

**TITLE OF REPORT: OPTIONS FOR THE FUTURE OF CHURCHGATE AND SURROUNDING AREA, HITCHIN**

REPORT OF THE PROJECT EXECUTIVE FOR CHURCHGATE PROJECT BOARD

**1. SUMMARY**

1.1 The purpose of the report is to:

- (i) Report on the potential future options for Churchgate and its surrounding area as requested by Full Council on 31<sup>st</sup> January 2013.
- (ii) Make a recommendation on the way forward based on consideration of the report.

**2. RECOMMENDATIONS**

2.1 That having considered all the alternative options and risks to deliver the Council's aspirations for the Churchgate area the Council resolves to:

- (i) await the outcome of the Local Plan and consider the approach to take after the final adoption of the Plan,
- (ii) continue an open dialogue with interested developers on the Churchgate site in the interim.

**3. REASONS FOR RECOMMENDATIONS**

3.1 To allow the Council to decide its aspirations for the Churchgate area of Hitchin to protect the medium to longer term vitality and viability of the town, in the light of updated planning policy considerations.

**4. ALTERNATIVE OPTIONS CONSIDERED**

See Section 8 of report.

**5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

5.1 The alternative options formed part of the report to a special meeting of Full Council on 31<sup>st</sup> January 2013 and have been previously noted by members.

5.2 The Leader of the Council, the Portfolio Holder for Finance & IT, The Portfolio Holder for Planning, Transport & Enterprise and also the former Chair of Hitchin Area Committee (2011/12), now a representative of Hitchin Committee, as members of the Churchgate Project Board have discussed and noted the options forming the content of this report.

## **6. FORWARD PLAN**

- 6.1 The report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 January 2013.

## **7. BACKGROUND**

- 7.1 A report was submitted to a special meeting of Full Council on 31<sup>st</sup> January 2013 which considered:

- The request by Simons Development Ltd for variations to the Development Agreement (DA) as set out in their letter of 24 January 2013 which included an extension of the 1<sup>st</sup> cut off date by 18 months to September 2014 with an addition of a further break clause in December 2013 should they have failed to either exchange Heads of Terms with an anchor tenant or submit a planning application by end 2013. They also offered to reduce their priority return percentage and the length of the proposed lease.
- History of the Council's long held aspirations to protect the future vitality and viability of the town centre through redevelopment of the Churchgate centre and surrounding area.
- The procurement process in appointing a development partner and objectives for the project.
- The context and rationale behind the request for an extension of time.
- An analysis of alternative options (i.e. Plan B options) on the way forward to allow members to consider the wider impact of their decision on the request from Simons Development Ltd (Simons).

- 7.2 Following a lengthy and detailed debate the Members were of the opinion that the information presented did not give Council the confidence that a viable scheme could be delivered by Simons and Council rejected the request for an extension of time to the first cut off date in the DA. Relevant Officers were instructed to implement the break clause in the DA should Simons fail to meet the first cut off date, subject to there being no material changes in circumstances.

- 7.3 It was also agreed that the alternative options presented in the report be noted and that if the DA were cancelled that a further report be brought to Council to consider the way forward.

- 7.4 A letter terminating the DA was sent by the Project Executive to Simons on 20<sup>th</sup> March 2013. This concluded the project with Simons for the redevelopment of Churchgate and surrounding area. It should be noted that Simons in their reply to the termination of the DA advised that once the Council had a view on the way forward they remained interested in playing a part in the future redevelopment of Churchgate.

- 7.5 The 31<sup>st</sup> January report to Full Council included the lengthy history of the Council's aspirations for the site, including the 2005 adopted Churchgate Planning Brief and the longer term vision for the surrounding area. Reference was also made to the 2006 proposals by Hammersmatch and to the bidders involved in the 2010 procurement process, who were presenting ideas that encompassed development beyond the extent of the Planning Brief in order to deliver a commercially viable scheme that met the aspirations of the Council at the time. In order to find a scheme that had the potential to be viable, the site areas consistently identified as required were A1 to A3 (the development area in the Churchgate Planning Brief) and additionally the adjacent sites

A4 and A5 (the enhancement areas). A plan showing these areas is attached at Appendix A. The scheme proposed by Simons and also more recently by Hammersmatch in January 2013 (which includes relocating the market to somewhere across sites A3 to A5), plus the concept masterplan presented by local architects (Brent Smith & Mark Wearne) that appeared in The Comet (16 May 2013) all refer to a larger site beyond the realm of the Planning Brief. It is important when considering the options for the Churchgate area, that the wider area and the aspirations that the Council may have for the area and for Hitchin town centre in the future is taken into consideration, as it is important that decisions taken by the Council now do not adversely affect any potential future development needs.

7.6 Section 7 of the 31<sup>st</sup> January report to Full Council also considered a series of options, i.e. the Plan B options, for Churchgate and its surrounding area. In order for Members to consider all aspects, the options clearly set out the pros and cons, financial and legal implications, as well as potential timescales compared to the option of whether to terminate the DA with Simons or not. The options reported on are listed below:

- i) The Council could decide to do nothing with the site for a number of years.
- ii) The Local Planning Authority could prepare a new Planning Brief for the site (or update the existing one) in the medium to long term.
- iii) The Council could undertake a further procurement process at some point in the future, i.e. in the medium to long term, to find an alternative development partner.
- iv) The Council could consider the Hammersmatch Options – including their refurbishment of the existing Churchgate Centre and their extension proposal.
- v) The Council could consider seeking to acquire the Hammersmatch interest in order to simplify land assembly for any future scheme.
- vi) The Council could seek to work up a scheme to achieve planning permission which is then sold or procured against.
- vii) The Council could take more of a joint venture approach through the whole process.
- viii) The Council could explore selling the land to the highest bidder for development or selling off discrete sections of the site for residential development and using the capital receipt or Section 106/Community Infrastructure Levy (CIL) to fund more limited improvements to the Churchgate area.

