

### Background to process of scheme development

- 1.1 In December 2004 Executive received a report setting out the need to address the future of retailing in Leamington town centre. The report set out the results of studies undertaken by DTZ on the potential for future retailing in Leamington and the need to progress future retailing proposals for it to maintain its position as an attractive, vibrant and successful shopping centre.
- 1.2 The report was made following commercial appraisal work undertaken on behalf of the council by CB Richard Ellis, a London based firm of Chartered Surveyors with experience of advising councils on commercial/retail development matters. The company was asked to address the potential for achieving a successful retail development based on the Chandos Street car park site. They concluded at that time that such a scheme would be commercially viable and would be likely to attract a range of potential retail operators.
- 1.3 At the December 04 Executive, it was resolved that:
  - 1) *Positive steps be taken to explore opportunities further retail development in Leamington town centre in order to safeguard its future as an important and attractive shopping centre within the sub-region*
  - 2) *Work be progressed in establishing a programme of work to achieve such development, focusing on the potential of Chandos Street as a first priority potential site and such programme including arrangements for full public consultation be reported to a future meeting of the executive*
  - 3) *Such work to take into account the future need for car parking, maintaining the retail attractiveness of the town centre overall, and for a working party of members be appointed to consider progress including a means of securing full consultation with all appropriate parties.*
- 1.4 Other work commitments prevented progress on this matter until late 2005 / early 2006 Executive when resources permitted reassessment of progress. As it was by then 12 months since the work undertaken by CBRE a further market assessment was undertaken by the company on behalf of the council to check on the underlying assumptions made at that time. A revised assessment produced in early 2006 concluded that not

only was the prospect of a scheme being successfully achieved still the case, but that the viability of the potential scheme in commercial terms, had increased since that time. CBRE also reported that major retail interest remained in place for such a scheme.

- 1.5 On that basis a further report was made to executive in March 2006 advising members of progress and requesting approval for a programme to secure the development of the Chandos Street site for retail purposes and additional car parking and that expressions of interest from potential developers should be sought.
- 1.6 Executive resolved as follows:
  - 1) *The programme for securing the development of the site of Chandos Street car park for retail purposes and additional car parking as set out in the report be approved and*
  - 2) *The council seeks expressions of interest from potential developers in accordance with the programme.*
- 1.7 The programme set out a staged process of developer selection leading through to commencement of development on site. The report set out the 3 main stages which, revised slightly for practical purposes as matters progressed was as follows:

### **Stage 1**

- Preparation of a marketing brochure advertisement and OJEU notice
- Invitation to submit expressions of interest from prospective developers
- Receipt of initial expressions of interest
- Selection of a short list of potential developers

### **Stage 2**

- Issue of detailed development brief and planning guidance to short-listed developers
- Discussion with developers as potential submissions are worked up
- Receipt of developers schemes and bids
- Review and analysis of bids
- Selection of the preferred developer
- Entry into collaboration agreement to give a 12 month period of scheme development in Stage 3 below

### **Stage 3**

- Work up of scheme by a selected developer
- Public consultation as part of work up process

- Finalise preferred scheme
- Agree Heads of Terms
- Enter into development agreement
- Settle form of Ground Lease and CPO Indemnity Agreement
- Submit detailed planning application and commence CPO where necessary
- Planning consent/CPO granted
- Start development

1.8 Following approval of this general approach by Executive, progress on the programme commenced overseen by the working party of members originally consisting of Councillors Tamlin (chair) Holland (replacing Cllr Tamlin), Mrs Begg, Hammon and Kirton and now consisting of Cllrs Hammon, Crowther, Boad and Heath. The programme was configured in accordance with a standard approach towards securing town centre retail development, whereby assessments of submissions made against a range of selection criteria leads towards the appointment of a selected developer who has demonstrated that it is possible to achieve a scheme that meets the Council's requirements. At that stage the Council has not approved a final scheme, but has satisfied itself that a particular developer is capable of producing an appropriate scheme in all relevant respects. At that stage the developer would enter into an agreement with the Council to work up a scheme. An integral part of this stage of the process would be extensive public consultation.

1.9 Work commenced in accordance with the programme with the preparation of an "Expression of Interest Document" that was issued in May 2006. This set out a brief introduction to the site, the retailing character of the town centre and an initial range of criteria to be met. The document also set out summary planning and development guidelines for the site, reflecting local and national policy towards development within the historic centre of Leamington

1.10 The opportunity was advertised during April 2006 and a considerable number of requests for the Expression of Interest brochure were received. Interested parties were required to submit a completed pre-qualification questionnaire by mid-June. At the deadline 13 completed submissions from a range of development companies had been received.

