

# Overview and Scrutiny Committee

10 June 2019

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

## Calverley Square Development Update

|                             |   |
|-----------------------------|---|
| <b>Final Decision-Maker</b> | Overview and Scrutiny Committee   |
| <b>Portfolio Holder(s)</b>  | Councillor David Scott – Portfolio Holder for Property & Major Projects |
| <b>Lead Director</b>        | Lee Colyer, Director of Finance, Policy and Development                 |
| <b>Head of Service</b>      | David Candlin, Head of Economic Development and Property                |
| <b>Lead Officer/Author</b>  | David Candlin, Head of Economic Development and Property                |
| <b>Classification</b>       | Non-exempt  |
| <b>Wards affected</b>       | All   |

### This report makes the following recommendations to the final decision-maker:

That members of the Overview and Scrutiny Committee note the update on the Calverley Square Development and specifically that the development remains on time and within the construction cost envelope (£90m).

- A Prosperous Borough
- A Green Borough
- A Confident Borough

The proposals within the Calverley Square Development support delivery of the Council's Five Year Plan through development of a new enhanced theatre, the provision of new office space and a new car park, and improvements to the entrance setting to Calverley Grounds, whilst protecting the historic integrity of the listed civic suite of buildings.

### Timetable

| <b>Meeting</b>                  | <b>Date</b>  |
|---------------------------------|--------------|
| Overview and Scrutiny Committee | 10 June 2019 |

# Calverley Square Development Update

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Tunbridge Wells Borough Council is progressing with its proposals for a Calverley Square Development, including provision of a new theatre, new council offices and parking facilities to support the new developments.
  - 1.2 The Overview and Scrutiny Committee has requested that the development be included as a regular item on its agenda and that when 'gateways' or other significant stages in the development are reached, the Committee's members are given the opportunity to look at the issues and receive any relevant reports.
  - 1.3 The Overview and Scrutiny Committee has also requested that updates are provided to Members throughout the year on key issues within the development.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The key elements of the Calverley Square development have been set out in previous O&S Committee reports. Full Council approved the delivery of the Calverley Square Development on the 6 December 2017 (Civic Development Delivery).
  - 2.2 The Borough has a clear and ambitious vision to "grow our role as the cultural centre of the Kent & Sussex High Weald, so that by 2024 the borough of Tunbridge Wells is nationally recognised for its vibrant cultural provision". Having a modern theatre sits at the heart of this vision. The commitment to deliver a modern theatre fit for the 21st Century and deliver new office space on Mount Pleasant Avenue Car Park are key components of the Council's Five Year Plan. The Calverley Square development will therefore provide:
    - A new 1,200 seat theatre that is able to stage high quality touring shows;
    - A new shared-use building including accommodation for civic functions and offices for TWBC and third party organisations;
    - An underground car park (approximately 260 car park spaces) partly under the office building and extending under part of Calverley Grounds; and
    - Local remodelling of the public realm associated with the above buildings and car park.
  - 2.3 Overview and Scrutiny Committee recognises the significant impact the Calverley Square development proposals will have on Tunbridge Wells town centre and on the borough as a whole. Overview and Scrutiny Committee members feel they have a part to play in ensuring the views and concerns of the borough's residents are given an appropriate forum. The Committee is also keen to fulfil its role in providing a critical challenge to key decisions the Council's executive will be making as the development progresses
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### 3. ECONOMIC BENEFITS

- 3.1 The development will cost £90m with a net annual revenue cost to the Council of £2.3m. The investment will deliver up to 362 new jobs and annual net economic benefits of:

|                           | Annual Net Economic Benefit |               |
|---------------------------|-----------------------------|---------------|
|                           | Regional                    | Local         |
| <b>New Theatre</b>        |                             |               |
| Earnings (Direct)         | £0.6m                       | £0.5m         |
| Earnings (Indirect)       | £0.2m - £0.3m               | £0.1m         |
| F&B Direct Expenditure    | £0.9m - £1.1m               | £1.1m - £0.9m |
| Town Centre Expenditure   | £1.3m - £2.6m               | £2.6m - £1.3m |
| <b>Commercial Offices</b> |                             |               |
| Earnings (Direct)         | £7.4m - £7.8m               | £3.9m - £3.7m |
| Earnings (Indirect)       | £2.2m - £2.9m               | £0.6m - £0.5m |
| Town Centre Expenditure   | £0.2m - £0.4m               | £0.4m - £0.2m |
| GVA (Gross Value Added)   | £24.3m - £33.2m             | £12m - £16.5m |

- 3.2 The Council commissioned GVA to produce a Wider Economic Benefits Assessment of the Calverley Square scheme. This assessment was independently tested by Lichfields on behalf of the Local Planning Authority. The above table sets out the sensitivity tested range of economic benefits delivered by the scheme on an annual basis.
- 3.3 The above does not include the annual economic benefits that would arise from the redevelopment of the existing civic complex.