7.7 During the debate at the Full Council meeting on 31<sup>st</sup> January Members expressed different opinions as to what should happen next following the termination of the DA with Simons. Section 8 below considers the available options and highlights a number of significant issues that should be taken into consideration when deciding a way forward that meets with the Council's Corporate priorities and takes into account the aspirations of the local community.

## **8. ISSUES AND OPTIONS**

8.1 There are a number of significant issues to be considered that will inform the options for the way forward for Churchgate and its surrounding area. These include the viability of any deliverable development on the site; the needs and aspirations of the users of the town centre to ensure sufficient public support; the statutory requirement to produce a Local Plan; the Council's current financial position and the existing commitment of

resources to deliver the Corporate priorities across the district in the short to medium term.

## **Current Context**

- 8.2 The constraints of the site (listed and historic buildings, river, topography) limit the development options and the deliverability of a viable scheme that would meet the aspirations of the Council and the community. Different ideas for the site continue to be produced with the recent proposals by Hammersmatch (January 2013), the concept master plan presented by local architects (as reported in the Comet 16 May 2013) and the presentation by the Hitchin Societies to Hitchin Committee on their aspirations for the town centre (4 June 2013). It is understood that none of these proposals are currently viable without some form of investment or concessions either by third parties and/or the Council. The ideas need to be deliverable in planning and commercial terms. Both the Hammersmatch proposals and the local architects concept masterplan refer to development across the site (to different degrees), while the Hitchin Societies make reference to incremental growth and revisiting the Planning Brief for development at Paynes Park. While such initiatives demonstrate the continued local interest in the future of the Churchgate area and Hitchin town centre, there clearly continue to be different views as to how to proceed. The Hammersmatch proposals will be discussed in more detail under paragraph 8.14. The ideas of the local architects were reported as having been created to prompt debate and the Hitchin Societies paper has been created to input into the wider planning policy process, rather than specifically relating to the Churchgate area. As neither has directly approached the Council with regard to the options for Churchgate these ideas will not be explored further within the report.

## **Local Plan**

- 8.3 The Council is currently preparing a new Local Plan to cover the period 2011 to 2031 and is reviewing its policies in light of the National Planning Policy Framework. Part of this work includes understanding the changing role and function of town centres and the need to review the economic and retail policies to ensure that the town centres continue to retain their market share in the future. Included in this work is the assessment of retail needs and making provision for suitable development sites that will contribute to the continued economic viability of the town centres. The needs of the town centres within the District will also be affected by the locations identified for potential housing development. The Council has prepared a revised Local Development Scheme which sets out its intended timetable for the production of the Local Plan. It is anticipated that the Local Plan should be formally adopted within the next 2 years i.e. by mid 2015. The proposed Local Plan submission document will be agreed by Cabinet in December 2013/January 2014 for public consultation in February/March 2014. It will then be considered by Cabinet and Full Council in July 2014 for formal submission to the Secretary of State. Following an independent examination and approval by the Planning Inspectorate, only then will the Local Plan be formally adopted by Full Council, anticipated mid 2015. The Local Plan timetable is attached at Appendix B.
- 8.4 For the future of Churchgate and the surrounding area the content of the new Local Plan is of critical importance. The current Local Plan (North Hertfordshire District Local Plan No. 2 – with Alterations), adopted in 1996, contains a clear intention to allow a comprehensive redevelopment of the Churchgate Centre and the surrounding areas (including areas A4 and A5 on the Planning Brief) for ‘appropriate town centre uses’. Essentially this means that the current development plan has allocated the whole area for additional commercial development. Notwithstanding the contents of the adopted 2005 Churchgate Planning Brief, when the Council last adopted a Local Plan in 1996 it

made the decision that it wanted a comprehensive redevelopment of the Churchgate area and its surrounding car parks. We are now in a new plan making cycle and critical over arching decisions need to be made by the Council as to where they want to allocate land for housing, employment, retail and other commercial uses up to 2031. None of these decisions have been made yet or indeed tested at Examination by an appointed Government Inspector prior to the Local Plan being adopted. The critical decision in this context is whether the Council is again prepared to allocate sites A1-A3 and sites A4 and A5 for additional new commercial development as a key opportunity development site in the new Local Plan? The answer to this will depend on evidence of need and an assessment of alternative development options available. If the Council decides not to allocate areas A4 and A5 for any form of development and decides it should be left as a car park, this decision would have far reaching implications for what may be feasible, viable and therefore deliverable on any enhancement/redevelopment of the Churchgate Centre itself and the surrounding area. Likewise if the Council decides to repeat the 1996 strategy of seeking a comprehensive redevelopment then other options come into play as to how that might be achieved.

- 8.5 Realistically it would be very difficult to make any strategic decisions on the future of the Churchgate area until all the over-arching issues are resolved, firstly by the Council making the decisions about land uses and future options for growth and then having those decisions tested at Examination in Public by an appointed Inspector before the new Local Plan can be adopted.

### **Council Priorities**

- 8.6 The Council's resources (staff and financial) are currently being utilised to further the identified Priorities for the District and associated projects. Whilst Churchgate had been included in work plans, it was in the context of a scheme led and funded by a developer and the resource identified reflected that commitment. The Local Plan work has similarly been included in work plans. However, if the Council sought to pursue a strategy for the Churchgate Area that required more resource than previously identified for the Simons proposals, this would need to be identified by reviewing existing work plans and objectives and/or employing external expertise.
- 8.7 Seeking to deliver the Council's aspirations for the Churchgate area has led to the Council incurring external costs of almost £1million in total over the past ten years or so, with no tangible outcomes as a result. Council finances are stretched following a number of years of savings and efficiencies and this challenging financial environment is forecast to continue to 2018 at least. Therefore any further investment required should be able to demonstrate a realistic prospect of delivery and a worthwhile financial return.
- 8.8 Of the £1million referred to above, the Council has had to charge the costs spent on the Development Agreement with Simons,(which equates to approx £524k) to Revenue. This had been held for a number of years to be capitalised against a delivered scheme. The £524k will not appear in the Revenue accounts again as it has already been shown in 2009/10, the change is with regard to how it is funded. This has further impact on the Council's current financial position making no funds available for continuation of a project for the Churchgate area in the short to medium term, without re-allocating revenue already identified for other purposes.
- 8.9 Going forward, it should be noted that in the short term the Council will need to patch repair the current car parks of St. Mary's, Portmill Lane East and West and Biggin Lane at an approximate cost of £80k in total over a five year cycle. This is required whichever option is finally progressed in the medium to long term, due to safety reasons and to