1.11 A technical assessment of each of these submissions was undertaken by CBRE and officers and as a result of this, 8 candidates were recommended for long listing for the issue of an invitation to submit outline particulars. These were then expected to submit outline proposals by mid-July 2006 which would be the subject of interviews with council officers, CBRE and members of the working party.

1.12 Further information was submitted by most of the developers and on the 18<sup>th</sup> and 19<sup>th</sup> July 2006, interviews were held with 7 developers to ascertain their

suitability for moving forward to the short-list stage. The interviews took place with representatives of CBRE, council officers and the members' working party present.

1.13 Following consideration of the information submitted beforehand and added to at the interviews, the following 4 developers were selected to go through to the next stage;

- Wilson Bowden
- Milligan
- Simons Developments
- Henry Boot

1.14 A full development brief was prepared, setting out in more detail the design and development criteria that the council would expect to be reflected in a scheme, within the context of the current planning policy framework in place, and the details of partnership arrangements and financial submissions. This brief was issued to the short-list of developers in mid-August who were then provided with a period until the end of October to prepare and submit their proposals.

1.15 At the end of October 2006, full submissions were made by all 4 developers. These were subject to initial analysis and a detailed presentation session was undertaken on 13<sup>th</sup> November to allow each developer to present working party, council officers and their advisors, CBRE.

1.16 The presentation session was followed by detailed review meetings with officers, CBRE and working party members and further work has been undertaken on clarification of a number of aspects of individual submissions.

### **Preferred Developer**

1.17 It was concluded that the submission made by Wilson Bowden had the most potential to provide a scheme that would secure a desirable departmental department store and was most likely to provide a layout that would maximize the potential of the site for a new retail scheme for the town. The design analysis undertaken by your officers also anticipated that the scheme had the potential to provide an appropriately designed, high quality addition to the town's character, though, as in all of the schemes, there were characteristics of the preliminary designs that would need evolution.

The outcome of this assessment was submitted to the Executive of March 07 which resolved:

*That the recommendations of CB Richard Ellis to the Council on developer selection be accepted as the basis for proceeding with the next stage of the programme leading to development of the Chandos Street site for retail purposes. The recommendations of CBRE are (in summary form) as follows:*

- a. the Wilson Bowden scheme provides the strongest scheme proposal and development team to achieve and deliver the Council's principal objectives*
- b. a 3 month period should be allowed within which to refine the Wilson Bowden scheme design and address outstanding matters of viability/feasibility, with the Council's professional costs covered by the developer*
- c. Subject to the scheme achieving feasibility and viability, the Council should complete the collaboration agreement with Wilson Bowden to move the project forward*
- d. The Council should establish a process for progressing legal negotiations, particularly Heads of Terms and site acquisition, including the use of compulsory purchase powers*
- e. The Council should drive forward the detailed design refinement process and ensure that a satisfactory process is put in place to work up a detailed planning application within an agreed period and address car parking, servicing and access issues as part of this process*
- f. The Council should put in place a project management process to ensure there is close management of the developer, its professional team and the and the work streams above*
- g. The Council should agree with its preferred developer a suitable public consultation process, which in due course will form a key part of the planning and compulsory purchase order process*
- h. The current risk of £36,500 in excess of the originally agreed budget is noted*

*1.2 That a further report on this matter be made to members at the end of the 3 months*

*1.3 That the Code of Contract Practice be waived to allow the appointment of CB Richard Ellis as the Councils commercial and retail advisers in progressing the scheme and Reed Smith Richards Butler LLP as external solicitors necessary*

*to negotiate and draft the appropriate development agreement in order to properly protect the Council's interests*

*1.4 That a further report be made in due course on the public consultation process to be undertaken in the event of confirmation of the appointment of a development partner*

It was agreed that a further report be made to the Executive of July 2007 on the outcome of the further work to be undertaken by Wilson Bowden.

### **Further Assessment Work**

1.18 Wilson Bowden were asked to address three key areas:

- How parking can best be provided having regard to both the district and the County Council's respective highway and car park strategies
- How can a successful retail scheme be configured to provide accommodation suitable for a major multiple store
- How should the scheme design be further refined to improve overall design and viability

1.19 This work was undertaken, together with further assessment work by CBRE.

The conclusions were as follows:

### **Parking**

The parking issue could be resolved such that the provision of approximately 500 spaces within the scheme, necessary to attract the multiple retailer can work in conjunction with the Council's own parking Strategy and the County Councils wider transportation requirements. Extensive discussion took place with the County Council on the relationship of this scheme with wider parking provision and the prime importance of securing a scheme for the benefit of the Town centre was recognized by WCC.

