

# Cabinet

**Grand Jury Room, Town Hall  
17 March 2014 at 6.00pm**

The Cabinet deals with the implementation of all council services, putting into effect the policies agreed by the council and making recommendations to the council on policy issues and the budget.

# COLCHESTER BOROUGH COUNCIL CABINET

**17 March 2014 at 6:00pm**

Leader (& Chairman): Councillor Anne Turrell (Liberal Democrats)  
Deputy Chairman: Councillor Martin Hunt (Liberal Democrats)  
Councillor Nick Barlow (Liberal Democrats)  
Councillor Tina Bourne (Labour)  
Councillor Annie Feltham (Liberal Democrats)  
Councillor Beverley Oxford (The Highwoods Group)  
Councillor Paul Smith (Liberal Democrats)  
Councillor Tim Young (Labour)

## **AGENDA - Part A**

(open to the public including the media)

	<b>Pages</b>
<b>1. Welcome and Announcements</b>	<b>1</b>
(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.	
(b) At the Chairman's discretion, to announce information on: <ul style="list-style-type: none"><li>• action in the event of an emergency;</li><li>• mobile phones switched to silent;</li><li>• the audio-recording of meetings;</li><li>• location of toilets;</li><li>• introduction of members of the meeting.</li></ul>	
<b>2. Urgent Items</b>	
To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.	
<b>3. Declarations of Interest</b>	
The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:- <ul style="list-style-type: none"><li>• Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at</li></ul>	

which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.

- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

#### **4. Have Your Say!**

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

#### **5. Call-in Procedure**

To consider any items referred by the Scrutiny Panel under the Call-In Procedure. At the time of the publication of this Agenda there were none.

#### **6. Regeneration**

##### **i. Vineyard Gate – Approval of revised Draft Heads of Terms**

**2 - 6**

See report by the Head of Commercial Services

**ii. Northern Gateway, Health and Racquets Club – Approval of Draft Heads of Terms**

**7 - 9**

See report by the Head of Commercial Services

**7. Exclusion of the Public**

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

**COLCHESTER BOROUGH COUNCIL  
CABINET**

**17 March 2014 at 6:00pm**

**AGENDA - Part B**

(not open to the public or the media)

**Pages**

**8. Regeneration**

**i. Vineyard Gate – Approval of revised Draft Heads of Terms**

The following report contains exempt information (financial/business affairs of a particular person, including the authority holding information) as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

See report by the Head of Commercial Services

**ii. Northern Gateway, Health and Racquets Club – Approval of Draft Heads of Terms**

The following report contains exempt information (financial/business affairs of a particular person, including the authority holding information) as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

See report by the Head of Commercial Services

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services. Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

## Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to most public meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at [www.colchester.gov.uk](http://www.colchester.gov.uk)

## Audio Recording, Filming, Mobile phones and other devices

The Council audio records all its public meetings and makes the recordings available on the Council's website. Audio recording, photography and filming of meetings by members of the public is also permitted. The discreet use of phones, tablets, laptops and other such devices is permitted at all meetings of the Council, with the exception of Committee members at all meetings of the Planning Committee, Licensing Committee, Licensing Sub-Committee and Governance Committee. It is not permitted to use voice or camera flash functionality and devices must be kept on silent mode. Where permitted, Councillors' use of devices is limited to receiving messages and accessing papers and information via the internet. Viewing or participation in social media is at the discretion of the Chairman / Mayor presiding at the meeting who may choose to require all devices to be switched off at any time.

## Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please use one of the contact details at the bottom of this page and we will try to provide a reading service, translation or other formats you may need.

## Facilities

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[www.colchester.gov.uk](http://www.colchester.gov.uk)

<b>Report of</b>	<b>Head of Commercial Services</b>	<b>Author</b>	<b>Fiona Duhamel</b>
<b>Title</b>	<b>Vineyard Gate – Approval of revised Draft Heads of Terms</b>		
<b>Wards affected</b>	All		

**This report seeks approval of the new draft Heads of Terms (which include the key financial terms detailed on the confidential section of this report) between the Council and Vineyard Gate Developments Ltd for the retail led mixed use scheme which forms part of the St. Botolph's Regeneration Area**

**1. Decision(s) Required**

- 1.1 To approve the draft Heads of Terms detailed in the report on Part B of this agenda which will form the basis of the Development Agreement
- 1.2 To agree that the Council will invest into the scheme in order to improve viability and allow the development to move forward, in return for a commercial income stream.
- 1.3 To accept the commercial advice from the Council's valuers, Lambert Smith Hampton (LSH), detailed in Part B of this report, that the draft Heads of Terms currently represent the best consideration to the Council, subject to an assessment of the latest development appraisal and taking into account current market conditions.
- 1.4 To give delegated authority to the Executive Director Ian Vipond, in consultation with the Portfolio Holder for Regeneration, to conclude the Heads of Terms substantially in accordance with the approved draft to enable legal negotiations on Development Agreement and associated documents to be progressed. It is anticipated that the final draft of the legal agreements will be brought back to Cabinet for approval.

