

MAIDSTONE BOROUGH COUNCIL
RECORD OF DECISION OF THE CABINET

Decision Made: 12 September 2012

THE COMMUNITY RIGHT TO CHALLENGE

Issue for Decision

To set out the possible approaches the Council wishes to take in implementing these new powers.

Decision Made

1. That a proactive approach to the Community Right to Challenge be agreed.
2. That the windows of opportunity when the Council will accept expressions of interest for services from suitable bodies, as set out in the draft programme attached at Appendix A to the report of the Assistant Director of Environment and Regulatory Services, be agreed.
3. That the Cabinet Member for Corporate Services be appointed to champion the strategic development of the agreed approach with the appropriate Head(s) of Service and consult with other Cabinet Members affected by any particular challenges.

Reasons for Decision

Background

The Community Empowerment chapters of the Localism Act offer new opportunities for local people and groups to bid to run services they feel are important to their communities. The Act is a central plank of the Government's drive for decentralisation.

The report of the Assistant Director of Environment and Regulatory Services focused on Part Five of the Localism Act – Community Empowerment, in particular the Community Right to Challenge, a summary of which was attached as Appendix B to the report of the Assistant Director of Environment and Regulatory Services.

The Community Right to Challenge gives voluntary or community groups, charitable bodies, parish councils or employees of the local authority the right to submit an expression of interest in running a service currently provided by the local authority. The local authority must consider and respond to the challenge. It can be rejected on specified grounds or, if

accepted, will trigger a procurement exercise which will be open to the challenging body as well as other bodies, including private companies.

By determining the Council's approach to implementing the provisions of the Act, Cabinet can aid these initiatives and ensure residents and groups are clear as to what is available and the associated processes.

Possible Approaches

Whilst there are certain obligations within the Act with which the Council must comply, it could decide to take the lead and put in place various structures and frameworks that would help to make the process clearer and more efficient for itself and parish councils, community and voluntary groups and other eligible bodies.

There are three possible approaches to how the Council could address the legislation:

- Reactive
- Proactive
- Very active

Reactive

A reactive approach to Community Right to Challenge would see the Council choosing only to respond to challenges as they are received, with each application being considered on its merits.

Without a managed programme and a clear framework in which to operate, this approach could result in significant amounts of officer and member time in assessing and discussing the merits or otherwise of each challenge. There would be no control over which challenges came forward, and this could have adverse implications for the Council's own procurement programme.

Whilst this approach might enable bolder and more ambitious challenges to come forward, should the challenges be repeatedly rejected due to cost, feasibility, risk etc eligible bodies may become disillusioned.

Proactive

A proactive approach to the Community Right to Challenge would see the Council publishing a comprehensive list of its services which it is willing to consider for challenge, when the window of opportunity will be open, and guidance on how to apply.

Such a list would help eligible bodies to prepare for and submit challenges with a more realistic prospect of being successful. A managed approach with clear processes and operating frameworks would reduce officer and member time assessing challenges.

The Council's existing partnerships and other contractual commitments will need to be recognised with this approach, as the various services already being delivered in partnership, such as licensing, revenues and

benefits, legal services and internal audit, have already increased efficiency and delivered savings.

Devolving or disaggregating elements of partnerships could be time consuming and costly, with no guarantee of improved service or lower cost to the Council. However, the programme for inviting expressions of interest for services will include those covered by existing contracts and partnerships in accordance with their contractual end dates.

Publication of such a programme will not affect the implementation of the parish service scheme.

A proactive approach to the Right to Challenge appears to be the emerging preference for Councils and was the recommended option.

A draft programme of services to be published inviting expressions of interest was attached as Appendix A to the report of the Assistant Director of Environment and Regulatory Services.

Very Active

This approach to the Community Right to Challenge would see the Council taking the proactive approach up to the next level whereby it would actively devolve to community groups and seek out potentially interested groups and invite challenges from them, increasingly leaving a commissioning core at the Council. This would need to be additional to the publication of a programme of services referred to above, in order to retain some of the benefits of that approach.

