
Report to Cabinet

24th February, 2009

Report of Director of City Development and Director of Finance & Legal Services

**Belgrade Plaza Phase 3: Proposed amendments to the Development Agreement
(St Michael's Ward)**

1 Purpose of the Report

- 1.1 On 8th February 2009 Cabinet Member (City Development) considered a report proposing changes to the legal agreements between the Council and the developer of the Belgrade Plaza scheme, the Oakmoor Deeley Partnership (ODP). Cabinet Member authorised that the Council acting in a landlord capacity only, remove the obligation to provide shared ownership housing and any necessary amendments to the agreements to reflect any changes to the planning consent to enable the construction of Phase 3 for an amended purpose, in this case a change from residential development to student housing. This decision was called-in and at its meeting on 2nd February Scrutiny Board 3 referred the report back for further consideration.
- 1.2 Belgrade Plaza is an important £80m mixed-use phased development adjoining the Belgrade Theatre. A revised planning permission for Phase 3 was approved by Planning Committee on 19th February 2009, which amended the main content of that phase from residential apartments to flats for student occupation together with 4 units for uses within Use Class A3: restaurants and cafes.
- 1.3 The purpose of this report is to address Scrutiny Board 3's comments and reconsider the matter. The report is presented to Cabinet rather than Cabinet Member because the issues raised are considered to be important in the context of City Centre regeneration. The item is urgent because ODP needs to enter into agreements with their contractor in the next few weeks, so that the student accommodation is ready for occupation by the start of the 2010/11 academic year.

2 Recommendations

Cabinet is asked to confirm Cabinet Member's (City Development) previous decision with added conditions, as follows:

- 2.1 Authorise the deletion of the obligation for ODP to provide 51 shared ownership residential units and undertake any necessary amendments to the legal agreement between the Council and ODP to reflect any changes to the planning consent under planning permission Ref 51684/D, subject to the following criteria:

- 2.1.1 That materials and finishes used within Phase 3 reflect and where possible exceed the quality of the existing materials and finishes within the existing approved scheme under the development agreement.
- 2.1.2 That a limit of 4 units be imposed for retail and restaurant/cafe use (Use Class A3) for which the ground floor area shall not exceed 1200m² and the imposition of hours of use controls to ensure that any retail or restaurant units do not operate later than 12.30am within the variation to the development agreement.
- 2.1.3 That ODP be asked to take all reasonable measures as described in para. 5.1v), to minimise any potential disturbance to immediate neighbours.
- 2.2 Delegate the agreement of detailed terms to the Head of Property in discussion with the Deputy Director City Development and completion of the deed of variation to the Director of Finance and Legal Services.

3 Information/Background

- 3.1 The mixed-use Belgrade Plaza project is being undertaken by the Oakmoor Deeley Partnership, the site is shown on the attached 'site location' plan. The development comprises 4 discrete 'blocks' built in phases, with a pedestrian mall linking the Theatre to the multi storey car park, a taxi drop off and service area. Phase 1 which comprised the extension of the former Leigh Mills car park to provide c1100 spaces is complete. Phase 2a is under construction and is scheduled for completion in spring, 2009. This comprises 60 residential apartments (pre-sold to an investor, a Gala casino, Premier Inn Hotel (119 beds) and 3 bars/restaurants which are all pre-let (Metro Bar & Grill, Bella Italia and Pizza Express). Phase 2b comprises the Quality Hotel which is scheduled to commence Autumn 09. ODP are also finalising the remodelling of Belgrade Square, to incorporate a new water feature, terraced lawn, artwork and a taxi drop off area.
- 3.2 Phase 3, as shown on the attached plan, was originally planned to comprise c185 apartments for sale, 12 one bed social rented apartments to replace the units demolished, 51 shared ownership units and 2 bars and restaurants. Whitefriars Housing is obliged to accommodate the persons displaced from the demolished social rented units in the 12 new social rented units, if those tenants so require.
- 3.3 The permitted use of the Plaza scheme within the Agreements is related to the original planning permission dated 10th January 2005, or any subsequent variation. This currently permits two hotels, offices, casino, retail and catering units and residential apartments, and the extended multi-storey car park. There is a limitation on the number of retail and catering units to seven, of which 2 are located within Phase 3 and a prohibition on fast food restaurants and young persons drinking establishments.