ensure parking enforcement can take place. Further deterioration across all NHDC land holdings in the area will create the need for further maintenance expenditure on an ongoing basis (additional to car park repairs), this is estimated at an average of £20K per annum including public realm works, any necessary minor improvements required to the market area and other emerging essential maintenance. Specific examples of known requirements are a £30k capital budget for 2014/15 to undertake structural repairs to the steps at St Mary's car park. Another emerging requirement is the replacement of two of the lighting columns on St. Mary's car park at an estimated revenue cost of up to £10k. A scheme to fully resurface and re-line across all the Churchgate car parks is estimated at approximately £150K at today's prices and is not currently contained within budgets, although will become necessary in the medium term. A specific growth bid for £60k was agreed for 2013/14 budgets to undertake short-term resurfacing work in Portmill Lane West and East car parks.

8.10 Each of the options previously reported to Council will be considered in light of the issues outlined above and will make reference to the following timescales: - short term (i.e. within 5 years); medium term (i.e. between 5 and 10 years) and long term (i.e. over 10 years).

**8.11 The Council could decide to do nothing with the site for a number of years and await the outcome of the Local Plan**

8.11.1 The Council has been considering the future of the Churchgate centre and surrounding area since the mid-1980s, due to the perception that this part of Hitchin town centre does not do justice to the rest of the historic and attractive market town. It is considered likely that the Council will still aspire to improvements to that area that will seek to support the financial health and future growth of the town. However, given current financial pressures and the work being undertaken on town centres in the preparation of the Local Plan, a decision could be taken to put on hold consideration of the future of the area in the short term until the Local Plan has been adopted. An adopted Local Plan will provide the policy context for growth and development of Hitchin and its town centre over the next 20 years thereby providing the certainty required to encourage and promote investment.

8.11.2 Placing other work on hold for the next 2 to 3 years would mean that:

- No further costs are incurred by the Council on Churchgate and surrounding area in the short term, other than costs by the LPA associated with any planning application by third parties and the Council having to renegotiate the lease on the Market.
- The income to the Council from the car parks and the existing Churchgate centre is maintained (subject to continued usage and maintenance/ resurfacing costs)
- Officer resources are being spent on preparing the Local Plan, which allows consideration on future options once greater clarity is known on the extent of changes to the retail environment.

8.11.3 By having an adopted Local Plan in place, with agreed town centre and retail policies, this will strengthen the Council's position in defending potential out of town/edge of town centre developments that could undermine the future vitality and viability of Hitchin town centre. It would also seek to address the threat of leakage by local residents and retailers to competing centres outside the district, thereby ensuring that the town centre continues to retain or build its market share in the future.

8.11.4 Whilst the Local Plan work is undertaken, the Council, as landowner, could listen to any emerging ideas or development proposals from third parties.

**8.12 The Local Planning Authority could prepare a new Planning Brief for the site (or update the existing one) in the medium to long term.**

8.12.1 The current planning brief is seven years old and was prepared in a different economic climate. Moreover, the current planning brief was adopted within the framework of the current over-arching Local Plan (adopted in 1996) which, as is explained above, is now being replaced by a new Local Plan. To prepare a new planning brief for this site before the new Local Plan (together with all associated land allocations and development strategies) is adopted would be an illogical sequence of events and would potentially lead to abortive work by the Planning Policy and Projects Team. For example, if a new brief were devised that sought some form of development on areas A4 and A5 in order to enable a viable redevelopment/refurbishment of the Churchgate Centre and then the Council decided in its new Local Plan not to allocate areas A4 and A5 for any form of development, the Council would have established a very confused local policy context for the future of the Churchgate and surrounding area. Conversely, if a new brief, in consultation with local groups, led to a conclusion not to allow any development on areas A4 and A5 and then the Council decided to allocate these sites for development in a new Local Plan there would be further confusion.

8.12.2 Preparing a new brief would, however, take account of changing shopping patterns and the economic growth of the town but in order to ensure the right sequencing of decision making, and to ensure that any new brief has sufficient status for assessing future planning applications, it can only be devised after the Council has prepared and adopted a new over-arching Local Plan which assesses the future of the Churchgate and surrounding area as part of a wider development strategy for the District as a whole.

8.12.3 As mentioned above, the Council is currently preparing a Local Plan and reviewing its retail and town centre policies in light of the NPPF. Given that it is anticipated that the Local Plan should be formally adopted within the next 2 years i.e. by mid 2015, this would be an appropriate time to consider reviewing the Churchgate Planning Brief. A new or revised Planning Brief could provide more clarity on what is considered an acceptable use of St Mary's Square and Portmill Lane car parks, taking into account policy guidance set out in the adopted Local Plan.

8.12.4 Preparing a revised planning brief prior to the adoption of the Local Plan is unlikely to provide any new ideas, given that all those, including the bidders as part of the original procurement process, Simons and other more recent third party interests, who have looked at the site have ultimately produced very similar schemes that include the surrounding car parks. Equally preparing a planning brief based on research conducted in an economic downturn may not provide a well considered long term solution. A new Brief would require further public consultation, which was lengthy and controversial last time as outlined in the background section of the 31<sup>st</sup> January 2013 report to Full Council, and could take up to 2 years. In two years time the Council will be well on its way to adopting the new Local Plan.

8.12.5 The Strategic Planning and Projects Team, who would be responsible for preparing the planning brief, is committed to the production of the Local Plan which is a statutory requirement. There will be limited resources to put into the preparation of a new or revised Planning Brief in the short term until the Local Plan is adopted. If the Council were minded to progress the Planning Brief in the interim this would require external input and could cost the Council in the region of £50 to £70k for consultants given the challenges of the site and the requirement for full public consultation. Alternatively the

Council could employ an additional officer on a fixed term contract, but would still require some external expertise.