### **Retail Element**

In relation to suitability in retailing terms, the scheme had evolved from the initial submissions at the selection process stage in a manner that provided a more realistic and commercially attractive scheme.

### **Design Issues**

In relation to design, amendments reduced the impact of the scheme on outside elevations. The impact overall in massing terms was such that the draft scheme

largely sat back behind existing elevations. Its main external impact was in four areas:

- At the Warwick Street entrance, where the design shows an approach that could readily be evolved to a satisfactory solution
- To Parade, at a “punch through” adjacent to the former Post Office building. At this point a new portico would be created, forming an entrance similar in style to the new entrances from the Parade into the Royal Priors scheme.
- On the Chandos Street elevation, a new residential element was introduced, which provided the opportunity for a more sensitive and complementary design solution to be found.
- Amendments to the service and car park access arrangements resulted in the creation of an elevation near to the properties fronting Clarendon Avenue. This was recognized as a sensitive issue, with the flank of the car park entrance adjacent, which would require careful assessment as the scheme develops

### **Consideration by Executive July 2007**

At the meeting of July 2007, a report was made to Executive setting out the background, the evolution of the scheme and the current position. Executive resolved as follows:

- 1.1 *That The Council select Wilson Bowden as its prospective development partner for the development of a retail scheme on the Chandos Street site*
- 1.2 *That The Council enter into a collaboration agreement with Wilson Bowden to enable detailed work up of a scheme to proceed and for negotiations to be undertaken on an appropriate Development Agreement*
- 1.3 *That a comprehensive public consultation process be undertaken to ensure that community interests have a full opportunity to contribute to the scheme design process*
- 1.4 *That the Council affirm its willingness to utilise Compulsory Purchase Powers where necessary to achieve site assembly necessary for a scheme to proceed*
- 1.5 *That the current risk of the committed £36,500 in excess of the originally agreed budget , subject to entry into a collaboration agreement, is noted*
- 1.6 *That the additional financial risk of approximately £101,500 in the event of a subsequent Development Agreement not being concluded is noted*

*1.7 That further reports be brought to Executive as progress continues*

1.20 The public consultation process commenced in September 2007. The Consultation was extensive and resulted in significant amendments to the scheme. This consisted of:

- public consultation exercise at Royal Priors – exhibition both manned and unmanned for a period of a week in September
- meetings with relevant local organizations; the Town Council, Town Centre Management Initiative, Leamington Society, CLARA, Chamber of Trade,
- meetings with individuals including present occupiers of properties immediately around the site and owners/agents
- meetings with groups of residents and other specific interest groups e.g. Clarendon Avenue residents and Baptist Church representatives
- discussions with English Heritage
- discussions with MADE – the local Midland representatives of the Commission for Architecture and the Built Environment

1.21 The scheme that was subsequently put to Executive in July 2008 incorporated a series of amendments arising from the consultation process.

**Consideration by Executive July 2008**

At this meeting Executive resolved:

- 2.1 That the selection of Wilson Bowden as the Council's development partner for the retail led redevelopment of the Chandos Street site be confirmed*
- 2.2 That in principle the scheme proposed by Wilson Bowden, in its submission of April 2008 for the retail led redevelopment of the Chandos Street site meets the Council's Local Plan requirement to achieve development to secure the future of Leamington town centre as a vital, vibrant and economically successful retailing centre, subject to it securing planning permission and all other necessary consents*



- 2.3 *That the Head of Legal Services be authorized to settle and complete the Council's Development Agreement with Wilson Bowden, as soon as practicable*
- 2.4 *That the Head of Planning and Head of Legal Services be authorized to confirm the joint appointment with Wilson Bowden of Wragge & Co LLP solicitors in connection with the all matters relating to the CPO*
- 2.5 *That the Head of Legal Services be authorized to undertake all preparatory work including land referencing and serving all appropriate requisition notices necessary for the making of the CPO*

1.22 Since the previous Executive in 2007 a number of issues had been addressed:

- A Collaboration Agreement had been entered into in October 2007, following advice from the Council's external legal and commercial advisers. This set out the parameters by which the Council would, in due course, secure a Development Agreement. With its signing a sum of £75,000 was released from Wilson Bowden for payment to cover, in part, the Council's committed and forthcoming expenditure on commercial and legal costs.
- The Heads of Terms of the Development Agreement had been finalized which would cover the grant of planning permission, a successful outcome to the CPO (i.e. confirmation by the Secretary of State), appropriate stopping up orders for the existing public highway and securing a successful funding position for the scheme as pre conditions to be satisfied before the development can take place
- The public consultation exercise had been completed which raised a number of concerns as well as some expressions of support. Consequently the scheme that had been presented to members in July 2007 had been subject to a significant number of changes to take account of the outcome of the consultation process together with further site assessments and scheme development.

