

CABINET

9 FEBRUARY 2016

PROPOSAL ABOUT QUEEN STREET/SLICKETT'S HILL CAR PARKS, THE BROOK, CHATHAM

Portfolio Holder: Councillor Alan Jarrett, Leader
Councillor Adrian Gulvin, Resources

Report from: Perry Holmes, Chief Legal Officer

Summary

This report summarises a proposal to seek developer interest in developing the above council owned car park whilst retaining car parking facilities and proposes that Cabinet delegates authority to appropriate the car park for planning purposes and to enter into any necessary agreements in relation to developing the car park.

1. Budget and Policy Framework

- 1.1. Appropriating land for planning purposes is a matter for Cabinet and as the site is worth over £100,000 entering into any agreements in relation to developing the car park is also a matter for Cabinet.

2. Background

- 2.1. The Council owns the freehold of the site edged black on the attached plan. The site area is approximately 0.69 hectares (1.71 acres). Outline planning consent was approved by the Council's Planning Committee (Application reference MC/09/2626) on 10 March 2010, subject to completion of a Section 106 agreement.
- 2.2. Full Council at its meeting on 15 April 2010 agreed:

“..to undertake as landowner, to require as a condition of the land transfer that a developer enters into a s.106 agreement securing the planning obligations agreed with and required by the planning authority”.
- 2.3. Outline planning consent was granted on 21 April 2013 for a mixed use scheme comprising of residential and 3,375 sq metres of commercial space (retail Classes A1 and A2) with ancillary parking for 146 spaces/202 cycle spaces. The residential element to consist of 7 x 3-bed houses, 7 x 4-bed houses, 48 x 1-bed flats, 38 x 2-bed flats, 18 x

3-bed flats. Consent was granted subject to the prior approval of 'reserved matters' – full details of the appearance of any proposed buildings and landscaping – which had to be submitted before 21 April 2015. Development should then have commenced within two years of approval of the reserved matters.

2.4. Cabinet at its meeting of 13 May 2014 delegated authority to the Assistant Director, Legal & Corporate Services in consultation with the Portfolio Holder for finance, to declare surplus and then dispose of the car park site, so that it can be used for development on the best consideration reasonably obtainable.

2.5. The disposal of the site was not pursued due to:

2.5.1. The loss of parking spaces and because the income generated from the car park was giving the Council a better return than if it invested any disposal receipt elsewhere.

2.5.2. The deterioration in the property market and the postponement of development plans for other, privately owned, sites in the area. However there are now some signs of market recovery.

3. Options

3.1. Officers have identified the following options:

3.1.1. The site could be retained.

3.1.2. The site could be disposed of and used for development, in which case the parking and income would be lost.

3.1.3. The site could be appropriated for planning purposes, and the Council could undertake a procurement process to seek a developer for the site, who is prepared to develop the site whilst retaining the existing level of council parking spaces plus sharing the profit from the development. Development options would be subject to planning restrictions and ground conditions.

4. Advice and analysis

4.1. If the site is sold for development as set out in paragraph 3.1.2 above then the Council can only expect to achieve a low capital receipt from sale of the site relative to the long-term loss of income, currently around £68,500 per annum net. The Council will also lose 105 pay and display public car parking spaces and 6 disabled spaces.

4.2. If as set out in paragraph 3.1.3 above, the Council could procure a developer to retain the current provision of public car parking as part of any development, then the Council could secure re-development of the site, maintain the parking use and income and could also require a return from the development.

- 4.3. Members have expressed a desire to see urban development sites brought forward on council owned land. This proposal could do that and could offer a significant number of residential units in what is ultimately a challenging site for traditional development.
- 4.4. In due course this approach could also be considered for other less challenging and more attractive car parking sites in Medway.

5. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Adverse reaction to temporary reduction/loss of parking.	Car park users object to the proposals.	Consultation with users and signage to alternative parking, including disabled parking in Fullager's Yard and Solomons Road. The proposal could maintain a car park in the long term.	C3

6. Consultation and Programme

- 6.1. Any proposed development could not take place until a satisfactory planning permission has been granted. That process would involve consultation within the terms of the National Planning Policy Framework. The development could take 18 months to 24 months to complete if/when planning permission is granted.

7. Financial implications

- 7.1. Under Part 5 of Chapter 3 of the Council's Constitution, the decision to delegate authority to appropriate the site is a matter for Cabinet and as the site is worth over £100,000, the delegation to enter into any agreements in relation to building over the car park is also a matter for Cabinet.
- 7.2. The Council could lose net annual parking income of around £68,500 per annum if the site is disposed of by way of a traditional freehold sale to a developer.
- 7.3. The Council could also potentially lose approximately £68,500 of parking income annually whilst the car park is out of use.

8. Legal implications

- 8.1. The council has a power under section 122 of the Local Government Act 1972 to appropriate land for planning purposes which is no longer required for the purpose for which it is held immediately before the appropriation. Where the Council has acquired or appropriated land for

planning purposes, the Council may dispose of it under S233 of the Town and Country planning act 1990 in order to:

- 8.1.1. Secure the best use of the land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by themselves or by any other person);
- 8.1.2. Secure the erection, construction or carrying out on it of any buildings or works appearing to be needed for the proper planning of the area.

Unless the disposal is of a lease of seven years or less, then the consent of the Secretary of State is required, if the disposal is for less than the best consideration which can reasonably be obtained.

- 8.2. In order for the council to comply with the Public Contract Regulations (PCR) 2015 and also to demonstrate that the Council is achieving best value this development opportunity should be offered on the open market. The European threshold for advertising public works concession contracts is currently EUR 5,000,000/£4.1m. It is anticipated that the development value of this site will be higher.
- 8.3. PCR Regulation 117 states that the provisions regarding Public Concession Works contracts contained within the PCR 2006 remain.
- 8.4. The 2006 regulations state the following:

"public works concession contract" means a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the work or works to be carried out under the contract.

- 8.5. The Government is currently working on new national regulations for concession contracts to implement the Concessions Directive (Directive 2014/23) and the new regulations are likely to apply to this procurement.
- 8.6. By undertaking an open procurement for a developer the Council will be free to negotiate the development with the winning bidder without risk of legal challenge and will also be able to fully exploit potential income from that development and secure continuous income from the car park once it is restored.
- 8.7. This approach is possible via the Competitive Procedure with Negotiation and Competitive Dialogue Procedure as per the PCR 2015. These are available where:
 - needs cannot be met without adaptation of readily available solutions;
 - contract cannot be awarded without negotiations due to nature, complexity, legal/financial make-up or risks;
 - technical specifications cannot be established with sufficient precision;

- they involve design or innovative solutions; or
- irregular (eg late submissions, abnormally low tenders) or unacceptable (eg not required qualifications/ price exceeds published budget) tenders have been received in response to open/ restricted processes.

9. Recommendation

9.1. The Cabinet is recommended to delegate authority to the Chief Legal Officer in consultation with the Leader and the Portfolio Holder for Resources to:

9.1.1. Appropriate the site for planning purposes.

9.1.2. To carry out a procurement exercise to seek a developer to provide a mixed use development, with a retained Council car park on the best terms reasonably obtainable.

9.1.3. Enter into any necessary agreements to secure the development of the site and preserve the council's ability to use the car park after the development has taken place.