**2. Reasons for Decision(s)**

- 2.1 This is a major town centre regeneration scheme which will transform the run down part of St Botolphs and provide 750 new jobs to the borough. It will also deliver wider social and economic benefits as part of the Better Town Centre Improvements Programme and as identified in the King Sturge Retail Study 2011.
- 2.2 The revised Heads of Terms, whilst largely similar to those agreed at Cabinet in January 2012, do include revised financial terms including the need for direct investment by the Council which reflects the difficult economic conditions currently being experienced.
- 2.3 The draft Heads of Terms, once finalised, will form the basis of the Development Agreement which will be the legal contract between the Council and Vineyard Gate Developments Ltd. to build the scheme.

- 2.4 Approval of the Heads of Terms will enable each party to instruct legal representatives to commence the negotiations in respect of the Development Agreement and upon completion of the development agreement, work will commence on the planning application and other key tasks required to move forward the scheme such as the Compulsory Purchase Order.

### **3. Alternative Options**

- 3.1 The Council could refuse to accept that the revised Heads of Terms offer the Council the best possible consideration for its landholding or agree that they fail to realise the Council's aspirations in respect of this site in order to meet the gaps identified in retail provision.
- 3.2 The Council could conclude that it does not wish to invest into the scheme and will continue to search for other funding partners. However this will delay the scheme further and potentially lose the strong interest currently being shown by the anchor tenants
- 3.3 The Council could seek to renegotiate terms with the developer and or carry out a further review of the proposed scheme or accept that a shopping centre scheme will not be delivered on this site in the near future. It is recognised that a new shopping centre in the town will contribute significantly to future retail growth, higher expenditure and stronger economic growth.
- 3.4 The Council's agent, LSH has confirmed in a report attached to the confidential part of this item, that in their professional opinion, the financial terms proposed by Vineyard Gate Developments do represent the best consideration for the Council's landholding in the current economic conditions and although the scheme is smaller the developer will still be compelled to deliver a high quality shopping centre, which will seek to attract the type of retailers Colchester needs to ensure future retail growth and vitality.

### **4. Supporting Information**

- 4.1 A report to Cabinet in January 2012 presented Heads of Terms for a smaller more compact scheme with a lower overall floor area resulting from several months of negotiation with the developer trying to meet the viability challenges brought about by a very difficult economic climate.
- 4.2. Terms at that time were agreed and work commenced on the legal agreements but negotiations regarding viability of the scheme, and in particular funding options, continued.
- 4.3 It became evident during these negotiations that further investment into the scheme would be required to move it forward and the Council has been examining a number of options over the last 12 months, seeking to consider appropriate funding mechanisms to bring forward delivery.
- 4.4 The smaller scheme proposed by Vineyard Gate Developments still seeks to attract new high quality fashion retailers to Colchester whilst developing areas of public realm and potentially leisure uses within the proposals, particularly those with a food and drink bias.
- 4.5 The proposals are intended to build upon the existing retail offer in the town and create strong physical links to the rest of the town centre shopping areas.



- 4.6 The development of the Vineyard Gate scheme will also bring added impetus to proposals to develop the independent retail quarter (The Walls) in Eld Lane and surrounding streets which, upon completion of the development, will sit between two major retail areas of the town and therefore benefit from a mutually supportive and complementary relationship.
- 4.7 The current proposals will bring about much needed regeneration of a key part of the town centre which has been neglected for many years and will provide a link to the town's new bus facility in Osborne St/Stanwell Street,
- 4.8 Early dialogue in respect of the proposed scheme has been held with CBC planning department and English Heritage although it is recognised that further detailed work is still required with key stakeholders and the wider public.
- 4.9 Once the design options are finalised then the proposals will be subject to the normal consultation process through the planning application route. The developer remains sensitive to the Council's concerns, particularly in respect of the quality of architecture and materials used, key pedestrian and cycle links created and the relationship with retailers in the town including local traders, especially those affected directly and indirectly by the proposals.
- 4.10 The current economic situation and revised scheme design have had a significant impact on the financial aspects of the project and the level of return to the developer and to the Council. Although the current scheme and terms agreed still do not fully meet the developer's expectations financially, they are prepared to continue to move forward the project to the next stage, which will include the preparation of a planning application and in doing so, will be required to input significant resources (estimated at several million pounds). Although the developer continues to work at risk until a Development Agreement is completed, this situation is common for major schemes of this nature and reflects the potential significant returns for developers relative to the risks. The financial implications to the Council are set out within the confidential part of this report and the risks associated with the scheme delivery are set out in the risk management section below.