8.12.6 It is also to be noted that the option of a Neighbourhood Plan for the town centre area should not be ruled out. In terms of the current legislation, a Local Plan needs to be in place as a neighbourhood plan should be in conformity with the Plan. This means that a neighbourhood plan could not put forward less development than is in the adopted Local Plan. This is another reason for suggesting that any review of the Planning Brief commences post adoption of the Local Plan.

8.12.7 It may be that the policy guidance in the new Local Plan, together with Government guidance at the time of its adoption (i.e. anticipated mid 2015), may be sufficiently comprehensive that a specific Planning Brief is not required for the Churchgate area and is sufficient to afford the Council to consider redevelopment of the site through some of the other options identified in this report. Other documents can also be referred to as material considerations in the determination of any future planning application(s), such as the Design Supplementary Planning Document (adopted July 2011) and local conservation area appraisals for example. This may result in redevelopment of the site being progressed in the short to medium term rather than the medium to long term in the case of preparing a revised planning brief, which could take a minimum of a further 2 years following the adoption of the Local Plan. (Appendix B sets out the agreed Local Plan timetable)

**8.13 The Council could undertake a further procurement process at some point in the future, i.e. in the medium to long term, to find an alternative development partner.**

8.13.1 Given the current state of the economy, reflected in the challenges that Simons (the Council's previous development partner) were facing, it would not be considered advisable to progress this in the short term as there is no guarantee that the Council would find a developer with suitable funds to progress a scheme that meets the aspirations of the Council and the users of Hitchin town centre. Nor is there any guarantee as to whether any development would be completing in an economic upturn or downturn. It is also unlikely to result in any different solutions being proposed on the site as all ideas put forward by the other bidders during the 2009-2010 procurement process and by other third parties previously and more recently by Hammersmatch as part of their January 2013 proposals and the local architects concept masterplan) have been broadly similar in use of the available land. All proposals have extended beyond the existing planning brief initial development area and including some form of development on St Mary's and the Portmill Lane West and East car parks.

8.13.2 The Council had costs from the previous project with Simons that have now been met from revenue (£524K) as referred to in the Revenue Outturn report to Cabinet on 18<sup>th</sup> June 2013. As reported to Finance, Audit & Risk Committee on 13<sup>th</sup> June 2013, subject to Council's decision on the way forward, £93k of that sum might have continued to be held as capitalised expenditure for application to a future scheme. In view of the uncertainty surrounding the potential for a future scheme, Cabinet took the view that the more prudent approach was to charge the full amount to revenue in the 2012/13 Accounts. It is anticipated that any future costs incurred in a new procurement exercise could amount to a sizeable six figure sum, based on previous costs incurred. The Council does not have the available funds or the officer resources to undertake another procurement exercise in the short term, given that staff resources across the authority are committed to delivering other strategic priorities and key projects such as amongst others, the Local Plan, the Hitchin Museum Project, town wide parking reviews, office accommodation, working with local communities on transfer of assets, reviewing the leisure contract and waste and recycling works.



8.13.3 If timed well, however, a procurement exercise in the medium term may result in identifying a viable solution should the economy improve. Equally if there has been greater economic recovery, an alternative developer at that point in time may have a greater appetite for risk than Simons (and other developers who left the procurement process) did in the current economic climate. Subject to EU procurement rules there might also be the opportunity to follow a more open procurement process where potential developers could test their ideas through some form of public consultation process before submitting a tender to the Council. If EU procurement rules prevent public consultation on matters of vision/design prior to a contract being awarded, the Council could alternatively seek to award a contract based on track record and then, once a contract has been awarded, allow an open design evolution in full consultation with the public thereafter. The Council may not need to follow such an extensive procurement process as the previous Competitive Dialogue process, as the lessons learned from a number of such procurements around the country have resulted in more streamlined processes. If the Council were able to be specific as to the scheme it wanted, a different procurement process could potentially be followed, rather than a further Competitive Dialogue.

8.13.4 If the Council were to undertake another procurement process, leaving this to the medium term would be advisable as there may be an upturn in the economic climate and the Council should also have an adopted Local Plan in place which would outline the current planning position, policy guidance and development objectives for the site in the future. Detailed consideration of the potential procurement options would have to be undertaken at the appropriate time.

## **8.14 Hammersmatch Options**

### **Refurbishment of the Existing Churchgate Centre**

8.14.1 The current planning permission for refurbishment expires on 25 July 2015 and is subject to standard conditions including requiring details of materials and a scheme of archaeological evaluation.

8.14.2 As stated in the background section of the report to Full Council on 31<sup>st</sup> January 2013, in the mid-2000s Hammersmatch were promoting a wider scheme across the whole site. In addition to the longstanding, but not implemented, planning permission for a refurbishment of the existing Churchgate centre, Hammersmatch held a public exhibition in January 2013 of a slightly wider scheme including shops/restaurants and a cinema where the market is currently located. Consideration is given to this refurbishment and extension proposal at paragraphs 8.14.7 to 8.14.13 below.

8.14.3 Given that planning permission is in place for a refurbishment on the footprint of the existing Churchgate centre, this means, subject to available funding by a third party, that refurbishment could proceed immediately. A simple refurbishment may result in eventual slight physical improvement to the centre and to the current rental income received by the Council (although the rent review has only just concluded so the next one is not for 13 years, meaning that there would be no financial value to the Council in the short or medium term).

8.14.4 A refurbishment on the existing footprint however, would not meet the long term aspirations of the Council to seek to improve this part of the town, with the Churchgate centre referred to in a Council report in the mid-1980s as “considerably less attractive than it could or, indeed, should be.” Nor would it deliver the step change to retail

provision that the town centre requires to retain its market share and continue to function as a vibrant and successful town centre. Refurbishment alone would still provide uncertainty for the Market and the Council would need to agree a market strategy which could result in additional costs. There would also be ongoing maintenance costs to the Council of the car parks and public realm, as indeed there would be if the latest Hammersmatch proposal was taken forward as explored below.