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### 4. COMPLUSORY PURCHASE ORDER PUBLIC ENQUIRY

- 4.1 As Members will be aware the Council has progressed with the use of its statutory powers through Compulsory Purchase Order (CPO). The CPO Inquiry commenced on 12 February 2019 over 12 days closing on the 8 March 2019.
- 4.2 The independent inspector appointed by the Planning Inspectorate provided every opportunity during the course of the inquiry for those appearing at the inquiry to ask their questions and for allowing questions from the public attending to each of the professional expert witnesses. Overall this added some time to the overall length of the inquiry but provided the opportunity for the inspector to listen to all the questions.

#### Timetable

- 4.3 The decision was released on the 3 May by the Planning Inspectorate. The Planning Inspectorate had made clear that they seek to ensure that appeal decisions concerning proposals which have raised particular sensitivities or interest in an area cannot be deemed to have influenced the election or have been used to electoral advantage by any interested body. Accordingly the decisions were not issued until the local election results had been announced. The Planning Inspectorate issued the notice directly to all parties. Under the new process, the decision is taken directly by the Inspector and does not need confirmation by the Secretary of State.
- 4.4 The Council published notification of the decision in the local press on the 10 May. In addition notices were erected on site and all interested parties received a letter. Formal notification is part of CPO process. The order as confirmed became operative on the 10 May when the notice was published.

- 4.5 Within 6 weeks (21 June) of the publication an application to the High Court challenging its validity under section 23 of the Acquisition of Land Act 1981 can be submitted. The six weeks are due to end on the 21 June 2019. The grounds for challenge can be that the authorisation granted by the order is not empowered to be granted or that there has been a failure to comply with any relevant statutory requirement relating to the order.
- 4.6 The formal notification also sets a deadline for implementation of the CPO. The Council now has three years, up until the 9 May 2022 in which to progress with the CPO.

### **CPO Assessment**

- 4.7 At the inquiry the Council was required to demonstrate that there was a compelling case for the CPO and that is in the public interest. The Inspector considered evidence presented by the Council and Objectors which is tested. The Inquiry was open to public so members of the public were permitted to appear at Inquiry by the Inspector.
- 4.8 In setting out its case as to why the CPO should be confirmed the Council addressed the following grounds for objection:
- no compelling case for the scheme and concerns over economic, social and environmental benefits to the town;
  - inadequate consideration of alternatives, cost and viability of the scheme and effect on the existing Civic Centre and theatre;
  - inadequate consultation with the public, concern over the theatre design and vehicular access;
  - concern about the impact on Hoopers' car park and the knock on effect on the department store and inadequate consideration of alternative access arrangements;
  - lack of consideration of Human Rights and Public Sector Equalities Duty; and
  - Property specific issues.
- 4.9 The above matters were set out within the Council's Proofs of Evidence. Throughout the development of Calverley Square the Council has been supported by a team of professional expertise which has helped inform and guide the development proposals. In presenting its case at the Public Inquiry the Council had a range of professional expertise that attended the Public Inquiry as witnesses as well as professional expertise providing submissions where appropriate. The range of expertise used during the Inquiry covered:
- Architecture
  - Theatre Operations and Financial Viability
  - Theatre Design and Performance
  - Noise and Acoustics
  - Site Assembly and CPO
  - Construction Contractor
  - Economic Assessment and Benefits
  - Access and Transport
  - Health & Safety
  - Planning
  - Finance

