

**Agenda Item No:** **Report No:**

**Report Title:** **Lewes North Street Development**

**Report To:** **Cabinet** **Date: 24 April 2014**

**Cabinet Member:** **Cllr Rob Blackman**

**Ward(s) Affected:** **All Lewes Wards**

**Report By:** **Nazeya Hussain – Director of Business Strategy & Development**

**Contact Officer(s)-**

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**Purpose of Report:**

To request Cabinet to set out those objectives which it requires this scheme to achieve in order for the Council to be willing to commit itself to the scheme in its landowner capacity.

To request Cabinet to prioritise these objectives as it believes necessary.

To request Cabinet to authorise officers to progress the project by entering into a Reimbursement Agreement, an Interim Agreement and an appropriate Section 106 planning agreement as detailed in this report

**1. Officers Recommendation(s):**

- 1.1 To endorse the Council's landowner prioritised objectives as set out in paragraph 3.7.3 below;
- 1.2 To note that the Assistant Director of Corporate Services has signed a Reimbursement Agreement with the Santon Group, whereby Santon have agreed to reimburse the Council the professional cost (i.e. GVA Grimley property consultants, Eversheds solicitors), which (a) it has already incurred to date and (b) which it will incur between now and the date at which the parties enter into a Joint Venture Agreement.
- 1.3 To authorise the Director of Business Strategy and Development in consultation with the Council Leader to approve the submission of a joint planning application on behalf of the Santon Group and the District Council

providing that such application contains those matters identified in paragraph 3.7.3 of this report.

- 1.4 To authorise the Assistant Director of Corporate Services, in consultation with the Director of Business Strategy and Development and the Leader of the Council, to enter into an Interim Agreement with the Santon Group as described in paragraphs 3.9.1 – 3.9.6 of this report.
- 1.5 To authorise the Assistant Director of Corporate Services, if and when the South Downs National Park Authority determines that planning permission should be granted, to sign the Section 106 planning agreement on behalf of the Council as landowner providing that such agreement will secure the Council's priorities as set out in paragraph 3.7.3 of this report.

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## **2. Reasons for Recommendations**

- 2.1 In September 2013 Cabinet discussed two schemes for the North Street Quarter: a retail led development or a housing led development. Cabinet agreed to the latter option. The scheme consists of up to 420 residential units alongside circa 400,000 sq ft of commercial space (including a cultural quarter, leisure, retail and a health facility).
- 2.2 Cabinet agreed to progress work on the joint venture project with the Santon Group. Such a project requires the parties to agree their respective land resources input into the scheme; the level of control each party has as the scheme progresses; who manages those processes and how the profits will be shared.
- 2.3 Officers are currently drafting the Heads of Terms which will be subject to Cabinet authorisation shortly, in the meantime Santon Group requested that the Council enter into an interim agreement which allows the scheme to progress. Once agreed and signed by the Council, a joint named planning application will be submitted to the South Downs National Park Authority.

## **3. Information**

- 3.1 The North Street Quarter is arguably the most important regeneration project in Lewes and offers a great opportunity to regenerate a key part of the town, bringing forward a sustainable high quality development, with an enhanced cultural offer and improved public realm.
- 3.2 Recent history of the Site  
  
Since 2000 there have been two previous attempts at developing the North Street area:
  - 3.2.1 In 2003 Packham Developments submitted an application for 204 residential units and 5075sq ft of commercial space however the application was refused.

3.2.2 Shortly after, Angel Property (Lewes) Limited submitted a planning application but the company went into liquidation in 2011.

3.2.3 Subsequently Santon purchased the land and has been working in partnership with LDC to shape a viable future opportunity for the benefit of the Town and District.

### 3.3 Cabinet Decisions

During the past two years Cabinet has received a number of reports outlining The Santon Group's ideas for developing the site and in September 2013 Cabinet agreed to progress the initiative by entering into a joint venture agreement. Since that date Officers have been in negotiation with Santon and will shortly bring to Cabinet draft Heads of Terms of the Agreement which will set the terms of the Joint Venture and the commercial deal for the Council

### 3.4 Public Consultation

The Masterplan has drawn on the views of local people. Several consultation exercises have been undertaken by the Democratic Society (an organisation specialising in public consultation and participation). Affordable housing emerged as an important development priority, followed by good access to the river and environmental works. Many people accepted the need for a mix of tenures for different age groups with social and shared equity pepper-potted throughout. There was little desire for a development that was simply a housing estate and public feedback indicated that the development should also provide employment opportunities. Retail and visitor facilities were not given a particular priority, but there was some support for a hotel and a cinema on the site.