This approach could lead to problems arising from managing an extensive range and quantity of services including deterioration and variation in quality and higher overall costs.

Alternatives considered and why rejected

The alternative actions are included above. Taking no action is not an option.

Background Papers

None

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 20 September 2012
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MAIDSTONE BOROUGH COUNCIL

RECORD OF DECISION OF THE CABINET

Decision Made: 12 September 2012

KING ST MULTI STOREY CAR PARK

Issue for Decision

To consider the options for King Street Multi Storey Car Park

Decision Made

1. That the demolition of the building be agreed.
2. That the submission of a planning application for, and construction of, a surface level car park be agreed.
3. That development opportunities continue to be sought for the longer term use of the site.

Reasons for Decision

King St multi storey car park and the retail unit below were built around 1970 using the "lift slab" technique. Over the last ten years or so, there has been deterioration in the concrete and the reinforcement largely caused by road salts, requiring several contracts for repairs in order to keep the building in use. The most recent set of repairs was undertaken around August 2011 in order to prolong the life of the building for a further 12 to 18 months while the Council considered its options.

The Council has recently received a comprehensive report on the condition of the building from its structural engineers which recommends closure of the building within a year unless a comprehensive programme of repairs is carried out.

The ground floor of the building is a retail unit, which is currently empty, following the withdrawal of the Co-op late in 2011. Marketing of the space on the basis of a short term let has been unsuccessful to date.

The car park has 213 spaces, which earn a net income of £42,000, excluding depreciation costs. The store currently has no rental income, and the Council faces an annual rates liability of £70,000 unless the requested nil rating is granted. Therefore the total net deficit is currently £28,000, or £121,000 per annum including depreciation costs.

There were a number of options available to the Council.

Option 1 - Do nothing.

This will require closure of the building within a year, followed by demolition in order to prevent collapse in the longer term. Demolition of the building will cost approximately £500,000. However, assuming 100% transfer of season ticket holders and 20% transfer of other customers to alternative Council owned car parks, the Council will retain approximately £15,000 net income per annum after deduction of residual site costs but excluding repayment of the cost of demolition.

Option 2 – Repair

The estimated cost of repairs is £700,000, and will require closure of the car park for around 18 weeks, with a loss of income of £48,000 over that period. Repair will prolong the life of the building for around ten years, and will also provide the opportunity for a ten year lease of the retail unit.

The Council has been advised that a successful letting of the retail area would probably result in a rent of £12,500 in year one rising to around £100,000 in year five. Assuming retention of the current income levels for the car park, net income for the whole building will be £54,500 in year one rising to £142,000 in year five and beyond. However, if depreciation and repayment of repair costs are taken into account, the deficit will be £120,500 in year one, reducing to £35,000 in year five.

In addition to repair of the building the Council could also, in agreement with the Highway Authority, improve access to the car park by introducing two-way traffic in Church St. This would increase use of the car park, at a cost of around £100,000. However, there would need to be an increase in income of 6% to recover the additional cost.

Option 3 – Demolition and construction of a surface level car park

Cost of demolition and construction of a surface level car park will be in the region of £650,000. This will provide a car park with approximately 65 parking spaces and access from King St. Net income of £110,000 would be expected as a short stay car park, with around £25,000 being retained from transfer of season ticket holders and other uses to alternative Council owned car parks. The total would be reduced to £60,000 per annum if repayment of demolition and construction costs are included.

The planning officers have advised that demolition of the building is permitted development with prior notification and consultation with Environmental Health and Building Control; and that although the site is allocated for retail use in the Local Plan, a planning application for a car park would be acceptable providing a case is made that the site is unlikely to attract a developer and that it would be visually acceptable with decent landscaping.

Officers would also continue to seek development opportunities for the longer term use of the site.

