



Delegated decision report

DECISION UNDER DELEGATED POWERS

DECISION CANNOT BE TAKEN BEFORE 9 JULY 2020

Title **RELEASE OF TITLE COVENANTS ON LAND AT ST GEORGES WAY AND GODRIC ROAD, NEWPORT**

Report of **DEPUTY LEADER AND CABINET MEMBER FOR RESOURCES**

EXECUTIVE SUMMARY

1. In January 2015, the Isle of Wight Council (the council) granted an option to South Coast Leisure Ltd (SCL) to purchase a piece of council owned land at St George’s Way, Newport, and some restrictions were put on the title. This was subsequently varied in 2018 (delegated decision reference 11/17).
2. SCL exercised the option earlier this year and purchased the site. Due to weakening retail market conditions in recent years and now Covid, to ensure the successful delivery of the retail park, SCL is now requesting that all restrictions on the title be lifted and instead a fair proportion of any resulting increase in land value to be paid to the council.

BACKGROUND

3. In January 2015, the council granted SCL a five year option to purchase some council owned land at St George’s Way, Newport (decision reference 136 (14/15), shown hatched and dotted on Appendix 1 attached, and located immediately adjacent to SCL’s land currently occupied by Newport Football Club (“NFC site”). SCL completed the purchase of the former option land earlier this year.
4. The development permitted within the original option was “for non-food retail or light industrial uses” at an agreed purchase price of £350,000 + RPI.
5. Due to changing market demand, in 2017 SCL requested some amendments to the option, and a deed of variation was granted on 15 February 2018 incorporating these (delegated decision reference 11/17). These widened the original use restriction to include two foods stores of 18,800 sq. ft. and 11,000 sq. ft. and allowed ancillary food retail sales in non-food retail units up to 15 per cent of a unit’s floor area. Residential and hotel use remained prohibited. A requirement was also introduced that the end development (i.e. the NFC site and the option site) could only be sold as a single lot as it was SCL’s intention at that time to sell the entire development to a single financial institution. A valuation exercise was undertaken which concluded that these variations did not generate an increased land value for

the council. Finally, a buy back option exists on the title, which allows the council to buy the former option land back from SCL if it is not developed to an agreed level within an agreed timescale.

6. SCL is now requesting that all title restrictions be removed as a result of the extremely challenging retail market conditions which were not apparent in 2016/17, recently made worse by Covid: SCL advise that changes to market demand, combined with the restrictions on use, the ability for the council to buy back the former option land if SCL do not meet the agreed timescales for development and the requirement on SCL to only sell the two sites as one is proving unattractive to both tenants and funders, rendering the scheme unviable. SCL advise that they require as much control and flexibility as possible if they are to successfully deliver the new retail park. Essentially, the council is being asked to convert controls which were agreed five years ago when the retail market in particular was very different to that of today and convert them to value which will be paid to the council in the future if these changes prove to have additional value.
7. The detailed agreed heads of terms are attached as Appendix 2 and are briefly summarised as follows:
 - (i) the user restrictions be removed and instead a fair proportion of value to be paid to the council in the future if currently restricted uses are provided on site
 - (ii) the requirement that both sites (the NFC site and the former option site) are sold as one be removed, and instead a fair proportion of value to be paid to the council in the future if parts of the site are sold, and
 - (iii) to replace the council's "buy back" option with a satisfactory alternative which will still encourage SCL to build out the site as soon and as effectively as possible, within agreed timescales.
8. It is not possible to value these changes at the moment as SCL do not currently know how the redevelopment will evolve, what type of uses will be provided, which units will be built/occupied when, and if/when part of the site may be sold separately. Therefore, it has been agreed that if any of the current title restrictions are triggered in the future, a fair proportion of any increase in value will be paid to the council as a result.
9. The proposed retail park will deliver substantial regeneration benefits for the Isle of Wight, including attracting new employers and retailers, and the creation of new jobs and business rates. Based on similar units around Newport, SCL estimate that the proposed retail park (both the NFC site and the former option land, based on the current planning permission) could generate in the region 350 – 400 new jobs and in the region of £750,000 per annum in business rates.
10. If the council agrees to vary the terms of the current option, SCL will be able to:
 - (i) provide a wider variety of uses within the proposed development which will better match market demand
 - (ii) sell the completed development piecemeal which will better match market demand and be more attractive to investors, and
 - (iii) offer tenants and purchasers security that their unit/land will not be taken over by a third party (the council) in the future if SCL cannot meet the required performance obligations.

11. If this report is approved the council will need to sign a deed of variation to the above effect, the cost of which will be met by SCL.
12. SCL is funding the council's reasonable legal and professional fees in progressing this request, and in dealing with all future requests and calculations of value if no additional value is generated for the council.
13. This report also seeks approval to delegate authority to the Director of Regeneration, in consultation with the Cabinet member for resources, to agree the precise contract terms.

STRATEGIC CONTEXT

14. To agree an amendment to the original option is consistent with the council's Corporate Plan 2019 to 2022 "Our Island-Our Vision" by delivering the following important outcomes:
 - Businesses have the confidence to invest.
 - A financially balanced and sustainable council.