- 8.14.5 Given the current economic climate and the fact that Hammersmatch has had planning permission for a refurbishment for the Churchgate centre for some 10 years it is doubtful whether refurbishment alone would be viable. Indeed, Hammersmatch argued to the Council in 2006-7 that for a development to be viable it needed to be on a larger footprint, which is one of the factors that led to the 2008/10 procurement process, and their recent cinema based proposal is also more than just a refurbishment.
- 8.14.6 The Council has maintained the position that it is a business decision for the current owner whether to commit to the refurbishment or not, but if the refurbishment would significantly increase the value of the Churchgate centre then that would be reflected in any CPO value, should the Council consider CPO in the future. It is recognised, however that Hammersmatch have consistently stated that any attempt to use CPO powers would be resisted. Given the gearing of the current lease (which results in approximately 35% of the rental income after certain allowable costs being paid to the Council) the viability of a refurbishment has to be questioned without a re-gearing of the lease, which would have potential adverse financial implications for the Council's revenue budget.

### **Refurbishment and extension proposal**

- 8.14.7 As stated previously Hammersmatch held a public exhibition in January 2013 of a slightly wider scheme including refurbishment of the existing shops with residential flats above and a restaurant/cinema complex where the market is currently located. Hammersmatch have met with senior officers regarding their proposals and had indicated that they would be submitting information for inclusion with this report. Such information has not been provided at the time of publishing this report. Any information received will be provided as soon as it becomes available.
- 8.14.8 The Hammersmatch scheme displayed in January was referred to as a vision for the area. While a cinema is likely to be a popular proposal with the public, as feedback the Council has received over time often refers to this as an aspiration, issues such as height and massing, proximity to listed buildings, impact on the Market, River Hiz, car-parking, retail mix and impact on ability to develop the wider area would all need to be considered. A further planning application would need to be prepared and submitted and these matters would be for the LPA to consider. Any proposal for a wider development outside of the footprint of the current Churchgate centre, using Council land, would need to be carefully considered. Below is an analysis of the initial ideas that Hammersmatch have discussed with senior officers based on the scheme they were proposing at the January exhibition, these being:
- Major refurbishment of the existing centre and conversion of the underused upper floors to residential. The number and type of residential units plus building height issues along with any parking matters would be for consideration by the LPA.
  - A new cinema and restaurant complex where the current market is located, resulting in possibly a nearly 50% increase in the existing Churchgate centre ground floor built area.
  - A new car park for at least 80 cars on the remainder of the market area.

- Relocating the market to somewhere within areas A4 and A5 (i.e. St. Mary's and Portmill Lane West and East car parks) As part of the January consultation the market is shown as being located on St. Mary's car park. Hammersmatch in their discussions with senior officers are suggesting that it will be for the Council to decide on its future size and location and mix between permanent and demountable stalls.

Any further information received in advance of the meeting, will be circulated as an addendum to this report.

8.14.9 For the avoidance of doubt, the Hammersmatch scheme proposes "development" on St. Mary's car-park in the form of a relocated market. The relocation of a market onto a current car park is at the very least a material change of use of land, which constitutes 'development' under the definition of development set out under Section 55 of the Town and Country Planning Act 1990 (as amended). If there are any fixed surface infrastructure such as permanent stalls then a relocated market would also involve 'operational development' on land outside areas A1-A3. Given that the previous Hammersmatch proposal for a wider redevelopment was one of the factors that caused the Council to have to run a procurement process to ensure best value for the disposal of its land, it is possible that a similar process would be required again. The Council would need to carefully consider the implications of Hammersmatch seeking to use Council land as this could trigger a further procurement process and if that occurred it is highly likely that development would not happen until the medium term, i.e. post adoption of the new Local Plan.

8.14.10 The current Hammersmatch proposal may require the Council to fund the relocation of the market and undertake the negotiation process to identify the specifics of a new market site, e.g. precise location, total area required. The potential cost for relocating the market could be in the region of £1m. This estimate is based on the costs allowed for within the Simons development scheme, which also considered relocating the market to one of the car parks. In addition to the capital cost there would be a net reduction in car parking availability. Such a reduction would adversely impact on the short term car parking capacity in this area, important for the viability of the commercial businesses in the town centre, and would also impact on car parking income potential.

8.14.11 At present there are 339 short term parking spaces available across the 4 car parks at Biggin Lane, St. Mary's, Portmill Lane West and East Car Parks. A cinema and residential development will generate a need for more parking spaces, albeit these may largely be required at different times than current office and retail requirements. The Churchgate Planning Brief states that the existing number of parking spaces needs to be retained. Relocating the market to one of the car parks and making provision for the traders vehicles will reduce the number of available spaces on market days (currently 4 days a week). This may be further reduced on a permanent basis if the market were to comprise a mix of permanent and demountable stalls, and would have an impact on the car parking potential income to the Council. The Churchgate Planning Brief also makes reference to the potential development of residential housing on Biggin Lane Car park, if this were to proceed in the future it would further reduce the amount of available short term parking serving the town centre and this would further impact on car parking income potential to the Council. As mentioned above, the provision of parking for the development will be a consideration of the LPA .

8.14.12 Hammersmatch have made reference to their proposal as being a 'Phase 1' of a larger scheme, which does not inhibit development on the adjoining car parks. The proposal is only focusing on sites A1 and A2. The proposal will result in the relocation of the market to somewhere on the surrounding car parks. A more holistic view is required, as the

proposal has the potential for stifling the future development of the site as a whole, should the area be considered necessary as contributing to delivering the future commercial growth of the town centre as part of the new Local Plan. This could have financial implications for the Council in terms of securing best financial consideration in terms of its assets on the other parts of the site, i.e. areas A3 to A5. . Demonstrating best consideration is a legal requirement that must be considered by local authorities when giving consideration of how to manage its public assets.