Option 4 – Sale/redevelopment of the site

An appraisal of the site was carried out two years ago by GL Hearn, who examined a range of development options. These included retail and office, retail and residential, residential, retail and hotel – all with and without parking. Redevelopment costs for such schemes range from £8.5m to £17m. However, with further decline in the market over the last two years in terms of rental levels and level of demand, and the improbable prospect of any improvement over the next five years, the site is unlikely to attract any interest for the time being.

Conclusion

In terms of value for money, demolition of the building and construction of a surface level car park is the best option. It also provides the opportunity for further redevelopment if and when the market improves. It was therefore recommended to demolish and construct a surface level car park, whilst continuing to seek development opportunities for the longer term use of the site.

A sketch of the recommended proposal was attached as Appendix A to the report of the Assistant Director of Environment and Regulatory Services.

Alternatives considered and why rejected

The alternative actions have been examined in detail above.

Background Papers

None

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MAIDSTONE BOROUGH COUNCIL

RECORD OF DECISION OF THE CABINET

Decision Made: 12 September 2012

INVESTMENT OPPORTUNITIES

Issue for Decision

This report considers investment proposals for the council to help improve income and achieve the Council's priorities

Decision Made

That the three areas of investment be supported, subject to the controls set out in the report of the Assistant Director of Environment and Regulatory Services.

1. That a member advisory panel be established in accordance with the terms of reference set out in Appendix 2 to the report of the Assistant Director of Environment and Regulatory Services.
2. That a Cabinet Committee be established, in accordance with the terms set out in Appendix 2 to the report of the Assistant Director of Environment and Regulatory Services, to make decisions on possible acquisitions, having regard to the views of the members advisory panel. The committee to comprise of the Leader of the Council, the Cabinet Member for Economic and Commercial Development and the Cabinet Member for Corporate Services. The remaining Cabinet Members are able to be appointed as substitute members of the Committee.
3. That an agent or agents be appointed on a commission only basis, in accordance with the maximum sliding scale identified in Appendix 1 to the report of the Assistant Director of Environment and Regulatory Services, to bring forward potential acquisitions on a confidential basis.
4. That the Audit Committee and the Council be recommended to authorise prudential borrowing of up to £6million within the current financial year 2012/13 and to set aside a fund of £500,000 from balances to cover any potential scheme failure.

Reasons for Decision

The current economic climate is causing significant financial pressures on local authorities. Revenue provision through government grant is reducing and will continue to reduce. In order to achieve the Council's strategic goals and indeed to maintain services, there is a need for the

Council to be more business-like.

The Government is actively encouraging local authorities to use prudential borrowing to generate additional income, support improved sustainability and provide encouragement for businesses to invest and regenerate.

The Cabinet, at its meeting on 25 July, considered the Council's Capital Programme and in particular, the possibility of prudential borrowing. This confirmed that the Council has the power to borrow to finance capital expenditure, subject to the guidance set out in the Code of Practice published by the Chartered Institute of Public Finance and Accountancy. Compliance with the code is a statutory requirement. In summary, the key objectives of the Code are:

- To ensure within a clear framework that capital expenditure plans are affordable, prudent and sustainable;
- That treasury management decisions are taken in accordance with good professional practice;
- That local strategic planning, asset management planning and proper option appraisal are supported; and
- To provide a clear and transparent framework to ensure accountability.

If the Council were to consider prudential borrowing as a source of funding for the capital programme, it would be required to evidence that such funding is affordable, prudent and sustainable. Given the current economic circumstances and the expected future pressure on resources, borrowing would place additional pressure on the savings requirements of the Council. At this time, it would only be appropriate to consider borrowing where the overall benefit of the schemes within the programme outweighs the additional pressure on the general fund or the outcome is self-supporting.

The Cabinet resolved:-

- a) That the proposed amendments to the capital strategy including the prudential borrowing where this achieves commercial development, outlined in Section 1.5 of the report of the Corporate Leadership Team, be agreed.
- b) That officers develop and present proposals that achieve the Council's objectives through commercial development, as set out in Section 1.5 of the report.
- c) That the evaluation of resources available and scheme proposals as set out in paragraph 1.6.5. of the report, identifying the appropriate use of the resources available, be approved.

