree all necessary due diligence, ground condition survey report and to approve the business case for the project. 3. Authorise the Interim Director of Law and Governance and Interim Corporate Director of Resources to exercise delegated authority to finalise and agree all necessary legal agreements with Norlin Hotels Holdings Limited and associated hotel franchises or otherwise connected to this project for the purposes of facilitating these arrangements. 4. Cabinet is requested to recommend to Council amendments to the Treasury Management Strategy to include organisations such as Norlin Hotels Holdings Limited and its subsidiary Fletton Quays Hotel Limited as organisations to which the Council is authorised to make secured loans. 	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to Cabinet following a request from Councillor David Seaton, Cabinet Member for Resources.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is for Cabinet to consider and approve a lending facility of £15m for 24 months for the development of a hotel on the Fletton Quays site by Norlin Hotels Holdings Limited. This will be subject to Council approving the inclusion of organisations such as Norlin Hotels Holdings Limited and its subsidiary Fletton Quays Hotel Limited as organisations it may make secured loans to within the Council's Treasury Management Strategy.

- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.3 'To take a leading

role in promoting the economic, environmental and social well-being of the area’.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. **BACKGROUND AND KEY ISSUES**

4.1 **Fletton Quays Project**

4.1.1 On 24 December 2014, the Council entered into a joint venture with Lucent Peterborough Partnership SARL (Lucent) and created the “Peterborough Investment Partnership LLP” (PIP) a limited liability partnership. This followed decisions by Cabinet in February 2014 (FEB14/CAB/17) and a Cabinet Member Decision in December 2014 (DEC14/CMDN/110), which outlined how it was expected this arrangement would work and what it expected to achieve. These previous decisions highlighted five sites in the city centre that the PIP would take forward, beginning with Fletton Quays and developing appropriate scheme designs and taking them through the statutory planning process.

4.1.2 The Cabinet Member for Resources approved the Peterborough Investment Partnership’s (PIP) Fletton Quays Project Plan on behalf of the Council in July 2015 (JUL/CMDN/68). The plan included an outline scheme of proposed development works:-

- New build offices, dependent upon demand, with one block integrated with an existing listed railway shed building to bring it back into use as meeting / breakout area.
- In the order of 250 units of high quality residential apartments.
- A new hotel.
- Commercial food, drink and, potentially, leisure units.
- Appropriate car parking allocated for the residential and other uses.

4.1.3 This Cabinet Report is to approve the lending facility to enable a 160 bedroom hotel to be developed on the Fletton Quays site by Norlin Hotels Holdings Limited.

4.2 **Fletton Quays Hotel Project**

4.2.1 The project is for the development of a 160 bedroom hotel by Norlin Hotels Holdings Limited and will be run under a franchise agreement with a well-known national, prestigious hotel chain. The hotel is to be situated on the bank of the quayside with excellent views of the river and the cathedral. Works are expected to commence in February 2018 and the hotel to be operational by the beginning of July 2019.

4.2.2 Norlin Hotels Holdings Limited are a nationally recognised hotel developer, with experience of developing and operating hotels with globally recognised hotel chains, and are a focussed service developer of choice by the chain under which the hotel will be operated. It operates a different model from that typical within the hotel market in which it develops the hotel and is the operator of the franchise agreement, so giving it an interest and responsibility all the way through from design, construction and continuing operation of the hotel.

4.3 Financial Arrangements

- 4.3.1 The Funding for this facility will be provided from the Invest to Save Programme and to satisfy the requirements of this Programme will have a full business case and will deliver savings, via the loan margin, which will be self-financing and improve the financial position of the Council.
- 4.3.2 The key elements of the loan facility will operate as follows:
- The initial loan facility of £15m will be provided.
 - The drawdown of the facility will operate on the same basis as normal construction finance facilities. Each drawdown will be preceded by a valuation of the land and works to date by a qualified surveyor employed by the developer.
 - The Council will then instruct its own monitoring surveyor to verify the valuation
 - The loan drawdown will only be allowed up to this value, so ensuring the Council always has security over its loan.
 - The facility will be available for 24 months.
 - The Council will gain a margin on the lending, the rate at which the loan is made will be at a market rate so complying with State Aid regulations.
- 4.3.3 Due diligence work is required on the scheme. This encompasses the financial assumptions underlying the project and its overall deliverability alongside the market conditions into which this project will be delivered. This has been commissioned from Grant Thornton and Gerald Eve and following successful completion of this work it is proposed that the Interim Corporate Director Resources, under delegated authority, will approve the release of funding to Norlin Hotels Holdings Limited in accordance with the progress of the project. Gerald Eve were appointed on the basis that they have specific expertise within the hotel market and Grant Thornton have successfully advised the Council on the financial due diligence of previous commercial projects.
- 4.3.4 The initial summary of research undertaken by Grant Thornton on the directors of Norlin Hotels Holdings Limited has not identified any adverse findings.
- 4.3.5 The forecasted draw down on the loan and the return on investment are profiled in Appendix 1 and the executive summary of the due diligence work is included in Appendix 2. Appendix 2 is Gerald Eve's reassurance that the development has a sound business case and is economically viable.
- 4.3.6 In the event that the total construction cost incurred exceeds the £15m facility, Norlin Hotels Holdings Limited have provided a letter confirming they will undertake to inject sufficient additional funds to ensure the practical completion of the development.
- 4.3.7 At the end of the 24 month facility when the hotel is operational the loan will be refinanced by a long term funding arrangement. This may be undertaken by the Council subject to a separate decision, a bank or other long term funding institution.

