


Cabinet Decision	
24 April 2019	
Report of: Ann Sutcliffe, Corporate Director, Place	Classification: Unrestricted
Wayside Gardens, Marsh Wall; Disposal of Land	

Lead Member	Mayor John Biggs
Originating Officer(s)	Ralph Million, Senior Strategic Asset Manager
Wards affected	Canary Wharf
Key Decision?	Yes
Forward Plan Notice Published	20 November 2018
Reason for Key Decision	Financial Threshold
Strategic Plan Priority / Outcome	<ol style="list-style-type: none"> 1. People are aspirational, independent and have equal access to opportunities; 2. A Borough in which residents are proud of and love to live in; 3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our Borough.

Reasons for Urgency

The report cannot await the next scheduled meeting of Cabinet in May because the purchasers of the Council land, who are the developers of the Alpha Square scheme, have indicated that an earlier decision is required in order to fit with its development timetable. The negotiations with the developers have recently been concluded, with insufficient time for the report to be finalised and published at least five days prior to the meeting. However it should be noted that the forthcoming decision notice was published in November 2018.

Executive Summary

The report recommends that the Council disposes of the land comprising Wayside Gardens in Marsh Wall to the developer of a wider redevelopment scheme, which has planning permission.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Note the further information on the planning permission and the s106 agreement, as they relate to the open space provision in the Alpha Square scheme, in line with the draft minutes of the meeting of Cabinet on 27 March.
2. Agree that the land at Wayside Gardens is declared surplus to the Council's requirements and is sold to the developer's property holding subsidiary, Drakar Limited, on the basis set out in this report.
3. Delegate authority to the Corporate Director of Place to agree and negotiate the final terms of the proposed disposal and to agree any variations to the terms set out in this report to the benefit of the Council.
4. Agree that works to improve existing parks and open spaces within the Isle of Dogs area are included as part of the development of the Council's capital strategy and programme.
5. Note that the Council gave notice of its intention to dispose of the open space and that no objections were received by the closing date of 22 November 2018.

1. REASONS FOR THE DECISIONS

- 1.1 It is important at a time of increasing financial pressures in the public sector, to pursue opportunities to obtain capital receipts. The subject opportunity arises due to a proposed property development on land adjacent to and including, the Council-owned land at Wayside Gardens and a sale on a "special purchaser" basis.
- 1.2 The proposed development will bring underused land, comprising low-rise industrial and office sites, into full use and is consistent with the Council's strategic plan in promoting regeneration and increasing the supply of housing. The proposed development includes; a primary school, public realm, health facilities in addition to affordable housing.
- 1.3 The land at Wayside Gardens, although open space, is currently not directly used by the public due to it being an area of dense, overgrown vegetation, which is difficult to access. An equivalent area of open space will be replaced within the wider provision of public realm in the development, constructed to current design standards and accessible to the public at all times.

2. ALTERNATIVE OPTIONS

- 2.1 The area of the land owned by the Council, at approximately 270 square metres, effectively rules it out for development in isolation. It is the potential sale to a special purchaser (by the fact that the purchaser owns neighbouring land) that creates the opportunity to develop the land, and create a purposeful use for it, thereby enhancing its financial value.
- 2.2 The land could continue to be used as open space but this would require the Council to incur costs to maintain it and ensure it complies with health and safety requirements. Further, the proposed consented development would not proceed in the form currently envisaged.

3. DETAILS OF THE REPORT

- 3.1 At its meeting on 27 March, Cabinet considered a report entitled “Asset Management: leases and disposals”, which proposed that the Council disposes of the land comprising Wayside Gardens in Marsh Wall, to the developer of a wider redevelopment scheme, which has planning permission.
- 3.2 The draft minutes of the meeting include the following; “In relation to the proposed disposal of land, the Mayor considered that on balance this was the right approach in order to enable the development to go ahead. However, he was acutely aware of the lack of open space in the borough and welcomed the work officers were undertaking to explore options for recreating this space. He also asked for more details on the agreement with the developer including in respect of control over future use of the disposed site. Finally, he also noted the exempt appendix.”
- 3.3 The Mayor agreed as follows;
- To agree in principle that the land at Wayside Gardens is declared surplus to the Council’s requirements and is sold to the developer’s property holding subsidiary, Drakar Limited, on the basis set out in this report.
 - To note that a final decision will be taken via an Individual Mayoral Decision subject to final consultation between the Mayor and lead officers.
- 3.4 This report sets out further information on the planning permission and the s106 agreement, as they relate to the open space provision, in line with the draft minutes of the meeting. The principal means by which public access to the open space is secured and monitored on an on-going basis, is through the planning system.