Section 1.5 of the Cabinet report identifies the possible use of prudential borrowing when the following criteria apply:

- a) Schemes (or proposals) are commercial in nature
- b) The outcome returns a financial benefit at least equal to the cost incurred by borrowing to fund the schemes.
- c) After covering the cost of funding, a further financial or non-financial benefit accrues to the Council that directly or indirectly supports the strategic plans policy outcomes.

The report of the Assistant Director of Environment and Regulatory Services considers three areas of prudential borrowing that will meet the guidelines of the CIPFA Code of Conduct and the criteria identified in the above decision of Cabinet on 25 July 2012.

Property Portfolio

Most local authorities have property portfolios and this Council owns assets with a value around £79 million. The major asset owned by the Council is the Park Wood Industrial Estate which generates over £300k per annum to the Council.

Property investment opportunities can become available which would require prudential borrowing, but would generate surplus income to support the Council's strategic priorities. Such acquisitions would comply with the CIPFA code and the recent Cabinet report and must:-

- Have existing long-term good quality tenants
- Be in good condition with long term lease and suitable construction
- Make an annual rate of return beyond the capital repayment based on a maximum 50-year repayment.
- Be available at an affordable price to meet the requirements of best consideration.

Such property, including those outside the Borough but within the UK, do not often come to the open market and the Council, if it wishes to consider such acquisitions, will have to procure suitable professional advice.

In order to achieve the best opportunities for the Council, expert advice would be needed and the Council would appoint an agent or agents who would work on a commission only basis, to be based on a sliding scale according to the value of the acquisition. This was shown in Appendix 1 to the report of the Assistant Director of Environment and Regulatory Services. Such agents would bring forward suitable acquisitions on a confidential basis.

Property Portfolio Governance

This is a new area of activity for the Council and the governance of such arrangements is critical to ensure the processes and responsibilities are clear and transparent.

It is proposed that the Council establishes an informal members advisory panel to review the business cases brought forward and advise the

decision makers. The proposed terms of reference of the panel were provided in Appendix 2 to the report of the Assistant Director of Environment and Regulatory Services.

It is also proposed that due to the *ad hoc* and sometimes urgent way that proposals are brought forward, that decisions are made by a committee of cabinet, the members of which, if needed, could meet quickly to consider an urgent proposition.

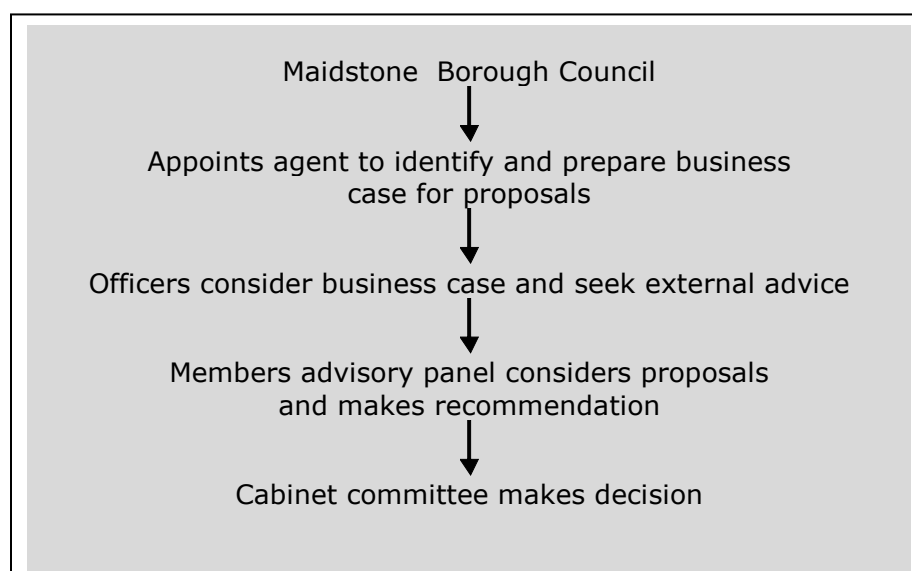
It was recommended that the committee would comprise of the Leader of the Council, Cabinet Member for Economic and Commercial Development and the Cabinet Member for Corporate Services. Substitute Cabinet members would be permitted. The terms of reference are also provided in Appendix 2 to the report of the Assistant Director of Environment and Regulatory Services.

