

CABINET

29 March 2016

THE OVERVIEW & SCRUTINY COMMITTEE

23 MAY 2016

ST CLEMENTS DOCTORS SURGERY, WINCHESTER

REPORT OF HEAD OF ESTATES

Contact Officer: Kevin Warren Tel No: 01962 848528

RECENT REFERENCES:

CAB 2709 – St Clements Surgery, Winchester – 17 September 2015.

CAB 2609 – Silver Hill Update – 10 September 2014.

EXECUTIVE SUMMARY:

In September 2015, Cabinet authorised the preparation of a planning application for a new surgery/pharmacy to be constructed on the Upper Brook St Car Park, in connection with the Silver Hill development proposals. Following the Council's termination of the Development Agreement for Silver Hill with SW1, the report reviews the options open to Members for dealing with the development of a new surgery and in respect of the existing surgery premises.

RECOMMENDATIONS:

To Cabinet

- 1 That in the light of the termination of the Silver Hill Development Agreement, Members review whether they wish to continue with the development of a new surgery on the Upper Brook St Car Park.

- 2 That in the event that Members decide to continue with the development, this be on the basis of the revised Scheme Viability Appraisal set out in Exempt Appendix 2.
- 3 That Members decide how they would like to proceed in respect of the existing St Clements surgery.
- 4 That if Members do decide to purchase the freehold of the existing St Clements surgery, the Head of Estates be given delegated authority to agree the terms up to the maximum price set out in Exempt Appendix 1.
- 5 That subject to approval by full Council, authority be given under Financial Procedure Rule 6.4 to incur the capital expenditure for the purchase up to the maximum price detailed in Exempt Appendix 1, plus stamp duty at the appropriate rate.

To Overview & Scrutiny Committee

- 6 That the Committee decides whether it wishes to exercise its powers of call in or to make any comments or recommendations to the Portfolio Holder, or if of significance, to the Council.

To Council

- 7 That if Cabinet decide to purchase the freehold of the existing Surgery:-
 - (a) such changes to the Capital Programme as may be necessary to fund such purchase be approved;
 - (b) authority be given under Financial Procedure Rule 6.4 to incur the capital expenditure for the purchase up to the maximum price detailed in Exempt Appendix 1, plus stamp duty at the appropriate rate.

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DETAIL:

1 Introduction

- 1.1 At its meeting of 17 September 2015, Cabinet authorised the appointment of Architecture PLB to prepare the design of a new surgery/pharmacy located on the existing Upper Brook Street car park and the submission of a new planning application (following on from that which had been previously obtained but expired). Cabinet also authorised the negotiation of terms with the St Clements practice and NHS England with a view to securing an agreed rent and lease terms which would enable the Council to proceed with the construction of a new surgery for occupation by the St Clements GPs. The expectation at the time was that the exit of the practice from its existing premises would be made straightforward by the purchase of the surgery building on Tanner Street by the Silver Hill developer, Silverhill Winchester No. 1 Limited (SW1).
- 1.2 Members were advised that the termination of the Development Agreement with SW1 and the decision not to implement the CPO for Silver Hill would create a complicated situation for the GPs and for the Council. This has now crystallised and this report provides information so that Members can determine how the Council should proceed.

2 Background

- 2.1 The Silver Hill risk register has identified for a number of years that the termination of the Development Agreement would cause a considerable change in the circumstances relating to the surgery. To properly understand the current situation, it is necessary to rehearse briefly what the operating arrangements for a GP practice are under an NHS contract, and the relationship between the St Clements Practice and the owners of the St Clements building.

- 2.2 GPs are not employees of the NHS; they are private contractors who sign a contract with NHS England to provide defined services in a particular location. NHS England decides where surgeries are required and negotiates the terms of the contracts, which includes reimbursement for the cost of the premises the GPs occupy, from which they provide the contracted service. Traditionally, GPs within a practice would purchase or lease a surgery building on a long term basis and the NHS would pay an annual sum equivalent to a fair rent for the use of the building agreed by the District Valuer. Where a property is owned, new GPs arriving in a practice might, at some point, be expected to purchase an interest in the property which they would sell on when they moved elsewhere or retired. Increasingly, however, this ownership model is no longer viable for GPs who do not wish to make the financial and personal commitment involved, and a more straightforward arrangement has emerged whereby a practice rents premises from a commercial landlord, with the NHS paying the actual rent agreed.
- 2.3 The St Clements surgery building was originally purchased and paid for by the then members of the St Clements Practice, but in recent years the “owning” GPs have retired, and new members of the practice did not buy into a property interest. Currently, the building is owned by two people, one of whom is a GP and one who is a recently retired GP.
- 2.4 It is of significance that there is no tenancy agreement between the owners of the building and the Practice itself. In the past this might have been considered unnecessary (as the two overlapped to a large degree) but it has now become important because the Practice as an entity does not have security of tenure and the owners of the building do not have a secure (and therefore saleable) income from the Practice. If the owners were to sell the building as a GP surgery in order to settle their financial affairs, the Practice would have to enter into a lease with the new owners if they wished to remain, but is also free to relocate to new premises elsewhere without penalty if it chooses to do so.
- 2.5 The development proposals for Silver Hill have always required the purchase of the Surgery (which was included in the CPO for this reason) and its relocation elsewhere. The Development Agreement did not place any requirement on the developer to provide the alternative premises although that was Thornfield’s intention and the Upper Brook Street was identified and agreed by the Council as available for the purpose. Detailed discussions with the Practice GPs led to the design of a new surgery by Architecture PLB which received planning permission in 2012. This consent expired due to the delays in progressing the Silver Hill project and a new consent is now being sought for an updated but fundamentally similar design.
- 2.6 At various times during the Silver Hill project, offers were made by SW1 to the owners of the surgery building to purchase the freehold. The last offer was made on behalf of SW1 in October 2015 on the basis of a sale and leaseback. The price offered was not conditional on the Silver Hill scheme proceeding, but did require that the owners of the property entered into a lease with the

