CABINET

St. Leonards House
17 January 2017

Report of Chief Officer (Resources)

PURPOSE OF REPORT					
This report seeks a decision on a proposed variation to the draft heads of terms for the disposal of St. Leonard's House, as previously submitted to Cabinet in the report dated 29 March 2016.					
Key Decision	X	**Non-Key Decision**		**Referral from Cabinet Member**	
Date of notice of forthcoming key decision	19th December 2016.				
This report is public					

RECOMMENDATIONS OF COUNCILLOR JAMES LEYSHON

(1) That Officers be authorised to incorporate the proposed deed of variation, as set out in section 2 of the report, into the conditional purchase contract for Robertsons to acquire St. Leonard's House.

1.0 Introduction

1.2 Back in March 2016 Cabinet considered terms for the disposal of St. Leonard's House in Lancaster. Following call-in of the original decision, on 26 April Cabinet reaffirmed its original decision as follows:

(1) That Cabinet notes the progress made following the financial commitment made to progress the 'Stage 2' report for the redevelopment of St. Leonard's House as student accommodation.

(2) That Cabinet approves Option 1 as set out in the exempt report, this being the disposal of St. Leonard's House to Robertson Property Limited in line with the exclusivity agreement and other heads of terms developed through the Lancashire Regeneration Property Partnership (LRPP) as set out at Appendix A to the exempt report, in support of the economic well-being of the area.

(3) That progress on this matter be covered in the normal quarterly reporting arrangements.

1.2 The reasons for taking the decision were to help achieve the targets within the Council's Medium Term Financial Strategy, whilst also supporting corporate priorities in connection with Economic Growth and Health and Wellbeing (housing). It was considered that the development proposal could also bring wider benefits including acting as a potential catalyst for regeneration and freeing up student homes to the domestic housing supply chain.

1.3 Since then the Council has been working with Robertsons on their development proposals and as both parties were keen to provide assurance that the development would proceed in a timely manner, a clause was included in the conditional purchase contract obligating Robertsons to commence the development within 9 months of purchase. This was reinforced with a buy-back option for the Council, should Robertsons fail to meet that obligation.

1.4 Much progress has been made by Robertsons regarding the development. All necessary detailed survey and design work has been undertaken. Subject to planning permission being granted, Robertsons should be in a position to commence works in spring of this year, which would secure a much needed future use for the building. The planning/listed building applications are due to be considered by Planning Committee on Monday 09 January and any update will be fed into the Cabinet meeting.

1.5 As preparatory work has progressed, an issue has come to light in relation to Robertsons concluding funding for their redevelopment. In short, the clause that enabled the Council to buy back the building if works had not commenced within 9 months means that Robertsons would fall foul of HMRC guidelines relating to the sale and development of land and buildings. This means that Stamp Duty Land Tax would be payable on the entire development cost, rather than it just being payable on the land transaction as originally envisaged. Unfortunately, there is no way to avoid this additional liability based on the buy-back provisions in the existing conditional purchase contract.

1.6 This obviously introduces a sizeable unforeseen financial liability and a variation to the conditional purchase contract is therefore considered necessary to ensure the financial viability of the scheme. In short, the preferred solution is for the Council to change the point at which it waives its right to buy back the freehold interest in the building, from when physical work commences on site to the point at which there is a legally binding building contract in place for the redevelopment of the building. The necessary amendments and their potential risk implications are highlighted in the proposal details below.

2.0 Proposal Details

2.1 In line with the draft heads of terms approved by Cabinet the Conditional Purchase Contract stated in clause 9(6) that '*In the event that the Buyer shall fail to commence construction works within the said period of 9 months the Seller has the right to reacquire the freehold interest in the Property for the sum of £50,000 (fifty thousand pounds)*'.

2.2 To rectify the issue described earlier it is proposed that both parties enter into a deed of variation to amend the Conditional Purchase Contract as follows:

a)	Clause 9(6) amended:	In the event that the Buyer shall fail to commence construction works (which for the avoidance of doubt shall mean in this context the entering into of a signed legally binding building contract for the development of the Property) within the

		said period of nine months the Seller has the right to reacquire the freehold interest in the Property for the sum of £50,000 (fifty thousand pounds).
b)	Clause 9(7) added: (This clause inserted into the agreement)	On or before completion of the transfer of the freehold interest to the Buyer, the Buyer shall exhibit a signed legally binding copy of the building contract for the development of the property to the Seller. Immediately following the exhibition by the Buyer of such building contract (and in any event on or before the date of completion of the freehold interest in the property to the Buyer), the Seller shall issue an unconditionally released signed and dated letter of waiver in the form annexed at Appendix I.
c)	Appendix I added:	Appendix I is inserted into the agreement by reference to form of letter annexed at Appendix I to this deed of variation.

