

CONFIDENTIAL Agenda Item 21

Cabinet

15 June 2011

11/1111



The Longboat Cafe, Budleigh Salterton

Exempt Information

Para 3 Schedule 12A information relating to the finance or business affairs of any particular person

Summary

At its meeting of 1 June 2010, the Development Management Committee, granted detailed planning consent to demolish an existing cafe/store and construct a new cafe/restaurant facility on the Marine Parade, Budleigh Salterton. The development of the scheme would require the cafe owner/developer to acquire land owned by Clinton Devon Estates and leased to the Council.

Recommendation

That the Council confirms as land owner that it does not wish to dispose of its interest to facilitate redevelopment of the Longboat Cafe (as per the approved planning application).

a) Reasons for Recommendation

The Council is requested to make a decision as to whether or not it supports the proposed scheme so that officers can either enter into negotiations with the relevant parties to try and facilitate the redevelopment or advise the cafe owner that the Council does not wish to facilitate the scheme.

b) Alternative Options

To retain the shelter/store and seating as in its current form on Marine Parade. These property assets are not currently designated by the Council as surplus to requirements but, should Members wish them to be, a third party has expressed an interest in purchasing them.

c) Risk Considerations

The risk considerations are dealt with in the main body of the report.

d) Policy and Budgetary Considerations

Should the Council choose to enter into negotiations with the cafe owner and Clinton Devon Estates, it is likely that either a capital receipt or an increased annual rental will be realised.

Positive Impact Overall

Thriving Economy.
Safe Environment.
Clean Environment.

e) Date for Review of Decision

Not applicable

1.0 Background

- 1.1 In February 2007, the owner of the Longboat Cafe on Marine Parade at Budleigh Salterton wrote to the Council to explore the potential to redevelop the site with a view to making a better provision for the needs of his customers and to enhance the tourism potential of Budleigh Salterton.
- 1.2 During preliminary discussions with the Planning Department, it had become apparent that the ability to secure the use of the adjacent shelter (leased by the Council from Clinton Devon Estates), to gain greater storage space and the potential to utilise the elevated seating area above, was 'vital to producing a development that would be viable and enhance rather than detract from the beauty of the area'.
- 1.3 The owner of the Longboat Cafe is the beneficiary of a lease from East Devon District Council to rent the store at the rear of the shelter. Both the store and the shelter are the subject of a 999 lease between the Council and Clinton Devon Estates. Clinton Devon Estates is the freeholder and the Trustees have informally indicated that they would not wish to see the currently proposed development proceed.
- 1.4 The three Ward Members have been consulted and are not in favour of the Council currently disposing of its land interest. Furthermore although there are strong opinions about the development within the town, there is an expectation that the land will be offered to third parties on the open market for them to frustrate the proposed development.
- 1.5 A planning application was submitted in September 2008 relating both to the land in the ownership of the Longboat Cafe and the adjoining land controlled by the Council and owned by Clinton Devon Estates. The application was and remains highly controversial. The Planning Authority received around 600 comments on the application from the public – most against the development. The Council as a landowner has to date received in excess of 50 letters and emails against the development.

2.0 Recent Events

- 2.1 At its meeting of 1 June 2010, the Development Management Committee, 1 June 2010 granted detailed planning consent to demolish an existing cafe/store and construct a new cafe/restaurant facility on the Marine Parade, Budleigh Salterton.
- 2.2 The owner of the Longboat Cafe has since approached the Council to ascertain whether or not the Council remain in support of the public shelter being used for the development and what information may be required from him to

commence the necessary steps to secure either a sub-lease or the freehold interest.

- 2.3 Following the grant of planning permission, Clinton Devon Estates have requested that prior to their Board of Trustees considering whether or not they would recommend the sale of their freehold interest in the land, or permit the Council to grant a sub-lease, they would like the Council to confirm their exact position (the Council as a landowner as opposed to the Planning Authority).
- 2.4 Land owned by the Council must be disposed of pursuant to the Council's obligations under Section 123 of the Local Government Act 1972, including a requirement to secure the best consideration reasonably obtainable on the open market, unless the Council chooses to exercise its powers to dispose at less than market value [See legal implications]. Best consideration is usually measured by advertising the land for sale by an open market tender process and assessing the bids received. However, should the Council wish to recommend support of the development in principle through the disposal of a land interest in this instance, the owner of the Longboat Cafe could be considered to have special purchaser status because he owns the majority of the land required to progress the development.

3.0 Recommendations

- 3.1 The Council needs to establish whether or not it is support of the proposed development. If it is, the Council's officers can work towards facilitating the scheme. However, if Members are not in support of the scheme, the owner of the Longboat Cafe will be advised that the Council does not wish to enter into negotiations to dispose of its interest in the relevant land and buildings.



Existing cafe building and separate public shelter and store



Architect's illustration of proposed development

Legal Implications

The Council's title derives from a Lease dated 4/7/1960 between Clinton Devon Estates and Budleigh Salterton UDC for a term of 999 years from 25/03 /1959. This Lease was surrendered and replaced with a new Lease between Clinton Devon and EDDC dated 12/11/2002 so that additional land at Steamer Steps could be added but the terms of the original Lease are the relevant ones. Both the Shelter and the cafe are shown on the Lease Plan. The cafe is shown as being excluded from the Lease presumably because the freehold was outside Clinton Devon's title. The lease contains an absolute prohibition against assigning or transferring the premises. Because of the nature of our interest and the covenants it is not in our gift to sell the site to the applicant in a direct manner. It is necessary for any purchaser to gain the agreement of both CDE and the Council to their proposals.

The rear part of the shelter is currently let to the owner of the Cafe, as storage.

The cafe owner has obtained planning consent to rebuild the cafe but needs the area including the shelter to carry out the proposed re-development. There is substantial local objection to the scheme including the suggestion that if the Council decides to dispose of its interest the objectors should be given the chance to bid competitively for the land. [There is no legal obligation to do this]. Other parts of the community are in favour of the proposal. The effect of a third party acquiring the shelter alone would be to put this small piece of land in separate ownership and the Longboat Cafe proposal would not be capable of implementation.

It is suggested the most appropriate process to resolve this issue, should the Council as landowner wish to support the development, would be for the purchaser to negotiate with Clinton Devon Estates as to freehold acquisition and then for the Council to surrender its interest as part of a three party arrangement

The terms of the General Disposal Consent of 2003 mean that specific consent from central government is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Further, the Council is not obliged to surrender its lease to the highest bidder, as the Disposal Consent permits disposal of land at below market value, provided the undervalue is less than 2 million pounds. Should any issues arise over valuation in the context of the Disposal Consents, the council's normal practice is to seek specialist advice from the District Valuer.

Financial Implications

The financial implications are difficult to ascertain. There may be a capital receipt or increased rent income if the redevelopment goes ahead. There might be costs involved in the negotiations with Clinton Devon Estates but we are advised by Estates that we would expect to recharge any costs incurred to the owner of the cafe.