

 Executive – 14 December 2011		Agenda Item No. 8
Title	Retail Development in Leamington Town Centre - Part A	
For further information about this report please contact	Bill Hunt Deputy Chief Executive 01926 456014 bill.hunt@warwickdc.gov.uk	
Wards of the District directly affected	Leamington Clarendon	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	Executive 2 December 2009 Minute number 147 Planning Committee 8 November 2011 Minute number 110-112	
Background Papers	Executive reports, December 2009, July 2008, July 2007, March 2007, March 2006, December 2004 Development Agreement Design briefs, retail Studies and other background papers Local Plan 1996-2011	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	No
Equality & Sustainability Impact Assessment Undertaken	No
Further assessment would be made of any potentially viable alternative scheme that could be progressed	

Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive		Author
Head of Service	05/12/11	Paul Pinkney
CMT	05/12/11	Chris Elliott, Andrew Jones, Bill Hunt
Section 151 Officer	05/12/11	Mike Snow
Monitoring Officer	05/12/11	Andy Jones
Finance	05/12/11	Mike Snow

Portfolio Holder(s)	05/12/11	Cllr. Hammon
Consultation & Community Engagement		
n/a		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 This report considers how the Council can bring forward retail led development in Leamington town centre in accordance with the Council's current Local Plan policies and the priorities within the Strategy Statement that will form the basis for the preparation of the new Local Plan.
- 1.2 The report is presented in two parts. The Part A report incorporates all of the information that it is considered appropriate to place in the public domain in order to inform the decision of Members in relation to the recommendations.
- 1.3 The Part B report, elsewhere on the agenda, includes those elements which it is considered necessary to deal with on a confidential basis in order to maintain commercial confidentiality. The information contained in the Part B report is considered to be the minimum necessary to meet such requirements and that report contains no recommendations. In considering the recommendations set out in this report it will be necessary for Members to have regard to information contained in both the public domain (Part A) and private and confidential (Part B) elements of the report in order to arrive at their conclusions.

2. RECOMMENDATIONS

- 2.1 That Executive notes that the rationale for bringing forward retail led development in Leamington Town Centre remains intact despite the implications of the refusal of planning permission for the proposed Clarendon Arcade development on the Chandos Street site.
- 2.2 That Executive reaffirms this Council's commitment to bringing forward retail led development of Leamington town centre on the Chandos Street site.
- 2.3 That Executive notes that the Development Agreement with Wilson Bowden commits the Council to undertake the preparatory work necessary for a compulsory purchase order to be made to assist its development partner to bring forward a viable retail led development scheme ("the CPO"), with the costs of such work indemnified by Wilson Bowden.
- 2.4 That Executive delegates authority to the Deputy Chief Executive (BH), in consultation with the Leader, Deputy Leader, Development Portfolio Holder and s151 Officer to undertake negotiations with Wilson Bowden to establish the nature and implications of any revisions that may prove necessary to the existing Development Agreement to facilitate a suitable and appropriate revised retail led development scheme being brought forward on a realistic timescale.
- 2.5 That, subject to approval of 2.4 Executive approves the potential use of up to £40,000 from the Contingency Budget to fund specialist retail or legal advice, with authority to utilise the funding delegated to the Deputy Chief Executive (BH) and s151 Officer, in consultation with the Leader, Deputy Leader and Development Portfolio Holder should the progress of the proposed negotiations demonstrate a need.
- 2.6 That, subject to approval of 2.4 and the outcome of the proposed negotiations, Executive receives a further report to enable it to consider approval of any necessary revisions to the Development Agreement.
- 2.7 That Executive delegates authority to the Deputy Chief Executive (BH), in consultation with the Leader, Deputy Leader and Development Portfolio Holder,

to agree with its development partner, Wilson Bowden, that the planning decision will not be appealed and to formally advise that a new Planning Unconditional Date, as specified by the Development Agreement, will be agreed.

- 2.8 That Executive approves the use of the Service Transformation Reserve, up to a maximum amount of £60,000, to allow the engagement of a suitably qualified temporary member of staff to work on the co-ordination of a revised Clarendon Arcade project, including the preparatory work for the CPO and on the co-ordination of other major corporate projects such as the Coventry & Warwickshire Gateway project.
- 2.9 That Executive notes that, dependent on the progress of discussions with Wilson Bowden, a further report would be brought forward to enable Executive to determine whether it considers 'in principle' support for a suitably revised scheme was appropriate, prior to the submission of a fresh planning application.

