

**REPORT TO THE EXECUTIVE BOARD APPEAL COMMITTEE**

**DEPARTMENT: CITY DEVELOPMENT**

**DATE: 4 NOVEMBER 2008**

**SUBJECT: ACCESS TO INFORMATION APPEAL – ST ANN’S MILLS AND ABBEY MILLS KIRKSTALL**

**1.0 PURPOSE OF THIS REPORT**

1.1 This report provides officer comments supporting the decision by the Director of City Development to refuse the request from Councillor Illingworth regarding which parties have had access to Abbey Mills and St Ann’s Mills, Kirkstall, after the termination of the most recent leases. It explains why officers believe that Councillor Illingworth has not made out a “need to know” this information, or alternatively even if Members conclude there is a need to know, the factors which officers consider should be accepted as outweighing that need to know in these particular circumstances.

**2.0 BACKGROUND**

2.1 As part of Councillor Illingworth’s requests for information regarding St Ann’s Mills, the Council have provided him with access to a considerable amount of information regarding the property. Although the following is not an exhaustive list, it provides the hearing with the level of information Councillor Illingworth has received from the Council in respect of the marketing exercise. The following detailed information has been provided:

1. Copy of the Condition Survey Report undertaken by ADS in August 2003.
2. Copy of the Concept Study undertaken by ADS in February 2004.
3. Copy of the Feasibility Study report undertaken by ADS in September 2005.
4. Copy of Lambert Smith Hampton Chartered Surveyors valuation for Abbey Mills undertaken in May 2006.
5. Copy of Lambert Smith Hampton Chartered Surveyors valuation of St Ann’s Mills undertaken in June 2006.
6. A note of tenders received for St Ann’s Mills on 26 October 2007 including details of the parties who submitted tenders.
7. Copies of the expressions of interest for St Ann’s Mills received in October 2007 including details of the parties who expressed an interest and the reasons why they decided not to make an offer.

8. A copy of the expressions of interest from Sancorp and Advent Developments received in October 2007 with their proposals.
  9. Minutes of meetings on 13 November 2007 with Sancorp and Advent Developments who submitted expressions of interest.
  10. A copy of the note of the final tenders received for St Ann's Mills on 21 December 2007.
  11. A full copy of the scheme and financial offer received from the two offerors. This included sketch layout schemes and financial offers including supporting information from the two parties making offers from Sancorp and Advent Developments.
  12. Copy of Lambert Smith Hampton Chartered Surveyors valuation of St Ann's undertaken in February 2008.
  13. Copy of Lambert Smith Hampton Chartered Surveyors valuation for Abbey Mills undertaken in February 2008.
  14. A copy of the Executive Board report of 11 June 2008 with plans and the minutes of this meeting which reported the above offers to the Executive Board.
- 2.2 In addition to the above Councillor Illingworth has previously been supplied with copies of all requested documents held on the St Ann's Mills file up to October 2007. Councillor Illingworth was given access to view the files on 4th October 2007 and was briefed by the Council's Chief Asset Management Officer on 24th October 2007. In response to more recent requests Council officers have offered to review the files and provide copies of documents received between October 2007 and the present date. This offer has not yet been accepted.
- 2.3 The hearing should be aware that when St Ann's Mills was marketed, officers followed a standard marketing approach where offers for the property were invited. This included the following marketing actions that comprised of:
1. Onsite for sale boards (two) at the entrance to the estate.
  2. Use of single sheet flyers – used as a mailshot to commercial property agents in Leeds and to the interested parties on the file.
  3. Use of a sales pack including a planning statement providing more detailed information which was provided to interested parties upon request.
  4. National advertising in the Estates Gazette ½ page colour advert on 25 August 2007 and in Property Week ½ page colour advert on 24 August 2007. Both these are nationally recognised professional property magazines.
  5. Regional advertising in the Yorkshire Post property section on 1<sup>st</sup> and 6<sup>th</sup> September 2007.
  6. Advertised on the Councils website.
- 2.4 All interested parties were invited to submit initial expressions of interest in sealed envelopes by a closing date of 26 October 2007 and these were opened and recorded by two officers of the Council.

2.5 In respect of inspections at St Ann's Mills, all internal inspections of the property were accompanied. As the site is open it is feasible that any interested party could view the premises externally without notifying the Council.