## CPO Decision

- 4.10 The decision of the Inspector was to confirm the order in full with no modifications. The inspector recognised the significant economic benefits and the compelling case in the public interest. A copy of the full report is attached as Appendix A. The key conclusion and decision of the Inspector is set out in paragraphs 283 – 289. The main points made by the Inspector in his decision are:
- 4.11 **Consultation - Para 44:** I consider that there has been good public consultation...I have noted the strong opposition to the proposal, expressed in letters, petitions and representations at the inquiry, but just because consultation has not led to the scheme being changed in line with objections, does not negate the consultation or mean that comments were ignored, just that the Councillors, who are the elected representatives and appropriate decision makers, disagreed.
- 4.12 **Alternatives - Para 46:** I accept that other theatres have been successfully refurbished, but given the constraints here, I consider the better option is to provide a purpose built theatre.
- 4.13 **Para 48:** Sensible to leave the Cinema site to private developer – additional economic benefit alongside the theatre.
- 4.14 **Para 49:** it is necessary that the theatre should be in the Town Centre and the location close to transport links is a significant advantage.
- 4.15 **Para 50:** Having considered other alternative sites that might be suitable, I conclude that this is the best alternative.
- 4.16 **Development Plan Policy - Para 51:** The relevant adopted Development Plan comprises the Tunbridge Wells Borough Core Strategy 2010, the Site Allocations Local Plan 2016, and the 'Saved' policies of the Tunbridge Wells Borough Local Plan 2006. The policies within the Local Plan which were relevant to the redevelopment scheme and its planning application were up-to-date and largely in accordance with the relevant National Planning Policy Framework.
- 4.17 **Para 59:** The development has been carefully considered against the development plan policy and this includes the effect on heritage assets. I have considered these matters and my conclusion agrees with the planning application process where planning permission was granted. While there is some effect on heritage assets, the public benefits of the scheme clearly outweigh those effects.
- 4.18 **Finance and Management - Para 73:** Overall, it is clear that the Council has put in place an expert team to develop the project, has carried out detailed control of the project and is endeavouring to anticipate potential problems and is managing risks. I conclude that the project is being well financed and managed and this is not a reason to consider that the project might fail or not proceed.
- 4.19 **Para 79:** Guidance on compulsory purchase notes that there should be a general indication of funding intentions, and of any commitment from third parties, which will usually suffice to reassure the Secretary of State (or as in this case, the inspector) that there is a reasonable prospect that the scheme will proceed.....In this case I conclude that the indications on funding are very strong and provide substantial reassurance that the scheme will proceed if the order is confirmed.

- 4.20 **Social Well Being - Para 90:** I conclude that the theatre will serve a significant social function and benefit the cultural provision for the town and will provide substantial benefits to the social wellbeing of the area.
- 4.21 **Environmental Well Being - Para 117:** While I have noted there will be some harm to the heritage assets and changes to views from the park, Hotel du Vin and elsewhere in the conservation area, that harm will be mitigated to some extent by new landscaping, and the overall public benefit of the development clearly outweighs the harm and there will be substantial environmental benefits from the development.
- 4.22 **Economic Well Being - Para 150:** I conclude that the economic benefits of the scheme are significant and weigh in favour of the conclusion as to whether or not there is a compelling case in favour of the compulsory purchase order.
- 4.23 **iSmile Dentist - Para 178:** I have taken into consideration the factors put forward and potential impacts of closure and this will be given due regard and considered in the balance. However, in my view, the compulsory purchase of iSmile premises does not mean that iSmile has to close down. While I have accepted that premises matching exactly the circumstances of the existing building will not be found, with some reasonable compromise alternative premises could be found nearby. While those already found were not acceptable to the objector, and are now not available, others should become available. With Dr Azimi's obvious concerns for his patients with protected characteristics, I am sure he will carry out appropriate adaptations to ensure that patient access can be maintained in any alternative building. Clearly, the final decision to close is a matter for Dr Azimi, but to my mind that would not be an inevitable or obvious result of the compulsory purchase.
- 4.24 **Grove Hill House - Para 220:** Other concerns from Grove Hill House residents are covered in other parts of the report relating to more general matters concerning the compulsory purchase order. These concerns relate to the impact of the development in terms of light and outlook, but these are planning matters considered at the time of the planning application. Overall, the compulsory purchase order will have some impact on residents, mainly in terms of the loss of the right of way to their property from the north. There is some impact from the right of way that will be formed over their side access road and need for turning caused by the loss of access to land to the north, but in terms of traffic flow the development would be beneficial. Compensation for the change is a matter for the Lands Tribunal, with some weight being given to these matters in terms of harm from the compulsory purchase order to be taken into the balance.
- 4.25 **Hoopers - Para 254:** While I acknowledge the importance of the car parking to viability of the store and that it is a considerable incentive to loyal customers, I do not see that the proposed order logically leads to the need to close the customer car park and therefore the viability of Hoopers should not be threatened. If Hoopers did, as indicated, consider that it would close the car park, to my mind that is a decision for it, but it would not logically flow from the compulsory purchase order. Overall, I conclude that substantial weight should be given to the impact the order will have in relation to Hoopers' loss of the ability to control the land, but only limited weight to the impact the right of way will have in terms of the provision of the car park.
- 4.26 **Para 261:** I consider that the proposed vehicle access strategy for the theatre is the most appropriate when all relevant factors are taken into consideration.
- 4.27 **Archaeology - Para 270:** Archaeology field work and monitoring required by the planning permission will be sufficient to ensure that if there is evidence of the pre Roman ritual site it should be found and appropriate action taken. The evidence