It would be the agents' responsibility to ensure that all costs are identified in the detailed business case. In this way, the Council would bear no additional costs, its exposure being limited to pre-agreed commission for each transaction as it arises.

It would be the relevant officers, supported by the agents, responsibility to present prospective acquisitions to the members panel, supported by a full report to include third party valuation, financial assessment, title report, etc. In turn, any recommended proposals would be presented to the cabinet committee for approval.

Such reports and recommendations would be comprehensive and capable of enabling a decision to be made which meets the guidelines identified above. This is likely to include external independent advice regarding the elements of the business case.

A possible flow diagram is shown below:-



The appointment of an agent would need to meet the requirements of the Council's procurement policy

It is considered prudent that a limit on acquisitions be set each year in accordance with the Council's treasury management arrangements and that for the present year, 2012/13, this be set at £6million. This will need Audit Committee and full Council approval.

Derelict Residential Properties

The Government is encouraging Councils to use prudential borrowing to bring back derelict residential properties to habitable use. This could include long-term empty properties.

The Council's Housing service has already secured government funding to support the restoration of 10 properties but surveys have identified that there are in the region of 50 properties in the borough that are derelict and 500 that have been empty for more than two years.

In addition, the Council is facing, due to the current economic downturn, ever increasing costs to provide homeless individuals and families with temporary accommodation.

It was suggested that, if restored, these derelict and long-term empty properties could be used to provide that temporary accommodation, which would be cheaper than the current costs of bed and breakfast and provide a regular income to repay the purchase costs.

These acquisitions should be made through the Property Investment Governance arrangements identified above.

Again, all acquisitions will need to meet the CIPFA prudential code and guidelines established by Cabinet.

Strategic Property Investment

Given the current economic position, there may be certain circumstances where development, within the borough, is not progressing in a way that the "market" would enable without intervention. It could be that bringing forward that development would assist the Council in achieving its strategic objectives. An example might be where a significant number of new jobs would be created.

In order to see the development come forward, the Council may decide to intervene and provide financial or technical support. Each case would be subject to a detailed report by the appointed agent and a detailed business case in accordance with the Property Investment Governance arrangements identified above.

Again, all the criteria set out above would need to be met, although in such cases, the Council could accept a proposal which would only return the original outlay and not necessarily provide an additional yield.

Possible Business Failure

It is inevitable that in investing in these properties, there are risks and possible failure, although unlikely given the controls, could occur. It is therefore proposed to establish a fund of £500k to cover any potential

scheme failure. This is also relevant for the report on commercial opportunities, also on the Cabinet agenda.

These are the only circumstances in which the Council will consider prudential borrowing at the present time.

Other capital projects will have to be funded from surplus received and through other funding sources.

Alternatives considered and why rejected

The Cabinet could have decided not to agree to the options but this would prevent any possible activity from the potential venture.

The Cabinet could have decided to propose different governance arrangements but the arrangements suggested in the report of the Assistant Director of Environment and Regulatory Services provide for clear decision making and transparency.

Background Papers

The Prudential Code, published by the Chartered Institute of Public Finance and Accountancy.