1.23 The previous scheme was of course, only a draft scheme developed at an early stage in the scheme evolution process from which development and improvement was always anticipated. The main changes to the earlier scheme that allowed its 'in principle' approval in July 2008 were:

**(i) General layout**

The disposition of shopping within the scheme remained broadly as before with the main anchor store at the north east corner of the site and a central mall running northwards from Warwick Street. The line of this Mall had been shifted slightly to the West to align

better with Royal Priors and the access point through Parade adjacent to the former Post Office is in the same place but reconfigured to accommodate the former Post Office listed building more effectively.

Changes had taken place in relation to access whereby the service access from Clarendon Avenue to the north and car park ramp access immediately to the rear of the Clarendon Avenue properties had been replaced by new vehicular and service accesses from within Chandos Street reflecting the access arrangements currently in place at the Royal Priors scheme to the south. This had resulted in removal of significant external ramp elevations from the rear of residential properties, provided more workable arrangements for service and car park access and the opportunity to develop a higher quality north entrance to the scheme. All vehicular circulation ramps were now incorporated within the scheme which consists of two levels of shopping as before plus an enlarged basement retail area.

The car parking deck layout had been reconfigured which has resulted in the loss of a complete floor from the scheme. This had significantly reduced the scale of the scheme in overall terms while still enabling the provision of the 500 plus car parking spaces required.

The extent of the scheme in terms of its impact on adjoining land and property had been examined closely. The scheme extends over the minimum area of land necessary to achieve a successful development in commercial and practical retail terms. It was acknowledged that its proximity to and impact on all adjoining property would require further examination in order to reduce as far as possible any potential for adverse impact on residential amenity.

## **(ii) Massing**

As a result of the reduction in scheme levels, the cutting back of high level elevations from Clarendon Avenue properties, reconfiguring of the ramp accesses and the re-modelling of scheme peripheries the massing of the scheme had been significantly reduced.

## **(iii) Elevational Treatments**

The elevation to the entrance from Warwick Street had been designed broadly to reflect the approach taken in the Royal Priors entrance opposite, with curving flanks leading to a main entrance

point. Along Chandos Street, where the main new additional elevation is created, a design ethos reflecting characteristics of traditional Leamington development had been incorporated creating a satisfactory approach to the street elevation at this location.

The massing of the car park to the rear (reduced in height) was now treated as a secondary elevation behind a primarily residential frontage. Other elements, such as the creation of an additional entrance to assist occupiers of premises on Chandos Street have been introduced as a result of the consultation process.

To the north a new elevation had been created in the truncated element of Guy Street to provide a contemporary and appropriate feature at this point. A traditional portico approach had been taken with the new entrance on Parade reflecting the approach undertaken with the new entrances created for the Royal Priors scheme.

#### **(iv) Sustainability/Conservation Measures**

The Developers are charged with creating a scheme of high credentials in terms of sustainability and energy efficiency. Developmental work was being undertaken on combined heating and power systems, solar collectors and small scale wind turbines together with high performance construction materials and close attention to air tightness and ventilation systems in order to achieve high credentials in this area.

#### **(v) Access and car parking**

Discussions had taken place between the developers, their transportation consultants and the Highways Authority on car parking provision and service access. The provision of approximately 500 car parking spaces would meet Local Plan Policy, Car Parking Strategy and wider transportation policy requirements for a balance of car parking provision throughout the town whilst securing the commercial requirements of a major anchor store user. Vehicular access had been designed to accommodate appropriate articulated and rigid lorries which would use access routings used successfully for the Royal Priors scheme.

- 1.24 Approval of the scheme ‘in principle’ meant that the key elements of the scheme design were “frozen”, meaning that the main configuration, massing, access and content of the scheme had been established. This

did not mean the scheme could not be subject to further variation, for example in relation to detailed elevational design.