### **3.0 LATEST POSITION**

- 3.1 Following Councillor Illingworth's contact with the Information Commissioner's Office about this matter, Councillor Illingworth was sent a letter dated 21 July 2008 explaining why it would be considered inappropriate to provide him with the information in question in relation to St Ann's Mills, following the Executive Board decision to dispose of all the Council owned land and buildings at St Ann's Mills at its meeting in June 2008, and refusing his request for this information under the FOI rules.
- 3.2 Broadly, although Councillor Illingworth already had details of all parties who had expressed an interest in St Ann's Mills and also details of those parties who had submitted tenders for St Ann's Mills, it was considered there was a limited pool of potential developers for St Ann's Mills, and potentially for Abbey Mills. Therefore it followed there was a real and significant risk of the Council's commercial interests being prejudiced at least to some extent, if the details of those having access to the Mills (being potential future bidders) were disclosed. It is to be noted that where the Council responds to an FOI request, it reasonably has to assume that the information is likely to go into the public domain, regardless of whether it is a Member who makes that request, or what the particular reasons are for that Member's request. A copy of the detailed letter of 21 July 2008 setting out the reasons for refusing Councillor Illingworth's request under the FOI rules, is attached.
- 3.3 In relation to whether Councillor Illingworth has a need to know this information, it is to be noted that the Guidance on good practice in relation to disposals of land, issued by the Ombudsman, recommends that Members should not themselves be directly involved in negotiating the disposal of land, nor in determining the details of the process for a particular disposal. This is reflected in the Council's Protocol on Member/Officer Relations which provides "Members should only become involved in commercial transactions at the formal decision making stage", and which refers Members to the guidance in Briefing Note No.6 "Guide for Elected Members Involvement in Commercial Transactions".
- 3.4 Given that Councillor Illingworth has already been provided with (amongst other items) valuation details, details of parties expressing an interest, and details of the final tenders, it is considered that Councillor Illingworth has already been provided with far more information than a Member might reasonably expect under their need to know rights, in relation to the marketing of St Ann's Mills. Given the history of the proposals for the Mills, it might well be appropriate in future for the Ward Members to have information about bidders, so that they can make their own representations to officers about the track record and reputations of those bidders as well as about the development schemes they are proposing, but whilst the list of visitors might represent the pool of future bidders for the Mills, it is considered there is no legitimate reason why Councillor Illingworth would need to know which organisations might form part of that pool at this point in time.
- 3.5 However, if Members take the view Councillor Illingworth has a need to know this information, officers consider there are other factors which should be accepted as outweighing that need to know in these particular circumstances. In particular it is considered there is a real risk of prejudice to the Council's commercial interests in disposing of the property. Following the Executive Board decision in June 2008, which decided that the property should be sold, it was considered that given the

current market conditions (which have deteriorated since June 2008) the Council would be unlikely to get a large number of bidders for the property. In fact the 'pool' of bidders may not extend further than those organisations and individuals who have already shown some interest in acquiring the property, and who may wish to renew their interest.

- 3.6 The Councils decision to dispose of the property at St Ann's Mills is a sensitive matter for some residents in the Kirkstall area and there has been continued opposition to the disposal of the property for a variety of reasons. The Appeal Committee will recall both delegations to Full Council on 2 July 2008 and to the Inner North West Area Committee on 3 July 2008 regarding opposition to the disposal of the property.
- 3.7 In addition Councillor Illingworth has already made a number of approaches to the firm of Chartered Surveyors who undertook the independent valuations, and it is considered reasonable to assume that releasing the names of those parties who viewed the property could result in some direct contact by Councillor Illingworth. Clearly this contact may make potential developers apprehensive given Councillor Illingworth's knowledge of the property and local conditions, and there will be no way for the Council to know what information is being pressed upon these potential developers, or for the Council to give its own (possibly different) account.
- 3.8 It is also possible that public opposition could be stirred up in relation to a particular potential developer, which again might prejudice a future bid, and the public interest in the Council operating a transparent process for the disposal of St Ann's Mills and also complying with its statutory obligation to achieve the best consideration reasonably obtainable. Conversely, it is difficult to see how the refusal to release this information has prejudiced Councillor Illingworth in the discharge of his duties as a Member, or in the pursuit of his own proposals at St Ann's Mills for a Community Visitor and Canoe Centre at the site.
- 3.9 With regard to the property known as Abbey Mills, this property has not as yet been formally marketed and there have not been any inspections in relation to the sale of the property. When the property is marketed all parties will be given equal opportunity to view the premises. Again the premises have open access and it is possible that parties have inspected the property without prior arrangement with the Council.
- 3.10 As can be seen from the above, Councillor Illingworth has had access to and received a substantial amount of information in relation to St Ann's Mills.
- 3.11 It is still considered that the position regarding the release of the information has not changed since the letter sent to him of 21 July 2008, and also the refusal of his request under the need to know rules.

#### **4.0 RECOMMENDATIONS**

- 4.1 It is recommended that Councillor Illingworth's request for this additional information is not supported. This is on the basis that Councillor Illingworth has not made out a need to know this information, or alternatively that disclosure would impact on the Councils commercial interests in disposing of St Ann's Mills – a disposal which officers have been instructed to undertake following the decision of the Executive Board on 11 June 2008.