10. Suggested Reasons for Decision

10.1. To bring forward the site for development, whilst retaining the car park and income.

Lead officer contact

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Background papers:

Cabinet report 13 May 2014

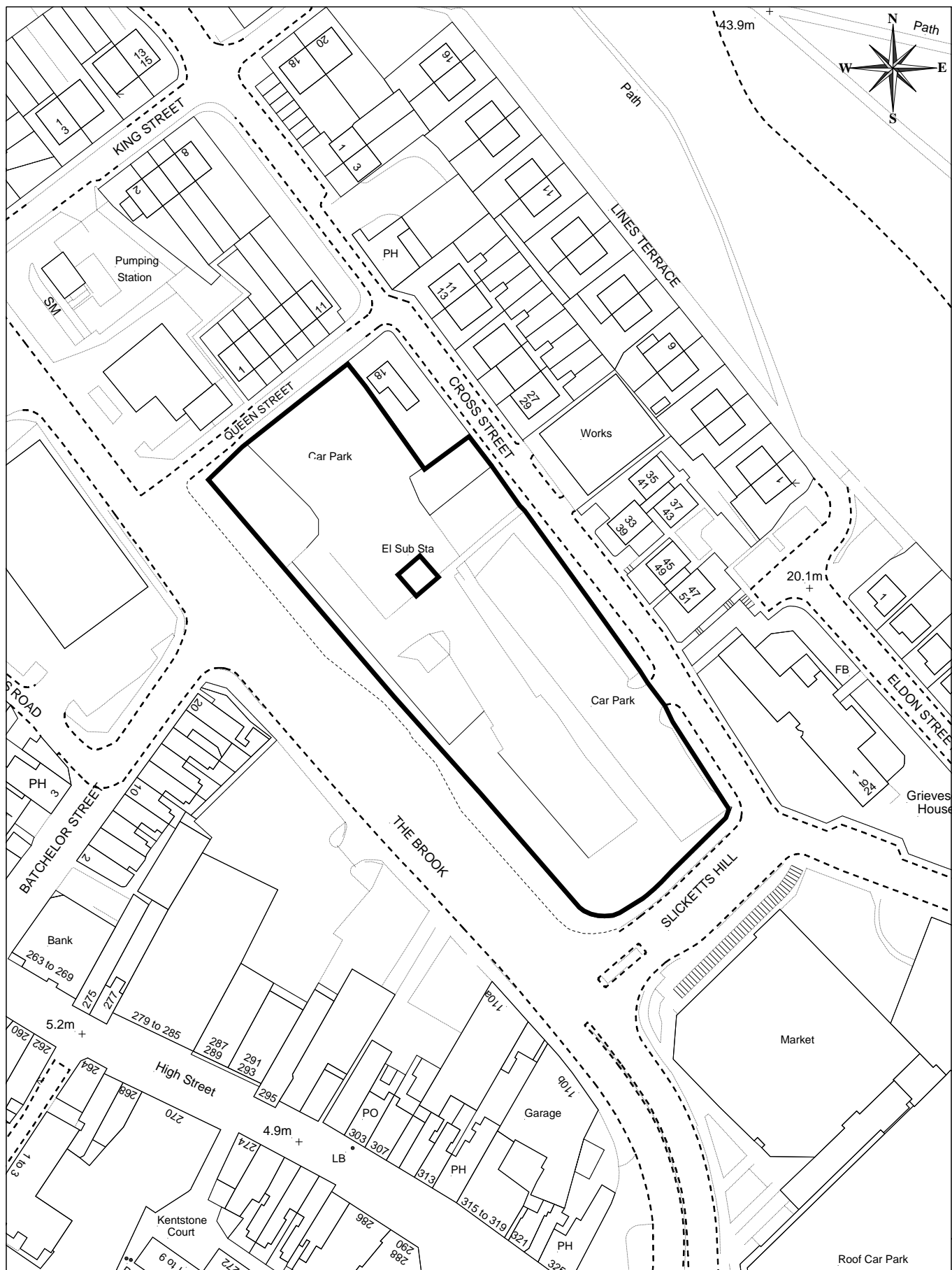
<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=2768&Ver=4>

Full Council report on 15 April 2010

<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=122&MId=185&Ver=4>

Appendices:

Appendix 1- Site Plan Queen Street / Slickett's Hill Car Parks



**Queen Street / Slickett's Hill Car Parks
Chatham
Area = 6,763 m²**



Scale: 1:1250 04/04/14

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