CONSULTATION

15. This report is a variation of terms of a previous Cabinet decision and delegated decision.
16. Newport and Carisbrooke Community Council has been advised of this proposal and recommendation.

FINANCIAL / BUDGET IMPLICATIONS

17. If this report is approved, and SCL "trigger" any of the current title restrictions, a fair proportion of value generated will be paid to the council. This value cannot be assessed at this time as the detail of the development is currently unknown, therefore the value will be calculated at the time. For the currently restricted uses, this will be via an overage clause and an independent valuation, and if either party challenge the outcome the matter can be referred to an independent valuer for a final decision. If the option land is sold separately or in more than one piece, the value will either be calculated by an agreed formula, or via an overage and an independent valuer's advice, or similar, to be agreed.
18. SCL is funding the council's reasonable legal and professional fees in drafting the deed of variation, and future valuation work if no additional value is generated as a result for the council. The council will only be expected to pay professional fees if additional value is generated for the council, so there will be no net costs that fall to the council either now or in the future.

CARBON EMISSIONS

19. The site is already owned by SCL therefore the sale of this land will not adversely affect the council's carbon emissions target. Consequent development of this land by SCL will be subject to planning controls in the normal way.

LEGAL IMPLICATIONS

20. The council has the power to grant a deed of variation under section 123 of a Local Government Act 1972 which requires it to achieve 'best consideration' in any disposals.

EQUALITY AND DIVERSITY

21. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
22. There are no implications for any of the protected characteristics as a result of this decision.

PROPERTY IMPLICATIONS

23. The council no longer owns the option land so there are limited property implications – it is simply foregoing control through title covenants for the benefit of future value.

OPTIONS

24. Option 1 – to agree to enter into the deed of variation requested by SCL on the terms attached in Appendix 2 and to delegate authority to the Director of Regeneration, in consultation with the Cabinet member for resources, to agree the precise contract terms.
25. Option 2 – refuse the terms of SCL's request.
26. Option 3 – endeavour to renegotiate and improve the terms set out in this report.

RISK MANAGEMENT

27. There is limited risk to the council in approving SCL's request regarding the user restrictions, as the council is keen for the regeneration benefits of the proposed retail park to be realised, including new jobs and business rates. As long as the council receives a fair proportion of any value generated from the greater range of uses permitted and freedom given there is limited loss to IWC.
28. By removing the buyback option and replacing it with an alternative which the council hopes will incentivise SCL to build out within agreed timescales, the risk to the council is that SCL does not develop out the option land, and if they choose not to, once the buyback option is removed the council cannot ensure that the former option land is developed, it will have lost that control. However, SCL claim they are keen to build out the retail park as long as there is sufficient market demand, and SCL has a good track record of delivering development, so there is little reason to suspect that SCL will not develop out the sites, as long as there is sufficient market demand. If the council insist on the buyback option remaining, it may result in the

retail park not proceeding due to limiting tenant and investor demand, making the scheme unviable.

29. If the council refuses SCL's request, the development may become unviable and not proceed, with the consequent loss of jobs, new employers to the Island and business rates that would otherwise be generated.
30. The council is already committed to the delivery of regeneration on the Island, and to this development in particular through already having signed an option with SCL, so there is no additional risk to the council in agreeing this variation of terms.

EVALUATION

31. Option 3 is not recommended as the likely additional value due to the council has already been comprehensively assessed and the council is satisfied that the terms proposed represent best consideration for the council.
32. Option 2 is not recommended as while the council is able to refuse such a request, if it does so it would simply frustrate SCL's regeneration proposals for their site, leading to either the consequent loss of the regeneration scheme or a less attractive one, with the loss of all the socio economic benefits that would otherwise result.
33. Option 1 is therefore recommended: for the council to approve the deed of variation to give the retail park the best chance of being financially viable, by SCL being best able to meet changing market demand.

RECOMMENDATION

34. Option 1 – to agree to enter into the deed of variation requested by SCL on the terms attached in Appendix 2 and to delegate authority to the Director of Regeneration, in consultation with the Cabinet member for resources, to agree the precise contract terms.

APPENDICES ATTACHED

35. [Appendix 1](#) – Site plan showing the former Isle of Wight Council option land in relation to SCL's Newport Football Club site.
36. [Appendix 2](#) – Agreed heads of terms.

BACKGROUND PAPERS

37. Disposal of Employment Land at Pan, Newport - Executive 20 January 2015 Decision reference 136 (14/15).

38. Variation of Option to South Coast Leisure Limited, Land at St George's Way, Newport – Delegated decision 24 November 2017 Decision reference 11/17.

All representations must be sent to Delegated.decisions@iow.gov.uk or they may not be considered as part of the decision-making process.

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CHRIS ASHMAN
Director of Regeneration

COUNCILLOR STUART HUTCHINSON
Deputy Leader & Cabinet Member for Resources

Decision

Signed



Date

7 July 2020

Decision

Signed



Date

7 July 2020