8.14.13 In the absence of further information, it is not possible to fully appraise this option at the time of writing the report. As with any other developer, were this option to be pursued the Council would need to satisfy itself of their financial standing and likely ability to deliver a scheme. As stated above any information received regarding the proposal and its funding arrangements will be provided as soon as it becomes available.

**8.15 The Council could consider seeking to acquire the Hammersmatch interest in order to simplify land assembly for any future scheme.**

8.15.1 Senior officers met with Hammersmatch in April 2013 who clearly stated that they were not interested in selling their asset. However, should things change in the future, the option could be pursued as a standalone investment, or in conjunction with some of the other options explored above (such as the planning policy work and further procurement). If pursued it would make a future procurement exercise more attractive and less risky to bidders as all the land ownership would be within the Council's control which would shorten timescales for a development.

8.15.2 Should the Council acquire the asset, in the interim it would receive the full rental income (less management costs) which could improve the Council's revenue position and, depending on purchase cost, it could provide a greater return on investment than what may be achievable from interest rates at the time. However, NHDC has little or no experience in managing assets within the retail market and therefore would have to consider the additional resources it would require to manage the shopping centre which would reduce the revenue return. A further consideration is that the Council would likely be subject to pressure to invest in improvements in the Churchgate Centre in the short term following its acquisition, as well as in finding an acceptable solution for displacement of retailers in the event of a future redevelopment and may have to part fund costs of displacement for existing tenants.

8.15.3 No timescale is provided for this option given Hammersmatch's current position not to sell their interest, plus the Council has previously stated that it would not invest any more funds. Thus this option is unlikely to be pursued unless circumstances changed.

**8.16 The Council could seek to work up a scheme to achieve planning permission which is then sold or procured against.**

8.16.1 When preparing the 31 January report for Full Council advice was sought from DTZ on the current commercial context for retail led mixed town centre schemes and the changing role of local authorities in delivering such projects. Their report made reference to a number of Councils adopting more proactive approaches, such as the Northgate Development in Chester and the Peacocks and Wolsey Place development in Woking. (The relevant extract from the DTZ report was appended to the 31<sup>st</sup> January Full Council Report at Appendix F).

8.16.2 Whilst this option may provide certainty as to the Council's intentions for the site and would also remove an element of risk for any potential developer, details and costs would have to be explored. These would include:

- the need to commission additional expertise if the Council were to undertake more of the initial work, effectively by taking on the role of developer, as it does not currently have the resources or expertise in house;
- the cost of a planning application (approx £750,000 for preparation and £200,000 for planning and building regulation fees) which is likely to be prohibitive given the Council's current financial position;
- the possibility that seeking planning permission may not improve viability (and therefore deliverability) of a scheme;
- the Council would assume more risk for delivery of project than if appointing a development partner through a procurement exercise;
- the risk of third party challenge over separate roles within the Council between applicant and the LPA if insufficient safeguards were put in place;
- the planning policy framework against which the planning application would be assessed. Until the Council has established a new policy framework in the form of a new Local Plan for the period to 2031 there is no clarity on what would be acceptable in planning terms to propose within a planning application (other than the existing policies).

8.16.3 If the Council chose this option it would have to fully pursue it to conclusion and would need to be able to agree on a suitable scheme in the face of differing public views. It is the officer view that such an option, if considered, should occur following the adoption of the Local Plan which would provide the necessary policy framework and options for development over the next 20 years.

## **8.17 The Council could take more of a joint venture approach through the whole process**

8.17.1 The DTZ report suggested that the Council could adopt a more 'robust' approach under any future option involving a development partner. This suggestion could apply if the Council decided to re-procure to seek an alternative development partner. What is suggested is that officers and Members be more actively involved in the detail of the development process, rather than relying very heavily on the expertise of the development partner. The Council could exercise more control over the process and drive the project forward.

8.17.2 This suggestion is perhaps a half way house between the development partner approach and the Council seeking planning permission itself. Such an approach would clearly require a more active role for a project board or similar body, being involved in negotiations with potential new tenants, interest groups, and having more involvement in sub-contracting for example. Clearly this also brings resourcing requirements to ensure this approach was appropriately progressed.

8.17.3 The Council would need to weigh up the risks and rewards of this approach and how it would fit into the Council priorities. Not only would staff resource be diverted from other Council business, but additional internal resourcing may also be necessary, and the Council may need to appoint specialist staff at the expense of the Council with no guarantee of delivery. The Council has incurred external costs of almost £1million over the past ten years or so, with no tangible outcomes as a result. Council finances are stretched following a number of years of savings and efficiencies and this challenging

financial environment is forecast to continue to 2018 at least. Therefore any further investment request should be able to demonstrate a realistic prospect of delivery and a worthwhile financial return.

8.17.4 The suggestion of DTZ that the Council adopts a more 'robust' approach or joint venture model with any future development partner is not an option in itself, as it relates more to how to progress one of the alternative options set out in this report. However, whichever option is selected the Council would continue to need to adopt a cost conscious approach in its dealings with any development partners. As referred to in the paragraph above, any further investment request will need to demonstrate a realistic prospect of delivery and a worthwhile financial return. This also applies to resource commitment from the Council (officer time, external advisors or other financial input).

**8.18 The Council could explore selling the land to the highest bidder for development or selling off discrete sections of the site for residential development and using the capital receipt or Section 106/Community Infrastructure Levy (CIL) to fund more limited improvements to the Churchgate area.**

8.18.1 Whilst the selling of the land to the highest bidder may result in a one off capital receipt of up to approx £6m (based on current valuation, although a development may not be viable at this price), the future of the site would no longer be for the Council to resolve. This is not considered a desirable option and has been included for completeness only.

8.18.2 Although the sale of discrete sections of the site would provide a capital receipt and may deliver limited improvements, the consequences would be:

- Loss of revenue income if sold freehold;
- Reduction in income if elements sold leasehold;
- Loss of landlord control on what is developed, with the only control on development would lie with the Local Planning Authority;
- Impact on the market and its future;
- Potential purchasers may cherry pick some parcels of land for commercial or residential use which will make delivery of a wider scheme more difficult, resulting in the aspirations for the wider area not being met;
- Potential issues for car parking provision within the town, if the land currently used as car parks was developed without suitable alternative parking being provided;
- Loss of net parking income to the Council (i.e. around £240,000 pa based on 2012/13 figures).