3. REASONS FOR THE RECOMMENDATION

- 3.1 During the development of the currently adopted Local Plan, the Council commissioned extensive retail studies to assess retail capacity within the District. These studies demonstrated that for Leamington town centre to remain vital and vibrant into the future, further retail development was necessary.
- 3.2 As a result the Council agreed that it would actively seek to bring forward additional retail development within Leamington town centre to address the identified need. This approach was set within, and is entirely consistent with, the framework of National, Regional and Local planning policy and guidance.
- 3.3 Having agreed the approach, the Council sought further advice from specialist commercial advisers (CBRE) which indicated that a realistic and suitable site for a viable and comprehensive town centre retail led development scheme existed on and around the site of the WDC owned Chandos Street car park. This led to a formal decision to progress the Chandos Street site as a potential retail development site and to undertake a developer selection process.
- 3.4 The developer selection process was undertaken in accordance with relevant procurement rules, with continued advice from CBRE, and has been the subject of a series of reports to Executive since 2004. **Appendix One** provides a summary of the development of the scheme and the selection of Wilson Bowden as the Council's development partner, as previously reported to Executive.
- 3.5 In July 2008 the Council agreed its full 'in principle' support for Wilson Bowden's proposed scheme, subject to it securing planning permission and all other necessary consents. In making that decision the Council had full access to the design details of the proposed scheme with plans and schematic diagrams of all its elements, including massing, proposed elevations and internal layouts. Following this decision the two parties have worked to bring forward the Clarendon Arcade scheme, with a formal Development Agreement having been signed in February 2010.
- 3.6 It is worthy of note that the scheme put before Planning Committee in November 2011 did not vary substantially from that agreed 'in principle' in 2008, although a number of significant amendments had been made to address issues raised by local residents and other interested parties, particularly to the

elevations closest to residential properties in Clarendon Avenue and Chandos Street.

- 3.7 The rationale and motivation for bringing forward a retail led town centre development scheme remain unchanged. The significant potential demand for additional retailing within the District and its economic catchment area, evidenced by previous studies, is still evident and it is notable that Planning Committee did not cite lack of need for a retail led development scheme amongst its reasons for refusal of the proposed scheme. Discussions with specialist commercial advisers, retailers and national and local agents demonstrates that Leamington remains a potentially viable investment location but that the potential for that investment is constrained not by the continuing economic downturn but by the lack of suitable retail units.
- 3.8 Public criticism of the Clarendon Arcade scheme tended to focus on a perceived lack of 'need', evidenced by empty retail units within the centre and a perceived negative impact on the specialist, small, largely independent retailers for which the town centre is noted. Whilst, no doubt well-intentioned, such perceptions are not supported by commercial realities. The proposed scheme was predicated on larger units, of sufficient size to be commercially viable even in today's uncertain economic climate, which are not otherwise currently available within the town centre. Indeed, it is arguable that the continuing existence of empty units shows that their size, configuration and potentially location is not attractive to retailers, particularly evident from the virtual full letting of Royal Priors, rather than demonstrating evidence of over supply of retail space. Equally the specialist retailers that give the town centre its distinctiveness and which we therefore wish to retain, will struggle to survive unless footfall, 'dwell time' and consumer spending can all be increased, which is precisely the point and purpose of the Council's longstanding approach to bring forward a significant, additional retail led development.
- 3.9 In addition to the rationale remaining relevant, despite the changes in the economic climate since the scheme was first mooted, the development of a significant retail led development scheme continues to be supported by the planning policy framework within which such a scheme has to sit.
- 3.10 Leamington is recognised as a Strategic Town Centre, one of only three in Warwickshire, within the current Regional Spatial Strategy (RSS). The RSS will finally be abolished through the provision of the Localism Act although it is likely to remain in place until at least March 2012. However, the Strategy Statement (set out at **Appendix Two**), approved by full Council on 1 December 2011 to underpin the development of the new Local Plan, demonstrates the Council's continuing commitment to ensuring that Leamington town centre continues to operate at the level of a sub-regional centre. Such centres cater for the needs of a wider catchment than their local population and therefore offer a greater retail and leisure offer than other town centres in their immediate area.
- 3.11 To meet its aspirations for the town centre, as set out in the Sustainable Community Strategy, and reinforced by the Strategy Statement, it is vital that the Council continues to ensure the provision of a suitable development site for additional retail provision. Without such an opportunity within the town centre, the threat of the development of significant out of town retailing increases. The sequential approach set out in Government planning policy requires that in the first instance, sites for meeting retailing need should be within existing centres.