provided does not add any harm in relation to the weight to be given to compulsory purchase.

- 4.28 **Human Rights - Para 276:** In respect of Article 1, the Courts have recognised that regard must be had to the fair balance between competing interests of those affected and the community as a whole.
- 4.29 **Para 277:** Similarly, interference with Article 8 rights must be in accordance with the law and must be necessary and proportionate. The homes affected are those associated with Grove Hill House and the compulsory purchase order affects access to the properties. While there clearly is an impact in terms of the loss of the use of the land affected, the overall impact of that acquisition is low and again there are procedures to ensure appropriate compensation.
- 4.30 **Para 278:** The compulsory purchase order and its implementation are consistent with Article 6 of the Human Rights Act 1998. All those affected were informed and advised of their right to make representations to the Secretary of State. As objections and representations have been made, the public inquiry has been held to consider matters raised.
- 4.31 **Para 279:** I have set out the benefits of the development. I consider that the public interest and wider economic social and environmental benefits realised as a result of the development outweigh the necessary interference with the private rights and interests that exist in the Order Land and that what is being acquired is a fair and proportionate balance between the interests of those whose Convention rights will be affected and the wider public interest. I conclude that there is a compelling case in the public interest for the compulsory acquisition for each and every parcel of land and other interest within the Order Schedule and that the impact on Convention Rights is justified in the public interest, authorised by law and necessary and proportionate to fulfil the Council's objectives of securing its civic development programme.
- 4.32 **Balance and Conclusion - Para 286:** I have found that the development is in accordance with the adopted Local Plan and the National Planning Policy Framework and has planning permission. Some impact on the local environment, including historic assets have been identified and these are considered in the overall balance. There are conditions to the planning permission, but there is no reason why these should not be discharged to allow the development to proceed. There is a need for compulsory purchase, as it is clear that agreement to acquire the rights and land sought would be unlikely to have been forthcoming without it.
- 4.33 **Para 287:** The Council has demonstrated that they have a professional team in place to manage the contract, and have full control of finances with appropriate funding in place and there is no reason that this matter should prevent the development proceeding. There has been appropriate consultation in relation to the project as a whole, the planning application and with those affected by the compulsory purchase reasonable steps have been taken to acquire the Order land and rights by agreement. Alternative options have been considered throughout the process, but I consider that given the purposes of the compulsory purchase and the aims for the development that the current site is the most appropriate for the development.
- 4.34 **Para 288:** Section 226 notes that while a local authority may be authorised to acquire land compulsorily, it must 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 objects of promotion or improvement of the economic, or social or environmental well-being of their area. It is clear that the Council does think that there will be such promotion and improvement, and given the expert team

appointed and the evidence and information provided, I concur and conclude that each one of those promotions and improvements would be achieved.

- 4.35 **Para 289:** I have taken into consideration the adverse effects that the development will have as identified in the decision above, including in terms of human rights and equalities of the statutory objectors, but consider overall that the development will contribute significantly to the achievement of the promotion and improvement of the economic, social and environmental wellbeing of the area. Therefore, on balance there are strong planning justifications for the use of the Compulsory Purchase Order powers to implement the redevelopment scheme so that I consider that there is a compelling case in the public interest; I therefore confirm the Compulsory Purchase Order.

### **Negotiations**

- 4.36 During the course of the Inquiry negotiation with a number of the objectors continued, including Sainsburys, the BBC and the owners of the Great Hall Arcade. As a result all three did not attend the Inquiry. While the BBC attended to ask questions of our construction contractor Mace, subsequent discussions enabled a letter of undertaking to be agreed. The various undertakings are now being developed into agreements with the three parties.
- 4.37 The primary concern for the BBC relates to noise and vibration during the demolition and construction phases. To enable this to be monitored during the development noise and vibration measurements will be taken prior to a start on site. Values will then be agreed between the parties. Establishing these measurements was part of an agreed test day which took place on the 24 April 2019.