2.3 Effectively, although the existence of a signed building contract does provide a good degree of certainty that building work will commence on site, there would still be a residual chance that there could be an unforeseen delay between presenting the signed building contract and the actual start on site – and this could potentially push the construction start date beyond the originally agreed 9 month timeframe. Furthermore, although a signed building contract will be in place the Council would not be party to it and therefore it would have no right to enforce it so this too introduces a small element of related risk (in the event that Robertsons or their contractor defaulted on the building agreement, for example).

2.4 Given the commitment that Robertsons have demonstrated so far in progressing the proposed redevelopment, however, and their need to ensure timely completion, these risks are considered very small and therefore acceptable – especially when compared with the much bigger risks to the scheme's overall viability if the proposed deed of variation is not approved (and the risk of the development not going ahead/the property remaining with the Council). Furthermore, it must be acknowledged that the use of the buy-back clause was for reinforcement only – as a deterrent to Robertsons not progressing the redevelopment and the listed building becoming 'at risk'. Again, the progress being made gives comfort that Robertsons are serious about undertaking the development – it is considered that they would have walked away before now if they were not so.

2.5 Importantly, Robertsons have already committed significant resources into this project, both in time and financial terms. They are currently targeting a start date of April 2017 with a view to the building opening in time for the start of the University year in 2018. Of course this will be subject to them being able to satisfy any conditions that may flow from the planning approval anticipated for January 2017 and obtaining permission for a road closure on St Leonard's Gate from County Council Highways to facilitate the work. It is worthy of note that with any new student accommodation development it is essential that they are open for business at the start of a new University year and therefore any significant delays at this point could potentially push the opening back to the start of the following University year in 2019 – and have implications for the scheme's viability. This is a key reason why is it not in Robertsons' interests to delay the actual redevelopment unnecessarily.

3.0 Options and Options Analysis (including risk assessment)

	Option 1: Do nothing	**Option 2:** Approve the deed of variation
Advantages	Keeps the Council's buy-back provision in place and unchanged.	Removes a significant unforeseen financial liability from the redevelopment that would impact on its overall financial viability.
Disadvantages	Introduces a significant unforeseen financial liability to the redevelopment that would impact on its overall financial viability.	Some potential still remains for delay between the signing of the building contract and work starting on site. By approving this deed of variation the Council waives its right to buy back the freehold interest in the event of significant delay during that period.
Risks	As outlined earlier. The impact of the additional Stamp Duty Land Tax could affect the scheme to the extent that it may not be financially viable to proceed and the ongoing costs, risks and liabilities for the building would remain with the Council, at least for a time. This risk is not worth taking, given the deed of variation now proposed.	As outlined earlier. Although a legally binding building contract would be in place prior to freehold transfer the Council would not be party to it and therefore would have no rights to enforce it beyond its existing planning powers from that point onwards. The risks involved are considered small and acceptable however, given progress being made and the commitment being demonstrated by Robertsons.

4.0 Officer Preferred Option (and comments)

4.1 With regards to the proposed deed of variation, the officer preferred option is to approve Option 2 i.e. approve the deed of variation. Officers consider that doing so will protect the financial viability of the redevelopment proposal and that the existence of a signed legally binding copy of the building contract for the development provides enough certainty to be comfortable that the building work will proceed, especially when combined with the significant time and financial investment Robertson has already put into the scheme.

5.0 Conclusion

5.1 This report provides a solution to a technical Stamp Duty Land Tax implication of the buy-back clause introduced during the drafting of the heads of terms that has only become apparent through process as the project has developed. The acceptance of the deed of variation would give the redevelopment of St. Leonard's House and all the advantages associated with it the best chance of success by simply adjusting the point at which the Council waives its right to buy-back the freehold interest in the building.

RELATIONSHIP TO POLICY FRAMEWORK

The proposal aims to help achieve the targets within the Council's Medium Term Financial Strategy, whilst also support current corporate priorities in connection with Economic Growth and Health and Wellbeing (housing).

CONCLUSION OF IMPACT ASSESSMENT
(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)

Although the building is already closed, regular access is still required for checks to essential equipment such as the testing and maintenance of fire and intruder alarms for example. Disposal of the building would remove this risk to both staff and contractors who need to access the building to deal with the ongoing maintenance liability.

LEGAL IMPLICATIONS

These have already been stated in the main body of the report. Legal Services have been consulted and have advised on this matter.

FINANCIAL IMPLICATIONS

There are no new financial implications for the Council – although it is considered that the financial risks to the Council are greater with option 1 (from the development not going ahead and costs of ownership resting with the Council, at least for a period).

OTHER RESOURCE IMPLICATIONS

Human Resources/Information Services/Open Spaces:

None directly arising.

Property:

These have already been stated in the main body of the report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has contributed to this report, which is in her name (as Chief Officer, Resources).

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS	**Contact Officer:** Gary Watson
Background Papers are exempt.	**Telephone:** 01524 582177 **E-mail:** gwatson@lancaster.gov.uk