GP Practice before the acquisition, so that the purchase was made on the basis of a continuing income stream. The GPs would not have been prevented from relocating to new premises if and when the Silver Hill scheme went ahead (this being the whole point of the exercise) but the lease would not have included a general break clause (which would have reduced the value).

- 2.7 The property owners were unable to enter into this sale, as it is understood that the GP Practice was unwilling to enter into a long term lease without a generic break clause. This is understandable given the circumstances. Without the lease being in place, the investment value could not be realised and the transaction did not proceed.

3 Options

- 3.1 The Council has currently committed to making new surgery premises available for occupation by the St Clements Practice. That remains the situation (subject to planning and agreement of financial terms). However, the question that presents itself is in relation to the purchase of the existing surgery building, now that SW1 has no interest in making that acquisition. There are a number of options open to the Council to consider, set out below.

Indicate to the owners that the Council has no interest in the purchase of the existing surgery building.

- 3.2 Now that the Silver Hill scheme is no longer proceeding, there is no reason why the owners must sell the building or indeed why the GP Practice must relocate. If it wishes to stay in the existing building, the Practice could take a lease from the owners. Having secured a lease, the owners could retain the freehold or dispose of the property as an investment. Having some certainty over their medium term future, an investment in refurbishment of the building should be possible. However, it is also possible in this situation that the owners would seek to sell the building to the highest bidder as a potential redevelopment project. This would not be a problem for the Practice if it is relocating anyway, but it would undoubtedly be better for the possible future regeneration of the area for the number of different landowners in the Silver Hill area to be as few as possible.

Enter into an option to purchase with the owners at a price struck at a current valuation, to be completed only if and when the new surgery is occupied by the St Clements Practice, and requiring that the premises remain as a surgery until that time.

- 3.3 Provided an agreed valuation can be achieved, this option is sensible for the Council since it protects its position in all circumstances. It is also reasonable in terms of financial outcome for the owners of the surgery but may give rise to some practical difficulties since it is a conditional offer (if the GP practice does not move into the premises the Council is willing to provide, then the Council would not purchase and it may be difficult for the owners to arrange short term finance if this is needed).

Purchase the freehold of the property at an agreed valuation now allowing the current owners to exit from further discussions.

- 3.4 In this option, the Council would immediately purchase the existing building at an agreed valuation and become the freeholder of the property. It would require the Practice to enter into a short term lease and progress the development of a new surgery on commercial terms. If the new surgery becomes a reality then the Council would be the owner of an empty former surgery building and would need to consider how best to deal with this. If the Practice were to decide not to move, then the Council would have a number of responsibilities and obligations which would crystallise and might be significant.

4 Assessment of Options

- 4.1 The first option (whereby the Council does not purchase or take an option at this time) has some logic as the Council does not currently have a scheme for the redevelopment of Silver Hill and can negotiate for the construction and lease of new premises with the Practice regardless of the ownership of the existing building. The disadvantage is that although there is not currently a scheme for Silver Hill, it remains Council policy to redevelop the Silver Hill site comprehensively and consequently it may not be possible for the owners to secure funding to upgrade the surgery to current standards. Without the certainty of a long term plan the owners may choose to look to alternative uses to safeguard the value of their investment.
- 4.2 The second alternative (Council takes an option to purchase, exercisable if/when the Practice moves into new premises) would allow the owners to retain the property and income from the Practice unless and until new premises for the Practice were actually occupied, at which point a sale to the Council would be completed. This would have the advantage of providing some security for the owners and the Practice could remain in-situ pending the provision of new premises. The advantage to the Council would be certainty about the purchase price, while expenditure was delayed until the purchase was actually necessary (when the new building has been completed and the Practice has moved). At that point, the Council would then own the building and would need to manage it pending further occupation or redevelopment.
- 4.3 The third option (Council purchases freehold now) does not anticipate a particular outcome. It simplifies the situation, in that once the purchase had been completed, discussions would be between the Council and the Practice only, rather than including the building owners as well. If the Practice moved, the Council would own an empty building which it would have to manage pending further occupation or redevelopment. If the Practice decided not to move, the Council would be the landlord of the Practice and would have obligations as a consequence as noted in 3.4 above.