### **CPO Website**

- 4.38 The Public Inquiry website includes all the documents submitted to the inquiry from both the Council (Acquiring Authority) and objectors. This includes main evidence and any subsequent notes published clarifying aspects. The website remains available at least up until a decision has been announced by the Inspector. The website address is: <http://calverley.persona-pi.com/>. The website is still active but will be closed down shortly.

### **Calverley Square Expenditure**

- 4.39 In line with the Full Council decision in December 2017 and on achieving a successful planning permission, RIBA Stage 4 commenced in June 2018 with the appointment of Mace as our construction contractor. RIBA Stage 4 is the technical design of the development at the end of which Mace will present their costed proposal to deliver the scheme. As designs have been finalised Mace have been undertaking tenders on work packages as they seek to select sub-contractors for the development to deliver for example structural steelwork, joinery and roofing through to auditorium seating. To date approximately 98% of the tender packages have been returned and the detailed evaluation and analysis of these packages has commenced. It is anticipated that the final contractor's proposal will be received in early July 2019.
- 4.40 Actual spend to date (time of writing report) during Stage 4 is £5,139,284 of which £4,974,000 was capital expenditure during the 2018/19 financial year. Expenditure covers design and development including de-risking the project, project management, tender package cost analysis, appraisal, site assembly negotiations including legal costs and CPO costs, Calverley Grounds Management Plan and Civic Complex Feasibility. The overall cost for the public inquiry is £750,000. However this does not



impact on the development costs as legal and other costs are covered by the Calverley Square reserve.

- 4.41 Overall expenditure by the end of Stage 4 is anticipated to be approximately £10.6m. This includes all expenditure from the commencement of the RIBA stages in late 2015. The table below breaks down the figure by stages.

|              | <b>RIBA Stage</b> | <b>Total (£)</b>  |
|--------------|-------------------|-------------------|
| 2015 - 16    | Stage 0 - 1       | 361,948           |
| 2016 - 17    | Stage 2           | 1,623,817         |
| 2017 - 18    | Stage 3           | 2,224,809         |
| 2018 - 19    | Stage 4           | 6,330,000         |
| <b>Total</b> |                   | <b>10,540,574</b> |

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## **5.0 AVAILABLE OPTIONS**

- 5.1 The updates on the Calverley Square development are for Members to note.

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## **6.0 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 6.1 The views of the Committee will be reflected in the minutes of the meeting which will be published on the Council's website.

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## **7.0 CROSS-CUTTING ISSUES AND IMPLICATIONS**

| <b>Issue</b>                            | <b>Implications</b>   | <b>Sign-off</b>   |
|---|---|---|
| <b>Legal</b> including Human Rights Act | There are no legal implications resulting directly from the recommendations in the report   | Patricia Narebor,<br>Head of Mid-Kent<br>Legal Partnership              |
| <b>Finance</b> and other resources      | With the loss of all government grants, future funding will be dependent on this Council's ability to deliver growth and to retain a greater share of business rate growth proceeds.<br><br>The finances of the Calverley Square development scheme were identified in the Full Council report on 6 December 2017. The finances have been independently reviewed and the council does have the financial capacity to deliver the scheme provided the schedule of cost reductions is achieved. | Jane Fineman,<br>Head of Finance<br>and Procurement                     |
| <b>Staffing establishment</b>           | There is no impact on staffing levels as a result of the recommendations in the report.   | Nicky Carter,<br>Head of Human<br>Resources and<br>Customer<br>Services |

|                   |   |               |
|-------------------|---|---------------|
| <b>Equalities</b> | <p>Previous decisions on Calverley Square have included an Equalities Impact Assessment on the Five Year Plan policy 2017-2022, which included proposals to build a new theatre, offices and car park, an Access and Inclusivity Statement from an Access Consultant, prepared at RIBA Stage 3 of the design work, and an Equalities Impact Assessment prepared for the CPO process.</p> <p>Future decisions relating to either Calverley Square or the civic complex, including implementation decisions for the funding strategy, will be accompanied by an Equalities Impact Assessment relating to those specific decisions as they arise.</p> <p>Decision makers are reminded of their duty under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimization and other conduct prohibited by the Act, (ii) advance equality of opportunity between people of different groups, and (iii) foster good relations between people from different groups.</p> | Report author |
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## 8.0 REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A – Calverley Square CPO Decision