If none are available, then edge of centre locations may be utilised and, if no such opportunities exist, out of centre sites may finally be considered.

- 3.12 Regardless of the Planning Committee decision on the detail of the previously proposed scheme, it is therefore recommended that the Council re-affirms its commitment to the development of revised proposals for a major retail led development within the Leamington town centre.
- 3.13 The Council's planning policy and economic development roles are entirely separate from its role in determining planning applications. Despite the Planning Committee's decision there is, therefore, no inconsistency in the Council re-affirming its commitment to the development of a retail led scheme nor to it continuing to work with Wilson Bowden, its properly selected development partner, to bring forward revised proposals for such a scheme. Development of a suitable scheme would minimise the risk of economic decline of Leamington town centre, the primary retail centre of the District, which could otherwise arise from increased out of town provision. A successful scheme would make a significant contribution to the Council's aim of securing the continued economic, social and environmental well-being of the town centre, as reflected in the Sustainable Community Strategy and the Strategy Statement that provides the basis for the development of the new Local Plan.
- 3.14 A re-evaluation of town centre options, undertaken since the Planning Committee decision, has confirmed that there are no alternative sites capable of delivering a significant retail development within the timescale that would be possible for an amended scheme at the Chandos Street site.
- 3.15 There is only one other site that, as with the Chandos Street site, has a large core of Council owned land that would enable the Council to be proactive in bringing forward a potential scheme. However, a combination of the development constraints of this site, the need to plan for significant alternative car parking provision during the development phase, and the delays that would be caused while the detailed survey work and preliminary land assembly (already undertaken at the Chandos Street site) rule this out as a viable alternative. The opportunity to extend the defined Town Centre area and identify edge of centre sites is also limited. Therefore, without a commitment to progress a revised scheme on the current site, the Council may find itself more vulnerable to arguments that capacity needs to be found for retail development in out of town locations.
- 3.16 The Council has previously agreed the 'in principle' use of its CPO powers in relation to an approved Clarendon Arcade scheme on the Chandos Street site. Given the continuing rationale for a retail led development scheme within Leamington town centre, to further its economic, social and environmental well-being, the rationale for the potential use of these powers, if ultimately needed, also remains. Further consideration of the CPO issues is contained within the Part B report.
- 3.17 The implications of the Planning Committee decision extend beyond the heightened risk to the town centre from out of town or out of area developments. Subject to approval of 2.2 detailed discussions with our development partner will be required to determine the feasibility and nature of a suitably revised scheme, with 'in principle' agreement subsequently being sought prior to the submission of a revised planning application. However, it is already clear from initial discussions with Wilson Bowden that the preparation of

any such revised scheme will have financial implications for both parties and that revisions to the Development Agreement will be required.