### 3.5 Core Strategy

As reported elsewhere on the Agenda, LDC is working in partnership with the South Downs National Park Authority in preparing the Core Strategy. The Core Strategy identifies the levels of growth planned to take place up until 2030, as well as identifying some key development sites that will help deliver this growth in the early years of the plan period. One such site is North Street, Lewes. Spatial Policy 3 of the Core Strategy sets the policy framework for the North Street site, which also includes the Eastgate area and bus station. The policy sets the broad mix of development that is planned to take place within the policy area, as well as identifying key criteria and issues that will need to be addressed. The scheme being proposed addresses these needs and is in line with the policy objectives.

### 3.6 Project Plan

3.6.1 Over the past two years key milestones have been achieved including: a comprehensive consultation with local residents, (described above), a monthly or when needed a 'sounding group' of local interest groups commencement of the work to relocate businesses and three design working group meetings with South Downs National Park Authority.

3.6.2 Progress in bringing forward the project to fruition is now gathering speed. A planning application has been developed in consultation with local communities. It is due to be submitted in the early summer 2014 with an anticipated approval by end of 2014, subject to S106 agreement. Start on site is due to begin during 2015 with the first occupation during 2017.

### 3.7 Priorities for LDC as Landowner

3.7.1 The design of the Masterplan has been guided by feedback from the consultation exercises; the Council's regeneration aspirations and the SDNPA Design Review Panel.

The Councils "Building a Brighter Future; A Regeneration Strategy for Lewes District Council" sets out the Council's regeneration vision and objectives and a key element states that:

*"We cannot rely on the public purse to keep our economy growing – we need to set the conditions for a more robust and thriving private sector. This means recognising and capitalising on our District's considerable assets. Promoting our distinctiveness; revitalising our towns...providing high quality affordable houses and upgrading business accommodation..."*

3.7.2 As a landowner one of the Council's key priorities will be to maximise its return on assets for the benefit of its taxpayers. It has a statutory duty to secure 'best consideration' for disposal of its assets. In the current financial climate with continuing annual reductions in government grants the Council needs to secure recurring revenue income streams to help balance its medium term budget. The projected level of annual recurring savings needed through to March 2020 is estimated at £3m. Revenue income streams are more flexible than capital receipts because they can be used to support both the Council's revenue and capital needs, whereas capital receipts can only be used for capital purposes.

3.7.3 Clearly a balance needs to be sought between the Council's regeneration aspirations and the need to maximise revenue income streams. Officers suggest therefore that the Council approves the following as its prioritised list of objectives as landowner:

***Essential – a balance of:***

- Achievement of the policy target of 40% affordable housing as far as possible, to meet local needs in partnership with a Registered Provider e.g. a housing association; and

- Maximisation of a return on assets through a recurring revenue stream (as described above).

***Desirable***

- Up to 400,000 sq ft of commercial floor space, including a cultural quarter, leisure, retail and a health facility
- Extra care housing; and
- Improved public realm and improved connectivity with the town

3.7.4 If approved, these objectives will feed into the negotiations by the Council in its landowner capacity and the South Downs National Park Authority as planning authority for the purposes of the planning application and the Section 106 planning agreement.

3.8 The Masterplan

3.8.1 A detailed discussion on the contents of the Masterplan is presented elsewhere on the Cabinet agenda.

3.8.2 Outlined below are the key aspects on the phasing programme.

3.8.3 In total the scheme provides up to 420 residential units. The Santon Group are currently proposing that 35% are affordable housing units and this is still under negotiation with LDC Officers. The affordable housing is also likely to include Extra Care Housing to accommodate the need of the elderly and infirm residents.

3.8.4 The delivery is spread over three phases and the key points to note for each projected phase of the model are as follows:

**Phase 1 Build (June 2015 - June 2017)**

- 113 residential sales units and 110 affordable homes 80% of the scheme affordable homes total are provided in this phase.
- All of the non residential components are delivered within this phase, including a cultural industries quarter, a doctors' surgery and leisure related projects.

**Phase 2 (Build June 2017 - September 2018)**

(Note that improved flood defences is a critical planning requirement of the design).

- Delivers 81 residential sales units and 21 affordable homes. A further 15% of the scheme affordable homes total are provided in this phase.

**Phase 3 (Build September 2018 –September/December?? 2019)**

- Delivers 65 residential sales units and 6 affordable homes, the final 5% of the scheme affordable homes total.

### 3.9 Agreements

3.9.1 A Planning Performance Agreement has already been signed. This is a framework agreed between the planning authority (SDNPA), LDC and the Santon Group, which sets out the structure and resources needed to process the planning application.