4 Proposal & Other Options to be considered

- 4.1 Your officers have been advised that in the proposed residential development of Phase 3 is not viable in the current economic climate, so along with ODP other forms of development of have been considered.
- 4.2 ODP are now proposing to construct flats to accommodate c504 students with communal facilities in association with Coventry University, together with 4 restaurant/cafe or retail units and the 12 apartments for Whitefriars Housing to replace those demolished, as shown on the 'site plan'. The 51 shared ownership units would not be provided. The form of development is similar to the previous layout in terms of design, massing and materials, and was considered by the Development Forum on 17 December 2008. A planning application has been submitted and was approved by Planning Committee on the 19th February subject to appropriate conditions.

- 4.3 The existing Development Agreement and Lease imposes certain obligations and restrictions on ODP which will need to be amended if their revised proposals are to be agreed in line with the revised planning permission:
- a) the obligation to provide 51 shared ownership affordable apartments would be deleted
 - b) the user clause restricts the use to be in compliance with the planning consent granted in 2005 this would have to be amended to reflect any new planning consent regarding the change in the nature of accommodation provided
 - c) the 2005 consent provided for only 2 retail or restaurant units to be permitted within Phase 3, this will need to be extended to 4 units and catering use defined by Use Class A3 . (the ground floor area of these units increases from 750m2 to 1200m2).
 - d) the commencement date for the development of Phase 3 will need to be varied from May 2008 to September 2009, with a development period of 18 months.
- 4.4 In respect of the shared ownership units the obligation to provide these was originally agreed between the parties to achieve a mix of tenure. It was not a planning policy requirement to provide such units in the City Centre and indeed it was not a condition of the planning permission. The removal of this obligation is considered acceptable to enable the proposed scheme to proceed with current economic conditions and on the basis that it is not relevant to the revised proposal. Officers within our own Housing Policy Unit have confirmed that there is currently a very poor market for shared ownership units.
- 4.5 ODP has considered other forms of development. A scheme for offices has been drawn up, but this would require gap funding and a pre-let to be viable. Retail (food) has also been considered, but both ODP and officers do not consider a large food store appropriate for this site. The other option available to the Council, as Landlords, is to refuse to agree to the proposals. This would have the disadvantage of delaying the commencement of development on Phase 3 until the housing or office market recovers sufficiently to make such a scheme economic. It would also have considerable impact upon phase 2a, which opens in April, as this will trade opposite a vacant development site for a number of years. In addition this would effectively reduce the critical mass of leisure uses in this area to the detriment of the vitality of the overall scheme.

5. Scrutiny Board 3

- 5.1 The Board agreed to refer the decision back to Cabinet Member and requested that it be reconsidered taking into account the following issues raised by them;
- i) *The importance of the Belgrade Plaza development remaining a prestigious mixed-use development.*
 Comment: This is a key development for the City of Coventry. Both ODP and officers agree quality is essential for the success of the scheme and the City Centre's regeneration. The Belgrade Theatre has confirmed their continuing support for the Plaza project. Although concern could exist that the proposed use does not have the same kudos as the previously approved scheme, the change to the scheme will for many people be imperceptible, subject to the use of similar architecture and materials. It has therefore been suggested that a condition be added to the development agreement ensuring the use of appropriate materials. The only substantive difference is the replacement of residential apartments by flats occupied by students, which is still consistent with a prestigious mixed-use development.
 - ii) *That the successful delivery of a four star hotel as part of phase 2b be considered a priority and that any changes to the Development Agreement to be sympathetic to securing this development.*
 Comment: the provision of a quality hotel is an obligation on the developer which is secured in the existing legal agreements. The developers have discussed the change in nature of the accommodation with the prospective hotel operator and they

welcome the proposal as it potentially widens the appeal of the conferencing market outside normal term time, when joined up working with the University and Theatre will provide a range of attractive facilities within close proximity, with greater capacity for delegates accommodation and exhibitions/ meeting rooms. The hotel also plans to benefit from business generated from parents visiting the students living nearby.