- 3.18 The likely commercial implications of the decision are explored in the Part B report, which, due to the commercially sensitive nature of its contents is a private and confidential document. There are no specific recommendations in the Part B report but its contents must be read in conjunction with this Part A report in order for members to make an informed decision on the recommendations set out in section 2.
- 3.19 At this stage it is not possible to predict the extent of the revisions that may be required to the Development Agreement, not least because Wilson Bowden have yet to complete a full assessment of the scale of the changes that are likely to be necessary in order to address the reasons for the refusal of planning permission. If these changes were to impact on the potential commercial viability of an amended scheme it seems inevitable that some of the terms of the current Development Agreement may need to be revised. Dependent on the nature of any such revisions, they could have significant consequences for the Council, an issue that is explored further in section 5 of the Part B report.
- 3.20 It is therefore recommended that whilst delegated authority is approved to allow the necessary discussions to be progressed, any proposed revisions to the Development Agreement are brought back to a future Executive for consideration. This is consistent with the approach adopted for the current Development Agreement which was presented to the Executive in draft form in December 2009, prior to it being formally signed in March 2010.
- 3.21 It seems likely that the Council may need to seek specialist independent legal advice, and potentially retail advice in order to protect its position as the proposed negotiations progress. At this stage it is proposed that a commitment of £40,000 is made against the 2011/12 Contingency Budget to allow the commissioning of such work under delegated powers if the negotiations demonstrate a need, in order to bring forward the further Executive report referred to above.
- 3.22 There are also a number of immediate issues that need to be addressed, hence the separate recommendation 2.7. These concern the exercise of the clauses within the existing Development Agreement that make provision for an appeal of a planning refusal and for the Council to determine a revised Planning Unconditional Date (see Part B, Appendix two for definition) of 40 working days after such a planning refusal. These issues are explored further within the Part B report.
- 3.23 Since the Planning Committee decision, officers (and on one occasion members of the Executive) have held lengthy discussions with Wilson Bowden as to what can be learnt from the process leading up to that decision and how this learning can be applied to the work required to bring forward a revised scheme. One issue that has been identified is that we have lacked sufficient resource within any of the Development Services teams to co-ordinate a complex corporate project such as this.
- 3.24 To address this resource shortfall it is proposed that the Service Transformation Reserve is utilised to provide funding to engage a specialist part time coordinator, based within Development Services to focus on ensuring that all the tasks necessary to be undertaken by the Council in relation to a revised development proposal are achieved satisfactorily in accordance with a revised

project plan and within the relevant financial framework. This post would provide a dedicated point of contact for Wilson Bowden on all operational matters concerning Clarendon Arcade and would be responsible for coordinating the complex range of activities that will be required to bring forward a revised scheme across the Development Management, Planning Policy and Economic Development teams within Development Services.

- 3.25 It is further recommended that this project coordinator resource is also utilised on other complex corporate projects, for example, to coordinate the work required to address the complex range of potential issues associated with the proposals for significant employment led development at the Coventry and Warwickshire Gateway site. Flexible use of the post's specialist skills will not only add value to those of the Council's existing workforce but ensure those skills can be effectively deployed when not fully engaged on the Clarendon Arcade project.
- 3.26 At this stage it is anticipated that a temporary member of staff would need to be engaged for a maximum 12 month period. A job description for the post will require finalisation to eliminate potential duplication with existing resources and ensure a suitable candidate can be recruited. It is considered likely that when the role is finalised it will be the equivalent of a part time Grade A or B post.
- 3.20 As stated in 3.17 above it is proposed that, subject to approval of the recommendations and the detailed discussions required with Wilson Bowden, that a revised scheme is brought back to Executive for 'in principle' approval (as the previous scheme was in 2008) prior to submission of a fresh planning application.

4. **POLICY FRAMEWORK**

- 4.1 The recommendations are consistent with the Council's Vision and the Sustainable Community Strategy's general focus of furthering economic, social and environmental well-being for the district and the specific focus on the town centres of Leamington, Warwick and Kenilworth to underpin and develop economic activity.
- 4.2 The Council meeting of 1 December 2011 approved a Strategy Statement, attached at **Appendix Two** that will form the basis for the development of the new Local Plan. This statement reaffirms the Council's commitment to maintaining and promoting thriving town centres. It also recognises that in developing the plan it will be necessary to reconcile the intertwined needs of facilitating growth and development of the local economy, providing for population growth and demographic change and maintaining strong development management practices.
- 4.3 The current adopted Local Plan (1996-2011) and in particular policy TCP 3 provides for the development of large scale shopping proposals in accordance with a range of criteria. With the need for a retail led development scheme having been established through the previously commissioned retail study reports from DTZ, the Chandos Street site was selected after a detailed search as the most suitable site for future retail development in Leamington. A copy of the information provided to the July 2008 Executive, setting out the policy context for the development of the scheme is reproduced as **Appendix Three**.
- 4.4 The previous scheme put before Planning Committee was developed with reference to the relevant policies within the Local Plan, as any proposals for an

alternative scheme would be. Any new scheme that is brought forward would also be in accordance with national planning policy. The current guidance in national Planning Policy Statement 4 urges local authorities to take a proactive stance in securing the future of town centres and actions to secure a major town centre retail development would be compliant with this advice.