- 3.5 Wayside Gardens currently forms approximately 270sqm of open space and forms part of the application site known as Alpha Square.
- 3.6 The development of the Alpha Square scheme will include 272sqm of open space as a public square which will be open to the public, not just residents of the buildings. The development will also reprovide/upgrade approximately 952sqm of public realm (excluding the highway). This is highlighted in green in the image below.



- 3.7 Several conditions have been applied to the consent to ensure that the reprovided open space is retained for the life of the development, is high quality and cannot be fenced off. These conditions are summarised below:
- Condition 1 – requires the development to be carried out in accordance with the approved plans
 - Condition 5 – requires details of the landscaping across the entire site, including the public square, and requires a management plan. The condition also specifies that the landscaping must be 'maintained as such thereafter' which means for the life of the development.
 - Condition 6 – no fencing, hoarding or other boundary treatments will be allowed on site unless permission by Council is given. This will ensure that public access to the open space and public realm is maintained
 - Condition 9 – requires details of lighting and security across the site.

- 3.8 Details of conditions 5 and 9 have not yet been submitted to Council but must be done prior to development past third floor level (condition 5) and first occupation (condition 9).
- 3.9 The s106 agreement, at Schedule 6 and Schedule 7, also stipulates that the public realm and public square must be provided and that the above details must include management and maintenance plans. The costs of management and maintenance are to be met by the developer/land owner for the lifetime of the development. The s106 agreement requires the public realm and public square to be available to the public at all times.
- 3.10 With regard to the reference to an Individual Mayoral Decision in the 27 March Cabinet decision, the Mayor has subsequently determined that it is more appropriate for this decision to be taken at a meeting of the Cabinet.

4. EQUALITIES IMPLICATIONS

- 4.1 The development will provide a range of community benefits.
- 4.2 The proposed investment of the receipt in parks improvements projects will help to increase the usage of parks by all parts of the community with consequent health and social cohesion benefits.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 The main statutory provisions relevant to the proposal are contained in the Local Government Act 1972. Section 123 (1) provides the obligation to obtain best consideration for the disposal, which has been confirmed by independent valuation advice. Section 123 (2A) contains the obligation to give public notice of the intention to dispose of open space and to consider any objections received. This has been discharged through the placing of notices in the Docklands and East London Advertiser in two consecutive weeks' editions. No objections were received.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 Following an approach by the owner of a neighbouring site - Far East Consortium (FEC) - the Mayor in Cabinet, on 27th March 2019, approved in principle that the land at Wayside Gardens (shown in Appendix One) is surplus to requirements and that it can be disposed of it in order to facilitate the redevelopment of the full site. Disposal will take place to the developer's property holding subsidiary, Drakar Limited.
- 6.2 The detailed financial implications were included within the original report and its exempt appendix.

- 6.3 This report provides the further detail that was requested in relation to the planning permission and section 106 agreement. The site generates no income for the authority, and disposal will mean that the authority is no longer liable for any upkeep of the land, with the section 106 agreement clarifying that the costs of managing and maintaining the public realm and public square that will result from the development will be the responsibility of the land owner for the lifetime of the development.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The Council's general power of competence to carry out disposals is established in s1-6 of the Localism Act 2011. It is subject to the requirements in the Local Government Act 1972, most notably the s123 requirement to obtain best consideration for any disposal (which has here been discharged by obtaining independent valuation advice as referred to above at 5.1 of this report).
- 7.2 As the land owned by the Council is to be disposed of is a designated Public Open Space, an additional requirement arises under s123(2a) to provide an opportunity for public comment. This is carried out by arranging for the placement of notices in newspapers with a local circulation in two consecutive weeks. A notice has been approved and published in two local newspapers for the required two-week period as stated in 5.1 of this report.
- 7.3 The title to the site has been examined and contains a number of covenants relating to the Councils statutory predecessors which we do not anticipate any difficulties in discharging as part of the sale.
- 7.4 The Council Officers are satisfied that the proposed transaction is a disposal to a 'special purchaser' i.e. a sale to a purchaser for whom the land has a higher value than for anyone else. As stated in 2.1 above, FEC is in this virtue as a result of its ownership of the remaining area of the overall development site.

Linked Reports, Appendices and Background Documents

- None

Linked Report

- Cabinet, 27 March 2019; Asset Management: leases and disposals, section 1, Wayside Gardens, Marsh Wall; Disposal of Land

Appendices

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

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