Report to cabinet on the capital programme July 2012

<p>Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 20 September 2012</p>

MAIDSTONE BOROUGH COUNCIL

RECORD OF DECISION OF THE CABINET

Decision Made: 12 September 2012

COMMERCIAL OPPORTUNITIES

Issue for Decision

To consider ways in which the Council can take forward possible commercial activity to generate additional revenue income and improve sustainability

Decision Made

1. That the new opportunities for commercial activity identified in the report of the Assistant Director of Environment and Regulatory Services be agreed and put through the business model process.
2. That a similar business model process be used to bring forward opportunities relating to existing commercial activity.
3. That the Council's fund of £500k, as agreed in the decision regarding Investment Opportunities to meet possible investment failure, be also used in the event that a commercial venture fails or does not meet the expected return.

Reasons for Decision

The current economic climate is causing significant financial pressure on local authorities. Revenue provision through government grant is reducing and will continue to reduce. In order to achieve the Council's strategic goals and indeed to maintain services, there is a need for the Council to be more business-like.

The Cabinet had already recognised this and a comprehensive review of fees and charges was undertaken last year with the aim of maximizing income. Further reviews will be undertaken as part of the budget setting process.

In addition, with the aim to become more business-like, officers have undertaken extensive research and identified the Council's areas of commercial strength and areas of business opportunity. Existing commercial activity has been reviewed and potential expansion identified where appropriate.

Discussions with local business leaders had indicated that they have no objection to the Council being a competitor, where appropriate, but would expect that any commercial activity would be undertaken using "a level

playing field”.

However, any commercial activity has a potential risk and the Council needs to be aware that some ventures may fail. In order to minimize the risk, every proposal will need to be the subject of a rigorous business development appraisal. To assist in this process, advice has been sought from business experts and entrepreneurs and a detailed business development appraisal model has been identified to ensure proposals are fit for purpose.

This advice and appraisal system comes at a cost and budget from last year's underspend has been set aside to start the process off.

It is recognised that new commercial activity will require start up budgets and this will be provided through the invest to save fund.

Having reviewed the main opportunities through a workshop and having in mind the relative strengths of the services/activities, a short list has been identified for those areas considered to have the best commercial potential. These are:-

- Commercial waste
- Venues and event management
- Professional services
- Print room
- Temporary residential accommodation

Subject to Cabinet approval, it is suggested that the business development appraisal model be used to test the opportunities for a commercial waste service, as a lot of background work has already been completed. The author of the model will be employed to provide guidance on the way the model is implemented.

If this proves beneficial, this will then be extended for the other services on the short list.

Individual reports will then be provided to the appropriate cabinet member for approval to progress forward.

A summary of the appraisal model is provided in Appendix A to the report of the Assistant Director of Environment and Regulatory Services.

As mentioned earlier, a review of existing commercial activity has been undertaken and existing services that could benefit from what is called an “entrepreneurial” approach have been identified. These are:

- Bereavement services
- Procurement
- Building Control
- Shared services in terms of the next steps
- Advertisements
- Grounds maintenance

It is proposed to use this approach to review the opportunities for these existing services and bring forward the business plans to the relevant cabinet members.

It is recognised that this approach to business development is new and rigorous controls are necessary to minimise risks to the Council. Such new or extended ventures will need "start up" budgets. Clearly, it is difficult to identify how much additional income will be realised. Individual performance will be identified in the business plans presented to the cabinet members. Once established the performance of each venture will be assessed and monitored by means of the Council's normal procedures including quarterly reporting of service delivery and financial performance.

Alternatives considered and why rejected

The Cabinet could decide not to agree the proposals to test the business case for commercial waste, but this was not recommended as it would mean a potential opportunity to generate income would be lost.

The Cabinet could opt for a different service to test but the case for a commercial waste service is well developed and is most suited to going through the appraisal model in terms of timeliness.

The Cabinet could decide to select other services for potential business development activity; however, officers are satisfied that having considered the strengths of the various services, those identified provide the most likely ways to generate income.

A decision could have been made not to proceed with any of the proposals and not agree the use of the business model process but this would mean no further commercial activity would be brought forward.

Background Papers

Report on Investment Opportunities dated 12/09/2012

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 20 September 2012
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