5 Valuation Advice

- 5.1 In the absence of a revised Silver Hill scheme, it might reasonably be argued that the Council has no need to purchase the existing surgery premises using public funds at this time. The Council is taking steps to secure a new surgery for the St Clements Practice, and it would be able to move into those new premises if terms can be agreed.
- 5.2 However, it would be advantageous for the existing surgery building, whatever its use, not to transfer into another ownership which would complicate land assembly for any future comprehensive scheme as required by the current and emerging Local Plan policy. However, the purchase price has to be based on a current valuation, rather than past expectations. In the absence of a regeneration scheme (and noting that there is now no CPO as this expired recently) the price to be paid will be the existing market value in a 'no scheme' world.
- 5.3 To provide the Council with an external valuation of the surgery, JLL (a property and valuation practice with particular experience in healthcare property) have been engaged to undertake a valuation of the surgery on the basis of :
- the market value of the premises in its existing use;
 - the market value of the premises in an alternative use;
 - any marriage value between the surgery and the Council's estate.

Their full report is not to hand as this report is despatched but will be available in advance of the meeting and will be presented as Exempt Appendix 1. In the light of the information contained in Exempt Appendix 1, Cabinet is asked to determine which course of action officers should be instructed to pursue.

6 Replacement Surgery

- 6.1 Whilst it is no longer essential for the purposes of regeneration that the surgery is relocated from its existing premises, there are extremely good reasons for continuing to progress with the provision of a replacement building, and this is strongly supported by the Practice. Better and larger primary healthcare facilities than those currently available will be a long term improvement in Winchester's infrastructure and is an appropriate use of public funds, provided it remains possible to undertake the development while making an appropriate commercial return (in the same way as was achieved with Avalon House).
- 6.2 Exempt Appendix 2 sets out the latest update of the scheme viability appraisal, with revised land value and cost assessments having been undertaken. The appraisal demonstrates that it remains viable, albeit marginally, to proceed with a development, provided the NHS is willing to fund the rent at the level indicated. Cabinet is reminded that the Council cannot

negotiate directly with the NHS and is dependent upon the GPs themselves to conduct these negotiations.

- 6.3 Members are therefore requested to review the decision to proceed with the development of the replacement surgery in the light of the changed circumstances following the termination of the Silver Hill Development Agreement. If Members wish to continue with the proposed development of a new surgery it is recommended that they do so on the terms detailed in Exempt Appendix 2.

OTHER CONSIDERATIONS:

7 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 7.1 The provision of primary healthcare facilities which will enhance the well-being of the community is an objective which the Council has a legitimate and proper interest in seeking to pursue.

8 RESOURCE IMPLICATIONS:

- 8.1 The detailed resource implications are shown in the exempt Appendices. The project will be managed by the Head of Estates and require input from Legal, Finance, Planning and Building Control, Parking Services and the Major Projects Team. In addition external architects, valuation, cost, structural and mechanical engineering consultants and contractors will be appointed to progress the development of the replacement surgery
- 8.2 The Council has powers under the Local Authorities (Land) Act 1963 to erect and maintain buildings for the benefit or improvement of the area. The Council may purchase property for a number of purposes provided that it is guided in the acquisition price by proper considerations and professional advice.
- 8.3 The Council has set aside a sum (as detailed in Exempt Appendix 3) in its Capital Programme for property transactions associated with the existing St Clements surgery. Any amount required in excess of this sum will require a further budget provision. Having regard to the external valuation advice contained in Exempt Appendix 1, if Members do choose to make an offer to purchase the existing surgery premises, it will be necessary to set aside the budget provision identified in Exempt Appendix 3.

9 RISK MANAGEMENT ISSUES

- 9.1 There are a number of key risks which the Council should actively ensure that it takes into account in decision making:
- a) It is essential that all transactions are based on proper valuations and the advice of the Head of Estates and external experts. The Council should not enter into any transaction which it cannot justify if challenged.

- b) The ability of the St Clements practice to operate from a town centre location is an important public service which would be at risk if suitable premises are not available.
- c) If the future location of the Practice is not resolved satisfactorily and permanently, then this becomes another difficulty in ensuring a comprehensive regeneration of the Silver Hill area.
- d) The Council is not able to control all aspects of the decision making process, in particular those of the NHS.

BACKGROUND DOCUMENTS:

None

APPENDICES:

Exempt Appendix 1 – Valuation Report on existing St Clements Surgery (to follow).

Exempt Appendix 2 – Scheme Viability Appraisal – new surgery building, Upper Brook Street (to follow).

Exempt Appendix 3 – Budgetary Provision (to follow).