1.25 However, at this stage there were effectively 5 key questions for the Council to address:

- a) Will the scheme have the potential to provide the retail package necessary to maintain Leamington as a successful and vibrant shopping centre?
- b) Will the scheme meet the necessary standards of design compatible with preserving and enhancing the Conservation Area, maintaining the character of the urban fabric, securing a satisfactory relationship with adjoining properties, with the Council's broad aspirations for this site and its planning policy framework?
- c) Is it likely that the Council will need to use its compulsory purchase powers in order to assemble the land needed for the scheme?
- d) Will the scheme as proposed be viable as well as meeting the Council's required financial framework?
- e) Will the risk to the Council be within acceptable limits?

1.26 Each of the above questions was considered and the results reported to Executive. The conclusions were:

**Suitability of Retail Package**

This was examined in detail by CBRE, the Council's commercial/retail advisers. They considered carefully the layout in terms of its attraction to appropriate anchor tenants and major retailer needs and looked at its internal configuration and linkages to assess whether it would provide a successful and attractive retail environment. Their conclusion was that the scheme would meet the requirements of major anchor tenants well and provides an opportunity for many other major current retailers who require floor areas not currently available in Leamington to come into the town. Their advise was that it was likely that such occupiers would be readily attracted to the scheme as now configured and it had significant potential to attract appropriate retailers.

**Standard of Design – suitability for Leamington Town Centre**

In terms of detailed design the scheme it was acknowledged that it was not wholly finalized but the scheme as it stood, subject to further detailed consideration through the planning system, was considered to one that

could be regarded as appropriate and suitable in design and massing terms for the particular character of Leamington.

### **Compulsory Purchase order requirements and Order Lands**

It was considered that it would be highly likely that it will be necessary for the Council to exercise its compulsory purchase powers in order to obtain the appropriate area of land to secure the scheme. Therefore in due course the Council will need to resolve formally to utilise the CPO powers available to it in order to secure the necessary land. Meanwhile, it would be necessary for the Council to undertake the preparatory work for making the CPO, involving investigation and examination of land interests in the land that would be the subject of the CPO.

### **The Council's power of compulsory purchase**

The Council has the power under Section 226 of the Town and Country Planning Act 1990, (as amended by the Planning and Compulsory Purchase Act 2004) to make a compulsory purchase order for any land in its area if the Council think that the purchase will facilitate the carrying out of development, redevelopment or improvement on or in relation to that land. This power is the most appropriate one available to the Council in the context of the Chandos Street scheme, as it is not certain that the developer will be able to acquire the land by agreement.

Under Section 226 the Council may not exercise the power unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:-

- the promotion or improvement of the economic well-being of their area;
- the improvement of the social well-being of their area;
- the promotion or improvement of the environmental well-being of their area.

The report set out the legal guidance around the use of CPO in detail and concluded that the use of this Section is most appropriate having regard to the aims sought to be achieved by the development.

It also considered the Human Rights Act 1998 which prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. While certain Convention rights may be relevant to the CPO (such as the 'right to peaceful enjoyment of possessions'), interference with such rights by public authorities will be justified where the public interest outweighs the interests of the private individual. It was therefore concluded that any interference with Convention rights caused by the CPO would be justified and proportionate

in the wider public interest in order to secure the economic, social, physical and environmental redevelopment of Leamington Town Centre.

### **Viability of Scheme**

The detailed assessment of issues of viability was undertaken on the Council's behalf by CBRE. They reported that whilst market fluctuations are presently adversely affecting the current financial profile of the scheme, they would recommend that the Council agrees to proceed with the development, subject to appropriate cost recovery arrangements in respect of Council funds within the Development Agreement.

It was felt necessary for there to be further examination and assessment of the viability case for the scheme as work progresses. The outcome of the assessments would be submitted to Executive when reporting on a formal Compulsory Purchase Order resolution

### **Risks to the Council**

If the Development Agreement was not exchanged, then the funding to be provided by Wilson Bowden to cover the Council's own consultancy fees would not be forthcoming. The Council would therefore be risking a significant sum depending on the level of expenditure at the time of cessation of progress. This concern had been raised with Wilson Bowden, who had agreed to put in place a staged approach to covering the cost of the Council's fees which will involve payment in tranches to cover the Council's financial exposure. This had significantly reduced the element of risk to the Council.

This willingness to undertake this protection of the Council's expenditure was seen as indicative of the commitment of Wilson Bowden to the scheme. It was clear that this scheme is a high priority for the company and would only be at risk as a result of wider commercial/economic circumstance affecting the wider economy over which neither Wilson Bowden, nor any other individual developer has any direct control.

- 1.27 The Development Agreement was put to Executive in draft form in December 2009, prior to it being signed in March 2010.