- 4.5 The Government has recently consulted on a revised National Planning Policy Framework aimed at replacing the current national policy guidance with a radically simplified framework. The draft framework document has an entire section on the promotion of the vitality and viability of town centres under the general heading of Planning for Prosperity. In particular it urges Local Planning Authorities to:
- recognise town centres as the heart of their communities and pursue policies to support the viability and vitality of town centres
 - define a network (the pattern of provision of centres) and hierarchy (the role and relationship of centres in the network) of centres that is resilient to anticipated future economic changes
 - define the extent of the town centre and the primary shopping area, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations
 - recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites
 - allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, community services and residential development needed in town centres. It is important that retail and leisure needs are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites
 - allocate appropriate edge of centre sites where suitable and viable town centre sites are not available, and if sufficient edge of centre sites cannot be identified, set policies for meeting the identified requirements in other accessible locations; and
 - set policies for the consideration of retail and leisure proposals which cannot be accommodated in or adjacent to town centres.
- 4.6 The draft National Planning Policy Framework also proposes that the existing sequential approach to planning applications for retail uses that are not in an existing centre and are not in accordance with an up to date Local Plan should be retained.
- 4.7 The Localism Act has now gained royal assent, meaning that the existing Regional Spatial Strategy (RSS) will finally be abolished at some point during 2012. However, until that time the current RSS, which establishes Leamington as a third tier strategic town centre and therefore the preferred location for major retail developments exceeding 10,000 sq m (policy PA11) remains in place. Whilst the likely timescale for bringing forward an alternative retail led development for Leamington will almost certainly extend beyond the date of the abolition of the RSS, it is considered that the town centre remains the only suitable location within the district for a retail led development of the intended scale.

5. BUDGETARY FRAMEWORK

- 5.1 The budgetary implications of revisions to the Development Agreement are considered within the Part B report.

- 5.2 The 2011/12 Contingency budget currently has £209,800 of unallocated provision. Approval of recommendation 2.8 would reduce the unallocated balance (by a maximum of £40,000 but only if considered necessary) to £169,800.
- 5.3 The Service Transformation Reserve currently has an unallocated budget of c£1,700,000, which includes the 2011/12 New Homes Bonus allocation. Subject to approval of recommendation 2.9 it is anticipated that a maximum of £60,000 would be required to engage a suitably qualified planning coordinator for a maximum 12 month period to primarily work on this project, but where necessary to be deployed to other major, complex, corporate projects.
- 5.4 Preliminary discussions with Wilson Bowden have established that they would 'in principle' be prepared to supplement the funding of the element of work attributable to a revised Clarendon Arcade project. This would, subject to approval of recommendation 2. 4, be discussed further as part of the discussions on the Development Agreement but it is felt that a demonstrable commitment from the Council that it was prepared to put its own resources into the engagement of a suitable coordinator is likely to assist the negotiations.

6. ALTERNATIVE OPTION(S) CONSIDERED

- 6.1 Members could decide not to pursue retail led development within Leamington town centre. This has been discounted on the grounds that to do so would potentially expose the district to an immediate and continuing risk of out of town development with a potentially significant impact on the vitality and viability of the districts primary retail centre. Lack of investment in Leamington town centre also exposes the existing retailers and businesses to the risks of an adverse impact from out of area town centre developments. We are already seeing interest for edge of centre, for example the former Ford Foundry site and out of town, for example the Leamington (formerly Shires) Retail Park retail development so the scale of this threat should not be underestimated.
- 6.2 Members could decide to appeal the planning refusal. This has been discounted for the reasons set out in section 5 of the Part B report.
- 6.3 Members could decide not to seek to revise the Development Agreement with Wilson Bowden. This has been discounted for the reasons set out in section 5 of the Part B report.
- 6.4 Members could decide not to approve funding for a planning coordinator post. This has been discounted given the prominence of the two corporate projects that it is intended would be supported by the post and the need to demonstrate to our development partner our intent (and our willingness to commit resource) to the process of bringing forward retail led development in Leamington town centre. 'In principle' agreement has been obtained that our resource commitment could be enhanced, or (subject to an assessment of the level of resource required) potentially reduced, by the allocation of private sector resource.