5. CONSULTATION

- 5.1 No consultation is required with the public. Appropriate consultation was taken with the grant of the outline planning permission for the 160 bed hotel and will be taken again as the full detailed planning permission application is considered.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 The funding of the Fletton Quays Hotel with Norlin Hotels Holdings Limited will provide a prestigious hotel within the city of Peterborough and will generate additional investment returns for the Council.

7. REASON FOR THE RECOMMENDATION

- 7.1 The funding of this project will help the Council to contribute to the Fletton Quays Project Plan and to the growth, regeneration and development agenda. The Council was approached to fund development of the hotel in order to preserve the synergy of development on the site.

8. ALTERNATIVE OPTIONS CONSIDERED

Do Nothing

- 8.1 The Council could choose not to finance this project. This was rejected because this one off financing project relates to the last lot to be sold on the Fletton Quays site and will facilitate its completion by the Council's joint venture the PiP. If the Council does not fund the project for the hotel development this final part of the development will be delayed whilst alternative funding is sourced by the developer. The impact of this could mean that the adjoining residential site sales are impeded by the neighbouring hotel construction site. The Council would also lose the investment return on the loan.

9. IMPLICATIONS

9.1 Financial Implications

- 9.1.1 Within the Council's accounts, the investment with Norlin Hotels Holdings Limited will be treated as Capital Expenditure. Within the definition of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (the "Regulations") section 25 states that expenditure of a local authority will be treated as capital expenditure if: 'the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure' Therefore, as the loan to Norlin Hotels Holdings Limited and its subsidiary Fletton Quays Hotel Limited will be used for the provision of a hotel, the Council will need to class the loan as Capital Expenditure.
- 9.1.2 The capital expenditure will be funded through the Invest to Save capital budget. As the Council will make a margin on the loan, this will meet the criteria for use of that budget.
- 9.1.3 The loan will be secured over the land and building of the scheme and will be subject to loan covenants which will further protect the Council's loan investment. Compliance with these covenants will be monitored going forward by the Council.
- 9.1.4 It is considered that the repayment of the loan (as the loan will have security over the land and construction works as they progress) will negate the need of an amount of MRP (Minimum Revenue Provision is an annual charge against revenue to repay the financing costs of capital asset expenditure) to be charged as reliance can be placed on the capital receipt that will be generated when the loan is repaid, or in the event of default, on the sale of the land or construction works as they progress over which the Council has security.
- 9.1.5 The Council will make margin on the loan. This income will be fed into the MTFs, enabling the Council to make savings and protect services.
- 9.1.6 Key financial risks to the project have been considered. The market risk and project delivery risk are addressed by our professional advisors as part of the due diligence. The Council's investment is protected by the security over land and building of the project and loan covenants have been included in the loan documentation which will help to protect the Council against unforeseen risks that occur during the life of this project. It should be noted that the security at all times exceeds the loan.
- 9.1.7 In an event of failure by the developer the land and buildings (or construction works to date) will revert to the Council. In this position the Council would approach a hotel agent to find a new developer to either buy or complete the project on its behalf. Although the franchise agreement

will always remain with the developer, the hotel chain associated with this site has an interest in the hotel development and would typically assist the Council in identifying a new partner to complete the project.

- 9.1.8 Council will be requested to approve the inclusion of Norlin Hotels Holdings Limited and its subsidiary Fletton Quays Hotel Limited as organisations it may make secured loans to within the Council's Treasury Management Strategy on 11 October 2017.

9.2 Legal Implications

9.2.1 1. Powers of the Council

The Council has the ability to lend to Norlin Hotels Holdings Limited under the following powers:

Local Government Act 2003 section 12

A local authority may invest (a) for any purpose relevant to its functions under any enactment, or (b) for the purposes of the prudent management of its financial affairs.

