



Report of: DIRECTOR OF CITY DEVELOPMENT

To: EXECUTIVE BOARD

Date: 11 JUNE 2008

Subject: QUARRY HILL LEEDS 9

Electoral Wards Affected:

CITY AND HUNSLET

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

Executive Summary

Members of Executive Board on 11 June 2003 considered a report submitted by the Director of Development detailing the schemes and offers that had been received following the marketing of Quarry Hill. Members resolved "That the Director of Development be authorised to enter detailed negotiations with Caddick Developments Ltd with regard to their offer designated as B (the highest offer) in the documentation now submitted."

The Director of Development entered into negotiations with Caddick Developments Limited for the leasehold disposal of the Quarry Hill site and the company submitted planning applications for a mixed use redevelopment of the site. A contract for the sale of the site has not been agreed and planning permission has yet to be granted.

An unsolicited unconditional offer has recently been received. The purpose of this report is to advise Members of the options available to the City Council in considering how to proceed with the sale of the site in a way which meets the Council's legal obligations, and which also satisfies the general expectation of fairness in such matters. A second report is submitted by the Director of City Development to this meeting of the Executive Board which will detail the financial aspects of the situation and provide other confidential information. It is proposed the second report will be designated exempt under Access to Information Procedure Rule 10.4.3 on the basis this is information relating to the financial or business affairs of all the parties identified in the report and of the Council, and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

1.0 PURPOSE OF THIS REPORT

- 1.1 The purpose of this report is to advise Members of the current situation relating to the disposal of the Council owned site at Quarry Hill. The sale was agreed by Members of Executive Board on 11 June 2003 and negotiations have been ongoing between Officers of City Development and the selected purchaser, Caddick Developments Limited (Caddick). An unsolicited unconditional offer has now been received which the Council is legally obliged to consider. This report will advise Members of the options available to the Council and a second report is submitted to this meeting detailing financial and other confidential information. It is proposed the second report is treated as exempt for the reasons set out in this report.

2.0 BACKGROUND INFORMATION

- 2.1 Members of Executive Board on 11 June 2003 considered a report submitted by the Director of Development relating to Quarry Hill. The report¹ was accompanied by a schedule of offers² that the Director of Development circulated at the meeting. The report and schedule detailed the schemes and offers that had been received for the Council's site at Quarry Hill following a period of marketing. Members considered options relating to the future of the site and resolved "That the Director of Development be authorised to enter detailed negotiations with Caddick Developments Ltd with regard to their offer designated B (the highest offer) in the documentation now submitted."³
- 2.2 The sale was agreed on the basis of a 250 year ground lease being granted by the Council upon payment of a premium. The lease would be preceded by a Development Agreement which would be exchanged between the Council and Caddick. The Development Agreement would detail the conditions upon which the offer was made and the development obligations the Council would impose in respect of the redevelopment of the site.
- 2.3 Caddick's offer was made subject to the following conditions:
- i) Contract
 - ii) Environmental Survey
 - iii) Geo-technical Survey
 - iv) Satisfactory Planning Approval
 - v) Section 106 Requirements
 - vi) Section 278 Requirements
- 2.4 The Council's solicitor was instructed to prepare the draft documentation and Caddick instructed its architect to progress detailed design work in readiness for submission of a planning application.
- 2.5 Numerous design workshops were attended by Caddick, Caddick's architect, Planning Officers, the Civic Architect and a Property Services Officer to discuss the redevelopment proposals in detail. Caddick then submitted 2 planning applications on 19 November 2004. One application was in Outline for the whole site with the second being a Full application in respect of an element of the overall scheme. This approach was agreed with Planning Officers prior to submission. The applications were for a mixed use development comprising a office, residential, leisure, ancillary retail uses and a multi-storey car park.
- 2.6 The planning applications were referred to a meeting of the City Centre Plans Panel

on 24 February 2005 with a recommendation for approval. Plans Panel, however, requested significant changes to the proposals which resulted in major redesign work being undertaken by Caddick.

- 2.7 On 18 August 2005 Members of the City Centre Plans Panel considered revisions to the planning applications and resolved that planning permission should be granted. The applications were deferred and delegated for officers to agree certain other matters with Caddick prior to the planning permissions being granted.
- 2.8 The only outstanding issue which, until recently, remained to be agreed was the inclusion of affordable housing in the scheme. Members agreed an on-site provision at 15% of the total number of residential units. Due to a down turn in the property market, in particular city centre apartments, and increased construction costs Caddick stated that the viability of the scheme had been adversely affected. A reduction in the number of affordable units, or a reduction in the purchase price of the land, was requested. Following discussion with the Chief Planning Officer and Chief Asset Management Officer planning permission is about to be granted with the full 15% affordable housing requirement, but no agreement was reached regarding the purchase price.
- 2.9 In relation to the Development Agreement, certain matters remain to be agreed between the Council and Caddick before an exchange can be executed.

