

CABINET

9 JULY 2019

PENTAGON CENTRE UPDATE AND MOUNTBATTEN HOUSE

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

Report from/Author: Perry Holmes, Chief Legal Officer

Summary

This report updates Cabinet about the acquisition of the Pentagon Centre and seeks authority to work with the owners of Mountbatten House (“The Building”) to bring this forward for development, or to acquire the building and to add it to the list of developments to be progressed by the Medway Development Company (MDC).

1. Budget and Policy Framework

- 1.1 The responsibility for acquiring new property and land and managing the Council’s property portfolio is a matter for Cabinet as is the provision and management of housing.
- 1.2 Medway Council is the sole shareholder of MDC with that role being undertaken by Cabinet.
- 1.3 The making of a Compulsory Purchase Order is a matter for Cabinet as is any compensation payable.
- 1.4 Virements exceeding £1million and additions to the Capital Programme are a matter for Full Council.

2. Background

- 2.1 Cabinet approved the acquisition of the Pentagon Centre on 12 February 2019 (decision no. 31/2019) with Council agreeing to the funding of the purchase and investment in the Centre on 21 February 2019 for a total sum of up to £45 million (minute no. 838/2019). Under delegated authority, officers completed the buying of the Pentagon

Centre head leases together with some freehold properties in April 2019 for £34.875 M. A reduction of almost £1M was achieved just prior to completion.

3. Update on the Pentagon Centre

- 3.1 Officers have begun to develop ideas for potential improvements to the Pentagon Centre and also to consider additional or alternative uses for the adjoining sites which include the Centre and the Brook Car Park. The Council has a stated aim to deliver housing in its urban town centres. Ownership of a significant asset such as the Pentagon Centre allows the Council to consider how else it might intervene to encourage vitality and economic growth in Chatham. This follows significant investment in the public realm from Chatham Station, by St John's Church down through Military Road and onto the Paddock area in central Chatham. It also follows the Council, through its housing company, MDC, achieving planning permission for residential schemes at Whiffens Avenue and Chatham Waterfront. The Chatham Waterfront development will include a significant improvement of the public realm, in front of the Pentagon Centre and Mountbatten House.
- 3.2 Officers are in the first instance seeking general advice on the various options open to the Council for the overall site, so that they these can be appraised and presented to Members. The outcome of this work will be presented to Cabinet in due course.
- 3.3 A delegation was agreed by Cabinet in February to the Chief Legal Officer, in consultation with the Leader and Portfolio Holder for Resources and Chief Finance Officer on individual lease renewals and amendments, to an agreed criteria. Appendix 1 sets out the suggested wording for an agreed criteria. Since the purchase of the Centre, it has become clear that the Council will want to move very quickly when dealing with lettings at the property and as a result, one of the recommendations in this report is that the Chief Legal Officer can complete, lettings and management matters, after advice from the Council's management agents but without consulting senior Councillors and the Chief Finance Officer. Regular updates on the performance of the Centre will be provided to the Portfolio for Resources and the Deputy Leader at the Council's Property Board. Subject to Cabinet approval, the existing delegation in the Employee Delegation Scheme will be amended accordingly.

4. Mountbatten House

- 4.1 Mountbatten House is a significant and prominent office building in the centre of Chatham, built above the Pentagon Centre. Officers believe the super structure of the building to be sound.
- 4.2 Mountbatten House is the subject of a separate sub lease which was granted in 1975 for a term of 125 years (so there are 81 years remaining) the current owner of the sublease is Mapeley Gamma

Acquisition Co 2 (Ltd) in receivership. Officers visited the building recently and noted that the building is in a state of dis-repair and empty. Services have been disconnected except emergency lighting. Officers have subsequently liaised with Finance colleagues so that full Empty Business Rates are charged for the building rather than the discount that had been being applied.

- 4.3 In addition, officers have commenced discussions with Mapeley Gamma's agent, First Industrial (FI), indicating that the Council wants to acquire Mountbatten House. FI responded that their client does not wish to sell the building but would consider a joint venture development with the Council. Officers have asked for further details of the joint venture in order to advise Members on that and other options for the building.
- 4.4 There are no current approvals in place for either an acquisition or a joint venture development of Mountbatten House. This report therefore seeks that approval.
- 4.5 In order to put the Council in the best possible position, officers advise that compulsory purchase proceedings which will allow the council to purchase the building should also be started. A tender for the appointment of specialist lawyers has been issued and subject to Member approval the process can start quickly.
- 4.6 That process will require the Council to show what it intends to use the building for. Officers advise that the most appropriate use of the building is not to bring it back into office use, but to seek to convert it to a residential scheme. It is proposed to add Mountbatten House to the list of development schemes for the Medway Development Company and to progress that to the appointment of a construction contractor, to complete the project to convert the building into apartments.