One of the Council's functions is the provision and management of social housing. The site being developed will include the provision of social housing and the development of the site simultaneously with inclusion of the Norlin development will ensure its viability and thereby support other Council housing and planning functions including the improvement of standards in the private rented sector through design policies, the planning system and landlord accreditation schemes and its strategic planning function through the regeneration of the site.

Localism Act 2011 section 1

Section 1 provides a local authority with a general power of competence ie "a local authority has power to do anything that individuals generally may do even if it is unlike anything else the authority may do, it is unlike anything that other public bodies may do, it is carried out in any way whatever, including anywhere in the UK or elsewhere, for a commercial purpose or otherwise for a charge, or without charge; and for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area", albeit that this power cannot override any existing restriction on what a local authority may do.

Incidental powers in section 111 of the LGA 1972

"Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions", which has been held to include all the duties and powers of a local authority.

The particular activity being contemplated by the Council ie the loan, is considered by the Council to be necessary or reasonably necessary to implement the discharge of the local authority functions listed above in the context of section 12 of the Local Government Act. "The test [which the Council must apply in considering the applicability of section 111] is not whether a particular activity is ancillary to the function of a local authority, but whether it is calculated to facilitate, or is conducive or incidental to the discharge of the local authority's functions". In this instance the Council has applied the test and is satisfied that the requirements have been met.

9.2.2 2. The test of rationality of the decision

A local authority may be challenged if it makes a decision which no reasonable local authority acting reasonably could have made. It should be noted that this does not amount to a test of whether PCC acted unreasonably in making the decision.

PCC has given consideration to the reasonableness of this decision and has concluded that it complies with the test.

9.2.3 **3. The Council's ability to make this decision**

In addition to the matters considered above, the Council must give consideration to the rules set out in its Constitution. This decision will be treated as an Executive Decision exercisable by Cabinet under Article 11, being one which is likely to result in the Council spending, or saving a significant amount compared with the Budget for the service or function the decision relates to. When assessing whether or not a decision is a key decision, Members must consider all the circumstances of the case. However, a decision which results in a significant amount spent or saved will not generally be considered to be a key decision if the amount spent or saved is less than £500,000.

In making this investment the Council is also required to have regard to the Government's commentary to the Guidance on Local Government Investment, as well as the statutory guidance issued by the Secretary of State and specific guidance published by the Chartered Institute of Public Finance and Accountancy. Furthermore, any such investment must be consistent with the Council's Annual Investment Policy. Any request for funding from the Invest to Save budget will also be made in accordance with the Council's Constitution and applicable Contract Rules.

While the Council's arrangements with Norlin Hotels Holdings Limited do not currently amount to doing things for a commercial purpose under local government legislation, the Council is mindful of the need to keep this under review and continues to monitor the situation.

The Council must also have regard to rules relating to State Aid. Unlawful state aid occurs where a benefit is granted from a public resource for free or on favourable terms which distort competition. The scheme structure in this instance follows market principles and as such there is no unlawful state aid implication. However, this situation will also continue to be monitored to ensure that no state aid issues arise as commercial terms are finalised. Grant Thornton are advising on State Aid implications and the forecasted draw down on the loan and the return on investment are profiled in Appendix 1.

Pinsent Mason have been appointed to undertake legal due diligence on the certificate of title, a review of the franchise agreement and a review of the JCT contract under which the hotel will be constructed.

9.3 Ground Conditions Implications (Plot 1 Fletton Quays Hotel)

9.3.1 At the time of the writing of this report, there are no reasons to suspect any issues will arise in respect of ground conditions on Plot 1 at Fletton Quays.

White Young Green have already conducted a Phase 1 Site Investigation on Plot 1. The report contained no particular abnormalities which would impact the construction of a hotel on Plot 1. Fletton Quays Hotel Limited have commissioned Structural Soils Limited to conduct a Phase 2 Site Investigation.

The extensive on site drilling process is now complete, and the final report is approximately three to four weeks from being issued. There have been no issues raised to date in terms of the core samples taken.

Plot 3, directly adjacent to Plot 1, had a satisfactory Phase 2 Site Investigation – indeed, Weston Homes have now commenced construction on the site.

In any event, it should also be noted that an unsatisfactory Phase 2 Site Investigation, preventing or significantly commercially impacting the proposed development, would result in Fletton Quays Hotel Limited withdrawing from the purchase of the Plot 1 land. The development would therefore clearly not proceed, and with it the requirement for development funding would cease to exist. Any actions in light of the conclusion of the reports will be undertaken following approval of recommendation 2 above.

10. Equalities Implications

10.1 There are no equalities implications related to this decision.

11. BACKGROUND DOCUMENTS

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

11.1 None.

12. APPENDICES

12.1 Appendix 1 Hotel Cash Flow Forecast
Appendix 2A Executive summary of due diligencx Part 1
Appendix 2B Executive summary of due diligencx Part 2

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