- iii) *The Scrutiny Board's concern that various issues regarding the financial implications of the proposed amendments to the Development Agreement were not able to be fully discussed at their meeting.*

Comment: The Financial Implications sections of this report (sec. 6.4) have been reinforced. In brief, there is no diminution in capital receipt and no change to the rent receivable, whether the revised scheme goes ahead or not. The developers have been asked to provide an appraisal to support their contention that an increase in the premium is not warranted. As yet this has not been received, but when it is it will be scrutinised carefully.

- iv) *That before agreeing to delete the requirement for shared-equity 'affordable' housing the Cabinet Member should consider all alternative options including rejecting the proposal.*

Comment: the option of rejecting the proposal was included in the earlier report, with a comment about the implication of that, which is repeated in para 4.5. The previous report also discussed other options like offices, which had been discounted as unviable in the current market. The Housing Policy Officer advises that the Homes and Communities Agency has funds available for Housing Associations to construct affordable homes for rent, but no discussions have taken place on this specific scheme because ODP do not want to pursue such a scheme and in event it would not make the development any more viable for them. So to facilitate a social rented scheme the Council would have to obtain possession of the site. The implications of this are discussed in vi) below.

- v) *That, should he be convinced after considering all other options that the proposed amendment to the Development Agreement is merited, then consideration be given to negotiating covenants or other such amendments to secure;*

- *Strict limits on the size and form of any bars or restaurants developed in this phase of the development, including hours of use controls to ensure that any retail or leisure uses do not operate later than 12am (midnight).*

Comment: The Lease already contains a prohibition on fast food outlets and young persons drinking establishments. The latter may be difficult to define but demonstrates the intent of the parties. Two units were of course previously proposed in this location without any restriction on hours and match the three across the mall built as part of Phase 2a. It is proposed to limit the number of retail or restaurant/café units in Phase 3 to 4 and the ground floor area to 1200m². By limiting the use in line with planning Use Class A3, this excludes Public Houses, wine bars and other drinking establishments which are covered by Use Class A4. Hours of operation are normally a matter for Licensing, but it has been agreed with ODP that these units will be required to close at 12.30am, as a condition of the legal agreement.

- *The minimum disruption to neighbours and other parts of the Belgrade Plaza development.*

Comment: the lease contains the usual covenants not to cause nuisance or waste and in the event of a breach the Council can serve notice of breach upon the tenant under the lease for it to be remedied within a certain time period and failure to do so enables the Council to remedy the breach and recover the cost of doing so from the tenant. The scheme has been designed so that the main entrance to the student housing is off Bond Street, near the Town Wall Tavern and some distance from the existing sheltered housing which leads to an internal

courtyard which offers space for social interaction. The social rented units are accessed off Ryley Street. The external & common areas of the whole Plaza project are covered by a security (CCTV /Patrols), maintenance & cleansing regime. Phase 3's design includes specific security features including overlooking and natural surveillance from surrounding buildings, active frontages, CCTV within the student housing scheme covering the entrance & courtyard areas and a 24 hour warden presence. Advice from WM Police & Environmental Health based on experience with other purpose built and managed student schemes indicates there is no evidence to suggest that there are complaints from local residents of noise or disturbance arising from these schemes. Indeed the proposed scheme will be subject to much tighter on-site management than that previously approved. No car parking is to be provided, but is available and will be encouraged by ODP within the nearby 1100 space multi storey car park, which is significantly underused (weekday usage c14% & Saturdays 23% of capacity). The adjoining streets all have parking restrictions, allowing only parking by disabled drivers subject to such vehicles not causing an obstruction.