## **5. Proposals**

- 5.1 The Council proposes to agree Heads of Terms with Vineyard Gate Developments for the development of a mixed use retail scheme in the St. Botolph's regeneration area, which will form the basis of negotiations in respect of the Development Agreement.
- 5.2 It is proposed that the Council directly invests into the scheme in order to move forward development to achieve the completion of the legal agreements, submission by the developer of a planning application and concluding negotiations with the anchor tenant.
- 5.3 The draft Heads of Terms require for a planning application to be submitted to the Council's planning department within 12 months of completion of the development agreement.
- 5.4 The draft Heads of Terms, which have been negotiated with the Developer, are attached to the report. In part B of the agenda. The base design for the scheme is in principle the same as the design agreed by Cabinet in 2012.

## **6. Strategic Plan References**

- 6.1 Enabling job creation will be a key objective from the development of this scheme with 750 jobs brought forward. The scheme also contributes to the overall delivery objectives of the Better Town Centre Programme.
- 6.2 The Scheme delivers against the Councils objective to deliver regeneration of buildings and spaces.
- 7. Consultation**
- 7.1 Substantial consultation was undertaken prior to the approval of the St. Botolph's Masterplan. Whilst no specific consultation has been carried out in respect of the current Heads of Terms, key retail partners and local traders, both directly and indirectly affected, will be informed of current progress.
- 7.2 Public consultation and engagement will continue throughout the development process.
- 8. Publicity Considerations**
- 8.1 A press release will be issued which outlines the highlights the proposals.
- 8.2 The Council will continue to ensure that contact is maintained with the traders informing them of the latest position and will work with the developers to ensure traders in the area and wider town are regularly updated with progress especially as the scheme progresses towards a planning application.
- 9. Financial implications**
- 9.1 The proposal seeks approval by the Council to accept it will invest financially in the development in return for a commercial income stream.
- 9.2 The detailed financial proposals in respect of the Heads of Terms are highlighted in the LSH report, attached within the report in Part B of the agenda..
- 9.3. If the recommendations in this report are agreed it will be necessary for the Council to identify capital resources to deliver this scheme. In return for the required investment the Council will receive an annual income stream.
- 9.4. The full financial implications of this project and proposed approach to funding will be considered in detail in future reports. In summary these include:-
- Identifying capital resources to fund the capital investment including any borrowing requirement
  - Confirming the revenue implications of the proposal such as the loss of car parking income and the rents due.
- 9.5. These issues will be considered in the review of the capital programme, 2015/16 budget strategy and Medium Term Financial Forecast.
- 9.6 It must be accepted that in the current economic conditions, the scheme is on the cusp of viability and as such it has been accepted by both parties that further compromises may be required in order to bring about project delivery.
- 10. Equality, Diversity and Human Rights implications**

10.1 An EQIA has been completed for this project with the following link <.....\Cabinet 2014\EQIA form Vineyard Gate 260214.doc>

**11. Community Safety Implications**

11.1 None identified at this stage

**12. Health and Safety Implications**

12.1 There will be no Health and Safety implications at this stage.

**13.0 Risk Management Implications**

13.1 There are risks to future project delivery associated with: failure to progress to the development agreement stage, difficulty in identifying a suitable anchor tenant, rising costs and decreasing land and rental values, failure to reach agreement on levels of scheme quality and inability to meet planning and English Heritage expectations for the site.

13.2 All of the above risks are detailed further in the confidential section of this item.

**Background Papers**

None

<b>Report of</b>	<b>Head of Commercial Services</b>	<b>Author</b>	<b>Patrick O'Sullivan</b>
<b>Title</b>	<b>Northern Gateway, Health and Racquets Club – Approval of Draft Heads of Terms</b>		
<b>Wards affected</b>	All		

**This report seeks approval of draft Heads of Terms between the Council and David Lloyd Leisure Limited in respect of a proposed lease of 5.25 acres of land at the Northern Gateway for a Health and Racquets Club**

**1. Decision(s) Required**

- 1.1 To note the report on Part B of the agenda providing details of the draft Heads of Terms and the commercial advice from the Council's valuers, Lambert Smith Hampton, that the draft Heads of Terms currently represent the best consideration to the Council, taking into account current market conditions.
- 1.2 Subject to the consideration of the above report, to approve the draft Heads of Terms which will form the basis of the lease to David Lloyd Leisure Limited (DLLL)
- 1.3 To give delegated authority to the Executive Director Ian Vipond, in consultation with the Portfolio Holder for Regeneration to conclude the Heads of Terms substantially in accordance with the approved draft and complete negotiations on a Lease and associated documents.