5. Advice and analysis

- 5.1 The Council now has ownership and therefore control of a significant city centre asset. As a commercial investment the Pentagon Centre is performing well and has managed to trade through a period of increasing economic pressure on the High Street. There are a number of ways in which the Council might hope to make better use of the overall site. It is right therefore to take a short time to assess the various options and to read those alongside the emerging Masterplan for Chatham, the Council's £14 million Future High Streets Fund bid for Chatham and the Council's other regeneration plans for Chatham as Medway's city centre.
- 5.2 Compulsory purchase is often described as a draconian measure as it involves an owner being forced to part with land or buildings, against their will and is only appropriate in circumstances where the public interest outweighs the rights of the owners.

- 5.3 Without prejudicing any future legal process, the prominence of the building in the Council's chosen city centre and the impact it has on the wider street scape, make it of such significance in seeking to regenerate Chatham, officers advise that if a negotiated purchase of the building is not possible a CPO should be pursued.

Planning policy support

- 5.4 Chatham Waterfront is one of several major regeneration projects in Chatham Town Centre and the wider Medway area, which will enhance the character and the economic fortune of the sub-region and contribute to the wider regeneration of the Thames Gateway. Regeneration projects include the Chatham place-making project linking the train station to Chatham High Street, redevelopment of key sites in and on the edge of the town centre and the Command of the Heights project, which extends down to the waterfront. The waterfront site is therefore a part of a wider programme of projects.
- 5.5 The Chatham Centre and Waterfront Development Framework 2004 and the Chatham Centre and Waterfront Development Brief 2008 Supplementary Planning Guidance promote unlocking potential at the site and encourage development to boost Medway's economy and deliver opportunities for further investment.
- 5.6 Retained policy S5 of the Medway Local Plan 2003 identifies the site as part of the area for development of a major multi use 'city' centre for Medway. Policy S3 supports leisure use along the river's edge and policy S1 supports the reuse of derelict and under-used land within the urban area of Chatham.
- 5.7 The site is identified for a residential led mixed-use development.
- 5.8 The Council is in the process of preparing a new Local Plan, a regulation 18 draft which was published in early 2018. The Draft Local Plan will be subject to examination and adoption anticipated in 2020/21. The new Local Plan will be supportive of the Chatham Waterfront development.
- 5.9 The National Planning Policy Framework (NPPF) promotes sustainable development, including ensuring that there is sufficient land available in the right places and at the right times to support growth and innovation.
- 5.10 The Council has also been awarded Growing Places Funding to assist towards the redevelopment of the site.

6. Risk management

Risk	Description	Action to avoid or mitigate risk
Decisions about development of the Pentagon Centre and Brook site are not consistent with emerging or current policy.	Inconsistent regeneration	Consider the emerging Masterplan for Chatham and take specialist advice about the use of the overall site.
Mapeley Gamma remain unprepared to “sell” Mountbatten House	The building remains empty and has a negative impact on the regeneration of Chatham	Continue to seek a negotiated acquisition, consider a joint venture development and in tandem commence CPO proceedings
CPO proceedings are opposed	There is a risk the CPO will not be granted	Seek appropriate specialist support to put the Council’s case for a CPO in the strongest possible terms

7. Financial Implications

- 7.1 The Council will need to bear the costs of preparing a compulsory purchase order and then submitting it to the Secretary of State for confirmation.
- 7.2 The Council will also have to bear the costs of taking steps to secure the confirmation of the compulsory purchase order, which could include the costs of preparing for and attending a public inquiry.
- 7.3 If agreement can be reached with the sub-tenant, the Council will need to cover compensation costs for acquisition of the building together with legal and surveyor's costs and stamp duty land tax.
- 7.4 If agreement cannot be reached and the Council decides to use a compulsory purchase order to acquire the building then the Council will need to pay for the costs of obtaining the compulsory purchase order and for any land compensation and professional fees etc.
- 7.5 The Council will need to also bear in mind there is a risk that the costs of objectors to the compulsory purchase order will have to be borne by the Council if the order is not confirmed.
- 7.6 The cost of obtaining a CPO is estimated at £250,000.