- *That the design, materials, and finishes planned are of at least as high standard or better than those planned originally.*

Comment: The design and materials have been approved as part of the planning permission. They match the earlier phases in the use of brick, stone, glazing, and render in a contemporary manner. The height and building footprint are similar to the previous scheme. Pitched roofs are used at the Hill Street end of the site where the buildings are 2 & 3 storey; elsewhere flat roofs with simple parapets are used on the taller blocks. The main pedestrian mall from the Theatre to the Car Park maintains a minimum width of c10m. Therefore your officers consider that the revised scheme is at least to the same standard as that previously approved.

- vi) *The dissatisfaction expressed by the Board with the report presented to the Cabinet Member and the lack of clarity regarding the scope for decision-making open to the Council in considering the proposals to amend the Development Agreement.*

Comment: ODP requested landlord's approval from the Council to vary the legal documents to permit this change from the agreed works for Phase 3. Acting for the landlord officers considered the proposal and recommended that in order to ensure the delivery of the project that landlord approval be given. The only other options were to enforce the obligation on ODP to deliver the agreed scheme and this may have left the Council stepping in to find another developer and accounting to ODP for work completed to date on the project or to negotiate for something different, which as has been discussed is difficult in the current economic climate. If ODP withdraw from the Plaza project or the Council have to step in then inevitably this will also further delay the delivery of the quality hotel.

6 Other Specific Implications

6.1

	Implications (See below)	No Implications
Best Value		✓
Children and Young People		✓
Climate Change & Sustainable Development	✓	
Comparable Benchmark Data		✓
Corporate Parenting		✓

	Implications (See below)	No Implications
Coventry Community Plan		✓
Crime and Disorder	✓	
Equal Opportunities		✓
Finance	✓	
Health and Safety		✓
Human Resources		✓
Human Rights Act		✓
Impact on Partner Organisations		✓
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management		✓
Property Implications	✓	
Race Equality Scheme		✓
Risk Management		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

6.2 *Climate Change and Sustainable Development*

The development includes a complete sustainable package, considering all aspects of environmental sustainability, including energy emissions, water consumption, materials, surface water run off, waste, pollution, health and well-being, management and ecology in relation to the site and building design. The social rented element will comply with level 3 of the Code for Sustainable Homes. and the scheme is designed to achieve a BREEAM rating of 'very good'.

6.3 *Crime and Disorder*

ODP's architects have liaised with the police Architectural Liaison Officer to ensure the design minimises the potential for crime & disorder (see para 5.1v).

6.4 *Finance*

- 6.4.1 ODP agreed to pay a premium for the whole Belgrade Plaza site of £7.579m, subject to the deduction of the actual costs incurred by ODP in undertaking certain specified off-site works. ODP have already paid £5.829m to the Council and the final payment of £1.75m was due in January 2009, from which the agreed deductions were to be made. Some of these costs cannot yet be validated as the works have been deferred. However to date £850K has been validated and ODP have estimated the costs of the remaining elements at over a £1m, giving a total of £1.850m, which if validated would reduce the final payment to zero. Discussions regarding the measurement & specification of the remaining works in respect of the area beneath the Ring Road, to produce a more cost effective solution without compromising quality and security may produce cost savings. If these are achieved it could reduce the total costs below £1.75m, which would lead to a further payment to the Council.

6.4.2 ODP have indicated that in their opinion the proposed changes to Phase 3 do not warrant a renegotiation of the agreed premium, as economic circumstances have caused property values to fall since the original premium payment was agreed. Your officers have asked for a copy of their appraisal to verify this position, and this is awaited. In any event the premium and rent payable will not be reduced below the previously agreed figures.