There are two further agreements linked to this project:

- (a) A Reimbursement Agreement. It is anticipated that this will have been signed by the date of this Cabinet meeting. This agreement sets out the legal and commercial advice costs incurred by Lewes DC and which the Santon Group has agreed to reimburse the Council. These costs are set out in paragraphs 4.1 and 4.2 below.
- (b) An Interim Agreement. The proposed Interim Agreement is in preparation but has not yet been signed. Cabinet authority to enter into the Agreement is being sought from this meeting. Details of the intended Agreement are set out below but, in brief, its purpose is to give Santon Group some comfort and security in the unlikely scenario in which Santon expends money in working up the joint planning application on behalf of itself and the Council, only to find that the Council later decides, capriciously and without sound commercial reason, that it no longer wants to proceed with a joint venture agreement. In this scenario the Interim Agreement provides that the Council will reimburse Santon a proportion of its wasted pre-planning permission costs.

In more detail:

3.9.2 Santon is working up and will finalise the proposed application for planning permission. The planning application will be in the joint names of Santon and the Council. Santon is paying the costs involved in preparing and submitting the planning application. Santon has agreed to take the risk of the planning application being refused. So, in the event of a refusal, the Council will not share any of the pre planning application refusal costs.

3.9.3 However, developers will normally seek assurances from local authorities that if they are to continue to expend monies in securing a planning permission, but then find that the Council has a change of heart and decides not to proceed with the joint venture, that the Council will share in the costs. In these circumstances it is proposed that the Council will reimburse Santon a proportion of those pre-planning costs which have been incurred and which are set out in exempt Appendix I to this report.

- 3.9.4 It is proposed that there should be a financial cap of £390,000, being the maximum amount which the Council will be obliged to pay Santon under the Interim Agreement.
- 3.9.5 No such Interim Agreement will be signed until such time as the Council's property consultants (GVA Grimley LLP) have confirmed in writing to the Council that all those Costs in Appendix 1 are fair and reasonable cost estimates.
- 3.9.6 In addition, it is the intention that the Council will be able, under the Interim Agreement, to benefit from the pre-planning work (e.g. survey work), undertaken and use the data obtained from it, in the event of Santon walking away and the Council later wanting to proceed with a different development partner.
- 3.10 Next Steps
- 3.10.1 Work is currently proceeding on negotiating the Heads of Terms for the main Joint Venture Agreement (i.e. the Development Agreement between Santon and the Council), and it is proposed to bring those Heads of Terms to a special Cabinet meeting for approval.
- 3.11 S106 Priorities
- 3.11.1 Clearly with a development of the size being proposed there are going to be a number of infrastructure needs arising from the proposal. The infrastructure required to support the development is expected to be secured through a Section 106 agreement. The SDNPA, as the planning authority in this case, will need to agree the S106 with Santon (as the applicant). Lewes District Council, in its role as a landowner, will be a signatory to the S106 agreement.
- 3.11.2 The S106 agreement will contain a number of infrastructure needs that will represent a significant cost to the development. It will include:
- the provision of flood defences;
  - affordable housing;
  - off-site highway improvements; and
  - financial contributions to improved/extended educational facilities.
- 3.11.3 It will be essential that the correct balance is struck between securing infrastructure that helps ensure the delivery of a high-quality and sustainable development, whilst at the same time ensuring that the costs are not overly onerous so that the viability of the scheme is adversely impacted upon. To ensure that this does not happen, it has been agreed to set up an Officer working party to progress the S106 agreement. Lewes District Council will be represented on this working party and a clear over-arching objective for the authority will be ensuring that the S106 that is eventually agreed does not make the scheme unviable and provides a reasonable return for existing landowners. If certain infrastructure needs/costs need to be compromised in

order to make the scheme viable it is suggested that the Council adheres to its priorities outlined in paragraph 3.7.3 above

- 3.11.4 All of these costs are considered to be essential to the delivery of a sustainable scheme on this site. This is because the acute need for affordable housing in the district is particularly evident in Lewes town and with few potential large-scale development sites,
- 3.11.5 North Street represents one of the main opportunities for securing a significant quantity of affordable housing in Lewes town over the next few years.
- 3.11.6 The provision of the creative employment floor space is seen as essential to mitigate the loss of some of the existing employment units on site and the flood defences need to be secured in order to make the development safe and acceptable in planning terms. Cabinet are asked to endorse these priorities for inclusion within the S106 agreement.

#### **4. Financial Implications**

- 4.1 The costs of engaging GVA, the Council's professional property consultants, are estimated to be £40,000 in addition to £28,250 has been incurred to date.
- 4.2 External legal costs to date come to £6,030 plus VAT. We have obtained a headline estimate for external legal support to establish the joint venture. The estimate is £50,000-£60,000(excluding VAT and disbursements) and includes the following elements of the project:
- Settling the heads of terms with Santon, including legal structuring;
  - Stamp duty land tax (SDLT) and VAT advice to determine the most sensible structure from a tax perspective; and
  - Drafting, negotiating and agreeing a joint venture agreement between the Council and Santon.
- 4.3 Both of the above costs are due to be reimbursed by Santon through the Reimbursement Agreement.
- 4.4 The Council will engage the professional property consultants in order to seek a completely independent view on the duty to secure value for money from this transaction. This cost does not form part of the reimbursement agreement. The estimated cost is up to £25,000 and can be met from the budget for Service priorities which has an uncommitted balance of £390,000.