- 7.7 At its meeting on 21 February, the Council agreed £45 million for the acquisition of the head lease on the Pentagon Centre. Following this acquisition, there remains an uncommitted balance of circa £6 million. It is proposed to vire part of this to a new scheme for the acquisition of the sub-lease on Mountbatten House, however because this virement is likely to exceed £1 million it will require approval by Full Council.

8. Legal Implications

- 8.1 The Council has powers under Section 226 (1)(a) of the Town and Country Planning Act 1990 (Act) to acquire land compulsorily if it considers that the acquisition will facilitate the carrying out of development, redevelopment or improvement of the site. Under section 226(1A) of the Town and Country Planning Act 1990, such powers may only be exercised by the Council if the Council considers that such development, re-development or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area.

Further Guidance on Compulsory Purchase Orders

- 8.2 In promoting a compulsory purchase order, acquiring authorities should have regard to government guidance, and the relevant government guidance is now the guidance which was issued in October 2015 from DCLG.

- 8.3 Matters which must be addressed are:

(i) There must be a compelling case in the public interest – as to which see below;

(ii) Authorities should have taken reasonable steps to acquire the interests by negotiation, where practicable. A compulsory purchase order is intended as a last resort in the event that attempts to acquire by agreement fail. Negotiations with third parties have taken place and largely been successful. Officers are satisfied that they have carried out sufficient steps to meet this criterion.

(iii) There must be a clear idea of how the Council intends to use the building and that the necessary resources are likely to be available to achieve that end within a reasonable timescale. The building already has the benefit of permitted development rights for conversion to 112 apartments. Funding to support the acquisition process is available using the remainder of the £45M approved by Full Council for the purchase of the Pentagon and investment in it. MDC wishes to take forward development of the building, subject to being commissioned to do so by Cabinet.

(iv) Full details for the source of, and timing for, the funding of the scheme are required –the Council already has funding to cover the compensation necessary to acquire the building, subject to approval by Full Council .

(v)The scheme must be unlikely to be blocked by impediments to implementation. This again is demonstrated by the fact that there are permitted development rights in place and that the council owns the freehold and head lease of the Pentagon Centre. Officers propose to augment this by submitting an application for planning permission to enable improvements to be made to the façade and upper roof area of the building.

- 8.4 On the basis of the assessment carried out by the Council it must consider that a compelling case exists before a decision is made. Officers have carried out this assessment and as a result of the unlocking of the redevelopment of a key disused building in the centre of Chatham, which will bring employment opportunities, housing development and regeneration, (subject to relevant planning permissions being obtained), in addition to the strategic value of improving the use of the land in the town centre of Chatham. Officers are of the view that there is a compelling case in the public interest for making a compulsory purchase order (and interfering with the human rights of those affected by the Scheme).
- 8.5 The purpose for which the building is to be compulsorily acquired is likely to improve the economic well-being of the area by unlocking the site for development and regeneration as well as major improvement to the public realm at Chatham Waterfront.
- 8.6 There are permitted development rights in place to convert the building to residential use and an application in accordance with all relevant policy would be unlikely to face planning impediments. Further subject to confirmation of compulsory purchase powers, or acquisition of the building by agreement there are no remaining impediments to the Scheme proceeding.
- 8.7 The Council considers that there is no alternative other than to use its powers of compulsory acquisition powers to deliver the regeneration of the building albeit if continuing negotiations are successful which either secure the reuse of the building or which enable the council to acquire it by agreement, there will be no need to use the powers.

9. Recommendations

- 9.1 Cabinet is asked to delegate authority to the Chief Legal Officer, in consultation with the Leader of the Council and the Portfolio Holder for Resources to;
- (a) Continue negotiations with the Mountbatten House sub tenant (Currently Mapeley Gamma Acquisition Co 2 (Ltd) in receivership) to acquire the sublease of Mountbatten House (“the building”).

(b) Commission Medway Development Company to develop a residential scheme for Mountbatten House up to the obtaining of planning permission and the appointment of construction contractors.

(c) Continue to explore the joint venture development of the building with the subtenant of the building (currently Mapeley Gamma Acquisition Co 2 (Ltd) in receivership) or their agents to the extent that is more beneficial to the Council than a self-development approach.