6.5 *Legal Implications & Property Implications*

6.5.1 ODP hold the site by way of a Development Agreement and lease from 20 May 2005 for 150 years at a rental of £200k pa which is subject to an annual increase related to the Retail Price Index. This rent is in addition to the premium referred to earlier

6.5.2 ODP will meet the Council's reasonable legal costs incurred in the preparation of a Deed of Variation.

7 Monitoring

7.1 The project is being monitored by officers in the Development Projects Section of City Development Directorate.

8 Timescale and expected outcomes

8.1 If the student-housing scheme proceeds it is programmed to commence April 2009, and be completed for occupation by the Autumn Term, 2010.

8.2 The outcomes are 85 flats to accommodate 504 students and communal facilities, 4 restaurants/cafe or retail units and 12 social rented apartments. The completion of Phase 3 will also be a further milestone towards full completion of the Belgrade Plaza project that is a major regeneration scheme within the City Centre. All that would remain to be constructed would be Phase 2a (the quality hotel) and the environmental enhancements beneath the Ring Road.

	Yes	No
Key Decision		✓
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		
Council Consideration (if yes, date of Council meeting)		

List of background papers

Proper officer: Martin Yardley, Deputy Director, CDD

Author: Tony Auty, Manager (Development Projects), CDD ☎ 024 7683 2770

(Any enquiries should be directed to the above)

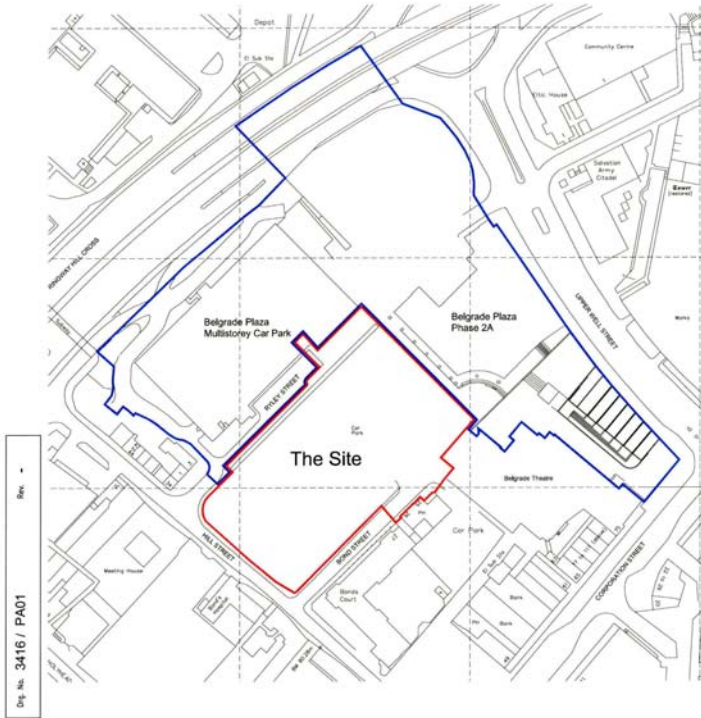
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Papers open to Public Inspection

Description of paper	Location
Scheme Drawings, artist's impressions etc	CC4/5

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Dwg. No. 3416 / PA01
 Rev. -



Rev.	Date	Description	Drawn	Checked
 <p> S R DAVIS ARCHITECTS Highgate Court 67-68 Highgate Rd Edgbaston Birmingham B15 3BU Tel: 0121 433 8231 Fax: 0121 436 2232 e-mail: enquiries@sr-davis.com </p>				
Project		Belgrade Plaza, Coventry Phase 3		
Client		Oakmoor Deeley		
Title		Site Location Plan		
Drawn	NW	Checked	DS	Date December 2008
Scale	1:1250 @ A3		Status	PLANNING
Dwg. No.	3416 / PA01		Rev.	-
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