3.0 MAIN ISSUES

- 3.1 The Council has agreed to sell its site at Quarry Hill to Caddick conditional on the items detailed in paragraph 2.3 being resolved. At the time of selection at the Executive Board meeting on 11 June 2003 the offer from Caddick was considered to represent the best consideration that could reasonably be obtained under Section 123 of the Local Government Act 1972 (or under the Housing Act 1985). The Council has a legal obligation to achieve the best consideration that can reasonably be obtained on a disposal of land, unless the Council is entitled to do otherwise by virtue of the consent of the Secretary of State given generally or in relation to a specific disposal.
- 3.2 The Council has now received an unsolicited unconditional offer for the site. The Council's Chief Officer, Legal, Licensing and Registration Services, has advised that although the Council did not invite this offer, and although it has been received after a period of several years of negotiations with Caddick, this offer and its implications for how the Council should proceed with the sale of this site, must be considered fully.
- 3.3 The second, and confidential, report referred to in paragraph 1.1 contains financial and other confidential information relating to the Caddick and unsolicited offers. This information relates to the financial or business affairs of those particular companies, and of the Council. This information is not publicly available from the statutory registers of information kept in respect of certain companies and charities. It is considered that since this information was obtained either through the negotiations with Caddick, which were conducted on a confidential basis, or in relation to the unsolicited offer, from the letter of offer which was made to the Council on a confidential basis, then it is not in the public interest to disclose this information at this point in time as to do so could lead to further competing bids from these companies or from the market generally, and in turn this would undermine the process for disposing of this site which the Council selects and affect the integrity of the disposal process. It is considered that whilst there may be a public interest in disclosure, much of this information will be publicly available from the Land Registry following

completion of this transaction and currently there is a greater public interest in ensuring that the site is disposed of in a fair and equitable manner with no party gaining a commercial advantage over another by having details of the likely level of other offers. Consequently, it is considered that in all the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosing this information at this point in time. It is therefore considered that this element of the report should be treated as exempt under Rule 10.4.3 of the Access to Information Procedure Rules.

3.4 In relation to the Council's position with Caddick, the options available to the Council are:

Option 1 - Complete the disposal to Caddick at the company's current offer or subject to planning permission being secured for an alternative scheme which could produce a higher land value.

Option 2 - Withdraw from the sale to Caddick and complete the disposal to the company submitting the unsolicited unconditional offer.

3.5 The risks associated with a disposal to Caddick, or the party making the unsolicited offer, or any other party are outlined below:

i) A sale to Caddick on the current arrangements could result in the decision being subject to a judicial review challenge by the party submitting the unconditional offer.

ii) A sale to Caddick could result in the other offeror submitting a further unsolicited offer in an attempt to secure the site.

iii) Any other party aggrieved by the Council's decision could also seek a judicial review.

iv) Caddick has indicated that if the Council withdraws from the sale the company may take legal action against the Council for not proceeding with the sale.

3.6 A further option for the Council is to retain the site for its existing use as public pay and display car parking. An income would be received, details of which are contained in the confidential report. This option would not bring about any regenerative benefits to this part of the city centre.

3.7 Under section 123 of the Local Government Act 1972, the Council may not dispose of land for a consideration less than the best that can reasonably be obtained, except with the consent of the Secretary of State given generally or for a specific disposal. The second report sets out the history of the negotiations with Caddick, and Members will note that detailed negotiations have been conducted with Caddick over a number of years, and that costs, which Caddick advise are considerable, have been expended by both sides. It is also to be noted that the complexity of these negotiations has arisen largely from the Council's disposal of other sites on Quarry Hill, rather than from any particular features of the Caddick development proposals. As a result, Caddick has argued it is unfair and inequitable for the Council to abandon these negotiations at this stage, and that to date Caddick have done all that could reasonably be expected on their part to bring these negotiations to a satisfactory conclusion. Further details of representations made by Caddick are contained in the second report. The case law acknowledges that there may be circumstances where an authority could properly

refuse a higher offer and proceed with a lower offer, for example where it wishes to 'close the deal' after a period of negotiations, and also that in obtaining the best consideration, an authority is not obliged to resort to extraordinary, unconventional or questionable means. It is clear however that each disposal must be considered on its own facts.

4.0 IMPLICATIONS FOR COUNCIL POLICY AND GOVERNANCE

4.1 Land at Quarry Hill has remained undeveloped and operated by the Council as a temporary car park for longer than anticipated. Approval of the recommendation contained in the confidential report will bring about the comprehensive redevelopment of the site which would provide the opportunity to add to the regeneration proposals in this area and create a substantial investment in this part of Leeds. The regeneration would assist with the Council's objectives to go up a league, create new job opportunities, together with closing the gap.

5.0 LEGAL AND RESOURCE IMPLICATIONS

5.1 The main legal implication is the Council's statutory obligation to achieve the 'best consideration' that can reasonably be obtained. Detailed advice from the Chief Officer, Legal, Licensing and Registration Services is contained in the second report for Members' consideration.

5.2 Resource implications arise from the sale of the site as the car parking income will be lost. Members are advised of the income figures in the confidential report.

6.0 CONCLUSIONS

6.1 Caddick asserts that it has incurred a considerable amount of time and expense in this project following the company's selection by Executive Board on 11 June 2003. Members' decision at that time gave a commitment that the site would be withdrawn from the market and the Council would proceed to sell the site, subject to satisfactory terms being agreed.

6.2 Members will now be invited to consider the information contained in the confidential report, which contains a recommendation by the Director of City Development.

7.0 RECOMMENDATIONS

7.1 Members are requested to consider:

- i) the contents of this report, and
- ii) the contents of the confidential report, and the recommendation contained therein, and
- iii) in the event of the recommendation being agreed in that report then Members are requested to agree that all future reports on the disposal of this land at Quarry Hill may be considered by the Director of City Development under the scheme of sub-delegation agreed for Directors and Chief Officers.

FOOTNOTES

- 1 Plots 1 – 4 Centenary Square, Plot 1 Playhouse Square, Quarry Hill – Selection of Scheme and Developer. Report to Executive Board 11 June 2003 by the Director of Development.
- 2 Plots 1 – 4 Centenary Square, Plot 1 Playhouse Square, Quarry Hill – Selection of Scheme and Developer (10.4(9)). Schedule of offers and comments circulated by the Director of Development. This report was designated Exempt / Confidential under Access to Information Procedure Rule 10.4(9).
- 3 Committee Minutes of Executive Board, 11 June 2003, Development and Sustainability minute 23 and minute 34.