#### **5. Legal Implications**

These have been written into the body of the report



## 6. Sustainability Implications

- 6.1 The planning application incorporates a full Environmental Impact Study.
- 6.2 There are a few issues that are likely to arise, the most critical is that the development is on a flood plain and although defenses are planned there is the issue of displacement of flooding to other areas and the ability for house owners to obtain house insurance despite the plans which incorporate raised homes.
- 6.3 Ultimately the sustainability of the site will depend on the financial viability of the development for Santon and LDC. The final outcome of the development will determine how sustainable the project is.

## 7. Risk Management Implications

The North Street Quarter project is subject to the risk assessment process that is applied to all Nexus projects, and this includes a detailed risk register, ongoing monitoring of risks, and effective management of the mitigations. Below is a summary of the main areas of risk and their mitigations.

<b>Risk</b>	<b>Mitigation</b>
LDC priorities for the financial and development outcomes are not properly defined which hampers negotiations and delays the planning phase of the project.	Cabinet is requested to establish priorities for the project and development.
Insufficient capacity within LDC to meet requirement for effective governance, professional standards and timely action at key stages in the project with the result that the development is delayed.	Effective planning and liaison in the Project Team to identify/address shortfalls, and employ appropriate external resources where necessary.
Loss of control over quality, management and timing of the development with the result that LDC capital receipts are reduced/delayed and LDC does not obtain best value for land assets.	Effective financial modelling, strong negotiating and detailed legal work to protect LDC interests.
SDNPA does not approve the planning application because of local objections, legal challenge or environmental issues, and the development is delayed or cancelled as a result.	Developer to work with stakeholders and adjust designs in respond to the challenges. LDC to work closely with the developer to ensure that the application is technically sound.
Development delayed by failure to complete site assembly because of disputes over title, and/or inability to achieve agreements with interested parties.	Employ specialist legal resources to resolve questions of title, and consider use of CPOs where appropriate.
Macro-economic factors affect the profitability of the development leading to delays in completion and/or a need to re-assess the mix of housing and commercial elements.	Re-appraisal of financial model to take account of economic changes, built in design flexibility to enable a re-balancing of the development should it be necessary and detailed legal work to protect LDC interests.
Costs of the land remediation, flood prevention works and access links threaten the viability of the development, with the possibility of adverse changes to the plans (e.g. reductions in affordable housing) to ensure the financial strength of the scheme.	LDC to work closely with the developer and local/ national bodies to ensure cost effective solutions to these issues.
Existing jobs on the site are not replaced via	Regeneration Team to work with existing

the development and the relocation strategy, with the result that the employment benefits of the project are not fully realised and there is a loss of trust in the Council among the local business community.	businesses and the developer on an effective relocation strategy.
Interruption of LDC recycling service during relocation of Recycling Centre.	Effective planning and liaison across LDC to ensure replacement service is established and resourced in accordance with the development timetable.
LDC decide not to enter into the JV with Santon	LDC has underwritten a proportion of the planning costs and has agreed a capped maximum contribution.
The costs of LDC securing vacant possession and acquiring third party land are higher than budgeted.	LDC to secure property cost estimate from consultants and allow for a contingency
There is no demand from developers to build out the consented scheme	A soft market testing exercise will be undertaken to establish the level of developer interest in the proposed scheme.
There is a fall-out between the JV Partners	There will be a provision for dispute resolution in the JV agreement but ultimately, if the dispute cannot be resolved, then the JV agreement will be capable of termination.

## 8. Equality Screening

This proposal was screened for possible equality implications on 28 February by Kevin Kingston. It was found that as the proposals considered are major or complex, it is not possible at this time to identify all the potential equality impacts, and further engagement is needed with affected equality groups. Also, budget changes of over £100,000 are proposed. As such, a Full Equality Analysis is required. This will be undertaken by Kevin Kingston before cabinet meets.

## 9. Background Papers

LDC Cabinet Report September 2013

LDC Cabinet Report April 2013

LDC Cabinet Report October 2012

LDC Property Strategy (Report 88/12 to Cabinet, 30 May 2012)

LDC Regeneration Strategy [Page 10 of 11](#)

**Exempt Appendix 1 – Santon’s Pre-Planning Costs**