8.18.3 The option of selling off discrete sections of the site for residential or commercial development in the short term and using the capital receipt or Section 106/CIL to fund more limited improvements could achieve some enhancement of the Churchgate area and potentially deliver refurbishment of the existing centre. However there would need to be further consideration of the planning policy aspirations of the Council through the preparation of the Local Plan as this could result in the Council's long term ambition for the area as a whole being stifled and the Local Plan objectives for the site and the town centre not being delivered. In addition the Council would assume more risk for delivery of its elements of the project and it is considered that this option would further reduce viability of any future scheme coming forward and would not be in the interests of the town. The Council would be failing to plan for the future. It is the officers view that this option is the least attractive of the options and should not be pursued.

## **8.19 Conclusion on alternative options**

8.19.1 In light of the town centre policy work being progressed as part of the preparation of the Local Plan, which will provide the strategic policy objectives and guidance for the future of the Churchgate area and the timescales required to complete the Local Plan, it is the officers' view that the following alternative options should be discounted as premature at this time:

- Preparing a new Planning Brief – needs to follow the Local Plan work, and may not be necessary if the new Local Plan provides sufficient guidance;
- Undertake a new procurement exercise – in order to achieve a different outcome to the previous process, would need to be based on the policy objectives identified in the new Local Plan;
- Acquire the lease of the Churchgate Centre – Hammersmatch have stated they have no interest in selling their interest and from the development perspective the land would not be needed until a new strategy is identified in the Local Plan;
- The Council designs a scheme - the costs would be prohibitive at this time, due to the amount of external consultant support required, and any scheme would need to be based on the policy objectives in the new Local Plan;
- Taking a joint venture approach to a future scheme – is considered not feasible due to current financial constraints and the need for an alternative strategy based upon the new Local Plan;
- Selling discrete sections of land – the Council would lose control of the site and ability to influence development proposals other than through the planning process.

8.19.2 If the Council chose to await the outcome of the Local Plan work this would not prevent any interested developers approaching the Council and having discussions in the interim. There are at least three developers who have shown an interest, one of which is Hammersmatch who are in discussion with the Council on their ideas as discussed under section 8.14.

8.19.3 In addition, the Council is currently assessing the impact of the recent spending review announcements on its financial position and the ability to continue to meet existing commitments and until that work is complete, it would not be prudent to enter into any new commitments that may have significant financial consequences.

8.19.4 In light of the above, it is the officer view that the Council progresses the work on the Local Plan and then reconsiders the above options in light of an adopted Plan, and continue to meet with interested developers in the interim.

## **9. LEGAL IMPLICATIONS**

9.1 Full Council made the original decision to award the contract to Simons on 25 February 2010. The reason Council was asked to make the decision as to whether to award the contract or not was that the likely land values of the Council land being used for the project fell within Council's terms of reference.

9.2 Full Council adopted the Hitchin Town Centre Strategy on 18 November 2004 and the Churchgate Development Area Planning Brief on 3 November 2005.

9.3 As Full Council has made these previous strategic decisions, Full Council should make the decision as to the future strategy for the Churchgate Area.

- 9.4 If the Council chose not to await the outcome of the Local Plan work, but instead sought to move forward with an alternative strategy in the interim, the legal implications of that strategy would need to be considered. The legal implications will vary from option to option, but would likely include procurement, contract, governance and property considerations.
- 9.5 In previous reports to Full Council, Members have been advised that taking part in decisions on the strategy to adopt for the Churchgate Area was unlikely to create a valid perception of predetermination in relation to a Member of the Planning Committee who takes part in the decision relating to any future planning application.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The Council has incurred external costs of almost £1 million in total over the past ten years, with £524k of this spent since 2005 on the Asset Management advice and subsequent procurement exercise. This sum of £524k was held to be capitalised against a delivered scheme and £200k of this figure would have been recoverable from the developer when they commenced work on site. All but a very small amount of this cost related to work performed by DTZ and Eversheds. A request was made to the Department for Communities & Local Government in March 2013 to allow “capitalisation” of the £524k sum, but this was declined. Therefore these costs have now been charged to Revenue in the 2012/13 Accounts.
- 10.2 There are clearly significant potential financial resource implications associated with the redevelopment of the Churchgate Centre and its surrounding area. Churchgate does not currently feature in the Council’s capital programme for major investment although full resurfacing and re-lining across all the car parks in this location would be necessary in the medium term and is estimated at £150k at today’s prices. Therefore, in view of the uncertainty over the future (both in terms of proposals and timing), a sum of £60k has been included in the 2013/14 capital programme for some short-term resurfacing and remarking of the Portmill Lane car-parks to ensure successful parking enforcement action can continue; and £30k is included in the 2014/15 programme for structural repairs to the steps at St. Mary’s car-park. This is in addition to the £80k (in total) maintenance budget for patch repairs over a 5 year cycle. Whilst there is no budget provision for any unrecoverable fees relating to the competitive dialogue process, the budget risk relating to the Developer failing to achieve a viable scheme, and therefore being unable to proceed, has been incorporated into the business planning process for each year since the Development Agreement was signed.
- 10.3 The contract signed with Simons did not require Council financial resources to be allocated to the development of this scheme. The Council’s contribution was to make its land holdings available for the development. Enquiries made by Simons in 2012 regarding the possibility to vary the terms of the DA, including whether the Council could consider making further financial contributions to the scheme, were declined. The other resources currently committed by the Council going forward take the form of officer time required for project management and project support activities and also some external specialist skills, as and when required, which will be funded from existing budgets. Since the signing of the Development Agreement, external specialist costs have been incurred in respect of FOI advice and more recently in considering the options outlined in the 31<sup>st</sup> January 2013 report to the value of approximately £20K.