**2. Reasons for Decision(s)**

- 2.1 Further to the ongoing development of land at Northern Gateway in accordance with the vision to create a sports and leisure destination, the Council now seeks to bring forward the next phase of delivery of this project.
- 2.2 DLLL has expressed interest in locating a centre in Colchester for some time. Over the last 2 years negotiations have taken place between DLLL and the Council with a view to them building a new racquet and sports facility at the Northern Gateway
- 2.3. The land transaction will bring an important annual income stream to the Council and secure a multi million pound investment into the Northern Gateway area.

**3. Alternative Options**

- 3.1 Not to allow DLLL to locate their Health and Racquets Club at Northern Gateway, thereby foregoing the opportunity to create 55 new jobs in the borough.
- 3.2 The Council could refuse to accept that the proposed Heads of Terms offer the Council the best possible consideration for this site, or conclude that they fail to realise the Council's aspirations in respect of the vision for this area.

- 3.3 The Council could seek to renegotiate terms with the prospective Leaseholder, or decide that the contribution to the Council's revenue budget is not sufficiently desirable.
- 3.4 The Council's agent, Lambert Smith Hampton has confirmed in a report attached to the report in Part B of the agenda on this item, that in their professional opinion, the financial terms proposed by DLLL do represent the best consideration for the Council's asset, in current economic conditions

#### **4. Supporting Information**

- 4.1 In 2012 DLLL approached the Council looking for a site on the Northern Gateway on which to locate a Health and Racquets Club.
- 4.2 In the summer of 2013, DLLL entered negotiations to find new owners. The group was eventually bought by TDR Capital in September 2013.
- 4.3 With the new owners now in place and fully committed to delivering new centres, the Council have now prepared draft heads of terms for the development of a facility on a 5.25 acre plot of land within the Northern Gateway area. This is covered by an Outline Planning Permission which includes leisure development on sites near the stadium.

#### **5. Proposals**

- 5.1 The Council proposes agreement to the draft Heads of Terms with DLLL which will form the basis of final negotiations in respect of a long lease to be granted.
- 5.2 It is proposed that the site will be leased for 125 years to DLLL for the development of a Health and Racquet facility which will include an agreed number of tennis courts, a gym and a swimming pool.
- 5.3 The proposed development will create 55 new jobs which contribute to the Council's employment targets for the area and will generate new business rates.
- 5.4 There will be a Community Outreach Programme agreed prior to the occupation of the site.
- 5.5 The draft Heads of Terms are attached to the report in Part B of the agenda.

#### **6. Strategic Plan References**

- 6.1 This proposal will enable job creation, while potentially delivering a sports facility which while generally encouraging increased sport activity will, with an outreach programme, link to various key parts of the wider community. It will also represent a significant element of the regeneration of this locality in line with the Councils Vision for the area.

#### **7. Consultation**

- 7.1 Significant consultation was undertaken during the original planning of the locality which included an Outline Planning Application for Cuckoo Farm (Northern Gateway).
- 7.2 Whilst limited consultation has been carried out in respect of this proposed transaction, future consultation over the proposed scheme will take place as part of the detailed planning application process.

## **8. Publicity Considerations**

- 8.1 The possibility of this transaction has been mentioned in the local press and further details will become public during the planning process.
- 8.2 The Council will include details of the scheme on the Regeneration pages of the Council's website, at the appropriate time

## **9. Financial implications**

- 9.1 The detailed financial proposals associated with this proposed lease are enclosed in the report on part B of the agenda, together with the assessment of Best Value contained within the report from Lambert Smith Hampton.
- 9.2 The scheme will deliver an annual income to the Council which will assist in the delivery of budget targets included in the 14/15 budget and Medium Term Financial Forecast. The project will also deliver additional business rates income for which the Council, under the localisation of business rates, will keep a share.
- 9.3 It is not considered that this proposal as envisaged would impact unduly on the Council's income from its own sports facilities, largely because the market target group for this centre is different.

## **10. Equality, Diversity and Human Rights implications**

- 10.1 Action to give weight to equality and diversity considerations is provided in two relevant Equality Impact Assessments for Renaissance Project Delivery and Strategic Development.

[http://www.colchester.gov.uk/servedoc.asp?filename=SPR\\_EIA\\_Renaissance\\_project\\_delivery.pdf](http://www.colchester.gov.uk/servedoc.asp?filename=SPR_EIA_Renaissance_project_delivery.pdf)

[http://www.colchester.gov.uk/servedoc.asp?filename=SPR\\_EIA\\_Strategy\\_development.pdf](http://www.colchester.gov.uk/servedoc.asp?filename=SPR_EIA_Strategy_development.pdf)

- 10.2 This project does not present a change to existing policy nor the introduction of any new policies.
- 10.3 This project does not have any direct implications for the Council regarding the Human Rights Act

## **11. Community Safety, Health and Safety and Risk Management Implications**

- 11.1 None identified at this stage

## **Background Papers**

Northern Gateway Vision – Available on Colchester Borough Council Website