(d) Prepare a compulsory purchase order (CPO) for any or all of the remaining interests in the building pursuant to the Council's powers under S226 of the Town and Country Planning Act 1990.

(e) Make the CPO to secure any or all interests required for the regeneration of the building

(f) Submit the CPO to the Secretary of State requesting the confirmation of the CPO.

(g) Respond to objections and continue negotiations with the landowner(s) following making of the CPO.

(h) Give undertakings and assurances if advised to and to acquire by agreement any outstanding interests.

(i) Confirm the CPO as an unopposed Order if the CPO is returned to the Council for confirmation.

(j) Instruct experts (including counsel) to represent the Council at an inquiry into the confirmation of the CPO or in any written representation process or process including a hearing.

(k) Attend any inquiry into the CPO and to pay the costs of the planning inspectorate for the inquiry.

(l) Advertise the confirmation of the CPO if it is confirmed by either the Council as an unopposed order or by the Secretary of State.

(m) Serve notices to treat and enter, make vesting declarations and/or deed polls to secure all remaining interests in the site.

(n) Seek to resolve issues of compensation by agreement or in default of agreement by reference to the Lands Chamber of the Upper Tribunal and/or by mediation.

9.2 Cabinet is asked to amend the existing delegation in respect of the Pentagon Centre to the Chief Legal Officer (paragraph 6.15 of the Employee Delegation Scheme), as set out in Appendix 1 to the report.

9.3 Cabinet is asked to delegate authority to the Chief Legal Officer, in consultation with the Leader of the Council and the Portfolio Holder for Resources, to acquire the sub lease of Mountbatten House and any other interests necessary to secure the development of the building on the best terms reasonably obtainable.

- 9.4 Cabinet is asked to delegate authority to the Chief Legal Officer in consultation with the Leader of the Council and the Portfolio Holder for Resources to take all steps to complete the acquisition of the sub lease for Mountbatten House and any other interests necessary to secure the development of the building.
- 9.5 Cabinet is asked to delegate authority to the Chief Legal Officer, in consultation with the Leader of the Council and the Portfolio Holder for Resources, to take all steps to enter into a joint venture for the development of Mountbatten House, if appropriate, and only in circumstances where that would represent a greater benefit to the Council than a self-development scheme, through Medway Development Company.
- 9.6 Cabinet is asked to delegate authority to the Chief Legal Officer to exercise the council's powers of appropriation in respect of any interests at the Pentagon Centre, the council's adjoining land and Mountbatten House.
- 9.7 Cabinet is asked to recommend to Full Council to approve the virement of up to £3M from the remaining funds in the £45M Pentagon Centre acquisition and improvement budget, for acquiring Mountbatten House either by agreement or after a Compulsory Purchase Order with compensation and the associated costs and to add this scheme to the Capital Programme.

10. Suggested Reasons for Decision

- 10.1 To secure the development of a strategic building which is integral to the Pentagon Centre and to the centre of Chatham. To enable delivery of residential development within Mountbatten House and to enhance the regeneration and economic vitality of Chatham.

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Appendices:

Appendix 1 - Delegation to the Chief Legal Officer – Pentagon Centre

Background Papers:

None

Appendix 1

Paragraph 6.15 of the Employee Delegation Scheme, part 4 of chapter 3 of the Constitution

Amend the existing delegation to the Chief Legal Officer (please see tracked changes)

<p><u>Commercial Property – Pentagon Centre and 205 – 209a and 181a – 189 High Street, Chatham</u></p> <ul style="list-style-type: none">• To arrange, in consultation with the Leader, the Portfolio Holder for Resources and the Chief Finance Officer, management of the Pentagon Centre and 205 – 209a and 181a – 189 High Street, Chatham after acquisition and to let, cease letting and sell premises subject to an agreed criteria within the Pentagon Centre and 205 – 209a and 181a – 189 High Street, Chatham as follows:<ul style="list-style-type: none">(i) <u>To permit new lettings that will enhance, promote and not detract from the current offer within the Centre. These will provide a mixture of retail, leisure, food and service led offers to provide the Medway community with a quality mixed use scheme in which to visit on a regular basis, promoting economic vibrancy for Chatham town centre and not contrary to Council policy.</u>(ii) <u>Consideration will be given to the quality of the incoming tenant and the financial benefit that they will add to the asset.</u>(iii) <u>All lettings should be in accordance with the principles of good estate management</u>	Leader/Cabinet
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