- 10.4 If the Council chose to prepare a scheme and acquire planning permission itself, the total costs would be in the region of £750k for preparation and another £200k in planning and building regulation fees, which is regarded as unaffordable.
- 10.5 Under Section 123 of the Local Government Act, the Council is required to get best consideration reasonably obtainable for all of its assets, and regarding Churchgate this potentially includes the freehold of the Churchgate Centre, the market and the adjoining car parks (St Mary's; Portmill East & West and Biggin Lane).
- 10.6 The 2013 Spending Review (SR) was announced on 26 June 2013; this includes the financial year 2015/16. A number of further significant reductions to affect Local Government had already been announced, including as recently as in the March 2013 Budget, where an additional 1% budget reduction for 2014/15 was added to the 2% budget reduction for 2014/15 that had previously been announced in the Autumn Statement of November 2012.
- 10.7 The Chancellor had already indicated that Totally Managed Expenditure for public services would continue to fall in 2015/15 and 2016/17 at the same rate as over SR 2010 and, in his Budget 2013, the Chancellor announced that the target budget reductions of £10bn for SR 2013 had now been increased to £11.5bn. Therefore it is very clear that the period of constrained Public Sector funding, and challenging budget balancing requirements, will continue for some years. Under these conditions the Council's alternative (i.e. non Government) sources of income are particularly important. Net annual income in total from the Churchgate car parks amounts to over £200k and any proposal that adversely impacts on this would at least need to provide sufficient return to the Council from other sources to compensate fully for this impact.
- 10.8 The 2013 Spending Review resulted in a further reduction in Government revenue funding for 2015/16 that will put significant pressures on revenue funding. Changes to the funding arrangements for Local Authorities mean that authorities are encouraged to replace the reduced government funding by growing their Business rates income through encouraging the development of more businesses and growing the numbers of dwellings in the area to increase Council Tax levels and generate New Homes Bonus (NHB) payments. However, another SR2013 announcement was that some NHB payments will be pooled in future and further information is awaited on this proposal before assessing the impact on NHDC. The overall impact on NHDC funding is currently being modelled, although it is already clear that, whatever assumptions are used the likely revenue funding "gap" over the four year period 2014/15 to 2017/18 will require significant further revenue savings.
- 10.9 Following changes to the required treatment of set-aside capital receipts, the Council is now able to consider using receipts for capital purposes provided it can demonstrate that it does so in a prudent fashion and is able to afford the revenue consequences of the loss of interest. Furthermore, invest to save proposals, and those generating ongoing income streams in excess of those available through Treasury Management activities, are given serious consideration.
- 10.10 Council finances are stretched following a number of years of savings and efficiencies and this challenging financial environment is forecast to continue to 2018 at least. Therefore any further investment request will need to demonstrate a realistic prospect of delivery and a worthwhile financial return.

## **11. RISK IMPLICATIONS**

- 11.1 The Council has identified Hitchin Town Centre as a top Cabinet Risk. Within the description of this risk is the development proposals for the redevelopment of the Churchgate area. This risk is monitored and updated regularly as part of the Council's risk management procedures.
- 11.2 The Council's Risk and Opportunities Management Strategy refers to Contractors and Partners as follows: *"Contractors and Partners are included in the Risk & Opportunities Management Strategy for NHDC. The risk appetite for both contractors and partners should be considered prior to engaging into contracts or partnerships. Ideally a joint Risk Register should be in place for significant contracts and partnerships. In order to achieve the Council's priorities, Client Officers/relationship managers should Implement an ongoing review of risks jointly with appropriate contractors/partners. Contractors and Partners should be able to demonstrate that they have resilient business continuity plans in place."*
- 11.3 In accordance with this Strategy the Churchgate Development Project had its own Risk Register. Such a document would be prepared were the Council to consider seeking an alternative development partner at some point in the future.
- 11.4 In addition, throughout this report, various risks associated with the alternative options have been described. The Council has identified and included the preparation of the Local Plan under Sustainable Development of the District as a top Cabinet Risk. This identifies failing to protect the environment for our communities as a key risk. An adopted Local Plan in place will provide the strategic planning policy objectives for the district to 2031 and will also strengthen the Council's position against hostile planning applications.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in the next paragraph, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 Depending on what option may be considered, any future development proposals for the site, detailed proposals surrounding thoroughfares, access, surface treatments etc and needs of any users for any resulting development will be considered under separate equality analysis at the time of consideration.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 The recommendations made in this report do not in themselves constitute a public service contract, subject to the measurement of 'social value' as required by the Public Services (Social Value) Act 2012, although potential equalities implications and opportunities are identified in the relevant section at paragraphs 12. However, any

decision Council may make with regard to Churchgate which could, either in whole or part, constitute a public service contract would need to report on the social value implications at the time of consideration. This would, in brief, consider how every £1 spent could best be spent to benefit the local community, which may include award of some aspects of redevelopment or management of the centre etc by local social enterprises.

#### **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 In terms of human resource implications the preparation of the Local Plan and the delivery of the other identified Corporate priorities and key projects have been factored into work plans. If the Council sought to pursue a strategy for the Churchgate Area in the interim this would impact on the Council's current staff and financial resources and would result in the need to review existing work plans and objectives and/or the need for employing external expertise.

#### **15. APPENDICES**

- 15.1 Appendix A – Site Plan of Churchgate Development and Enhancement Area.

- 15.2 Appendix B – Local Plan Timetable.

#### **16. CONTACT OFFICERS**

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## **17. BACKGROUND PAPERS**

- 17.1 Full Council Report 31<sup>st</sup> January 2013 – Churchgate and surrounding area redevelopment project, Hitchin
- 17.2 Report to Finance, Audit and Risk Committee 13<sup>th</sup> June 2013 – External costs incurred by NHDC during the Churchgate Report.
- 17.3 Planning Hitchin's Future: Hitchin Issues for the District Local Plan: April 2013 prepared by Hitchin forum, the Hitchin Society, Hitchin Historical Society and Hitchin Initiative. Can be viewed on the Hitchin forum website at: [www.hitchinforum.org.uk](http://www.hitchinforum.org.uk)