

Cabinet

**Grand Jury Room, Town Hall
21 May 2008 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.

Information for Members of the Public

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COLCHESTER BOROUGH COUNCIL CABINET

21 May 2008 at 6:00pm

Leader (& Chairman): Councillor Anne Turrell (Liberal Democrats)
Deputy Chairman: Councillor Martin Hunt (Liberal Democrats)
Councillor Lyn Barton (Liberal Democrats)
Councillor Tina Dopson (Labour)
Councillor Theresa Higgins (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)

Pages

1. Welcome and Announcements

(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:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Urgent Items

To announce any items not on this agenda which the Chairman has agreed to consider because they are urgent and to give the reasons for the urgency.

3. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

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. Minutes

To confirm as a correct record the minutes of the meeting held on 12 March 2008.

6. Call-in Procedure

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

7. Resources

i. Request for Delegated Authority in Relation to Insurance Contract

- 8. General**
- i. Appointments to External Organisations and Council Groups To Follow**

 - ii. Progress of Responses to the Public 2**
- 9. Planning and Regeneration**
- i. Approval of Heads of Terms for Disposal of the Cultural Quarter Site at Queen Street 3 - 9**
- 10. 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) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential 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**

21 May 2008 at 6:00pm

AGENDA - Part B

(not open to the public or the media)

Pages

11. Planning and Regeneration

- i. Approval of Heads of Terms for Disposal of the Cultural Quarter Site at Queen Street**

10 - 14

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.

12. Neighbourhoods

- i. Continuation of Repairs and Planned Maintenance Service for the Housing Stock**

To Follow

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.



Cabinet

21 May 2008

Item
7(a)

Report of	Head of Financial Services	Author	Hayley McGrath ☎ 282461
Title	Request for Delegated Responsibility		
Wards affected	n/a		

This report asks the Cabinet to agree that responsibility for agreeing the new insurance contract is delegated to the Portfolio Holder for Resources and Business

1. Decision Required

- 1.1 To delegate the responsibility for agreeing the insurance contract to the Portfolio Holder for Resources and Business or any other Portfolio holder the Cabinet sees fit.

2. Reason for Request

- 2.1 The current five year insurance contract expires on 31 July 2008. A tender exercise is presently being carried out by our external brokers, Aon Ltd, to obtain quotes from various insurers for a new contract. The results of this exercise are not scheduled to be available from Aon until 27 June 2008, which will not allow sufficient time to report to Cabinet before the current contract expires.

3. Alternative Option

- 3.1 The alternative option is to report to Cabinet at the meeting on 10 September 2008 requesting approval of the new contract. This would be over a month after the expiry of the existing contract and would require us to request that our current insurers extend cover for a further period, which they have no obligation to do. This may result in there being no cover until such time as Cabinet agree the new contract.

4. Financial Implications

- 4.1 The current annual insurance premium is in the region of £750,000. We have been advised by our brokers that the indications from the insurance market are that we can expect the renewal premiums to be around the same figure. The likelihood is that we will enter into a three year contract with an option to extend for a further two.

5. Standard References

- 5.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or equality, diversity and human rights; community safety; health and safety or risk management implications.

PETITIONS, PUBLIC STATEMENTS, QUESTIONS

Date of Meeting	Details of Member of the Public	Subject Matter	Form of Response	Date Completed
Cabinet 12 March 2008	Mr P. Lynn	Air Quality at Brook Street	Oral response provided by the Portfolio Holder for Culture and the Environment, with written response to follow	12 March 2008 for oral response
Cabinet 12 March 2008	Mr McKinney	Issues relating to Council housing, the co-ordination between the various policing agencies with responsibility for the garrison and how the profit from Colchester car parks was spent.	Oral response provided by the Portfolio Holder for neighbourhoods, the Portfolio Holder for Street Services and the Portfolio Holder for Resources.	12 March 2008
Cabinet 12 March 2008	Councillor Robert Johnstone, Myland Parish Council	Wind Turbine Options Appraisal, Park and Ride and The Stadium Green Way	Oral responses provided at the meeting.	12 March 2008



Cabinet

21 May 2008

Item
9a

Report of	Head of Renaissance Programme	Author	Fiona Duhamel 282252
Title	Queen Street Cultural Quarter – Approval of Heads of Terms		
Wards affected	All		

This report seeks approval of the draft Heads of Terms (which include the key financial terms) between the Council and Garbe Real Estate Limited for the development of a mixed use Cultural Quarter scheme within the St. Botolph's Regeneration Area

1. Decision(s) Required

- 1.1 To note the significant progress made in the last nine months in respect of the milestones contained within the Collaboration Agreement.
- 1.2 To approve in principle the proposed Heads of Terms, which will form a basis for the Development Agreement.
- 1.3 To accept the basis of the financial structure proposed for the Council in the context of the overall development within the St. Botolph's Regeneration area. It should also be noted that during the course of negotiations in respect of the Development Agreement and planning application this structure may be subject to change. A report will be submitted to Cabinet at the appropriate time, seeking approval to the terms of the finalised Development Agreement, including confirmation that the best consideration, in the context of the Council's statutory requirements and Strategic Plan, has been met.
- 1.4 To give delegated authority to the Head of the Renaissance Programme to conclude the Heads of Terms substantially in accordance with the approved draft and commence negotiations on Development Agreement and associated documents.

2. Reasons for Decision(s)

- 2.1 The proposed Heads of Terms form the basis of the Development Agreement which will be the legal contract between the Council and Garbe Real Estate Limited. to build the Cultural Quarter scheme in St. Botolph's Quarter on land adjacent to firstsite. In accordance with the

existing Collaboration Agreement the approval of the Heads of Terms will enable each party to instruct legal representatives to commence the negotiations in respect of the Development Agreement.

- 2.2 The formal approval of the Heads of Terms signifies the achievement of a significant milestone within the set timescale of the Collaboration Agreement, which reflects the parties' determination to progress the development in spite of the current adverse economic climate.

3. Alternative Options

- 3.1 The Council could refuse to accept that the proposed Heads of Terms offer the Council the best overall consideration for its landholding taking into account the delivery of key non financial objectives for the St. Botolph's Regeneration area and could sell it's landholding to the highest bidder on the open market for an alternative form of development. However an alternative form of development or use on the site would not necessarily complement or provide a suitable setting for the firstsite building and may not meet the objectives of the wider regeneration of this area as set down in the St. Botolph's Masterplan, adopted by the Council in 2005.

4. Supporting information

- 4.1 Previous reports to Cabinet have emphasised the strategic importance of the St. Botolph's regeneration area of which the Cultural Quarter land adjacent to the new firstsite building forms a key element. The proposals are intended to create a suitable setting for firstsite in the form of high quality public realm capable of being used for a variety of events, together with environmentally sustainable new homes, a new 120 bed hotel, cafes/restaurants, retail units suitable for occupation by local/independent traders and a new Creative Business Centre. The development will form a unique vibrant new destination within the town centre which seeks to provide complementary uses to the new gallery and "open up" existing heritage features in this part of Colchester.
- 4.2 Cabinet agreed in July 2007 to enter into a Collaboration Agreement with Garbe Real Estate Limited. following a detailed development competition process which was won by the Garbe/Ash Sakula team. The Collaboration Agreement set out a number of milestones which the parties have now met, with the exception of the agreement of the Heads of Terms and subsequent drafting and sign off of the Development Agreement. The negotiations in respect of the Heads of Terms and Development Agreement have both been slightly delayed due to viability issues arising from the current instability in the financial markets:

The key milestones within the Collaboration Agreement are set down below

- ❖ Within one month of the commencement of this agreement agree a brief to commission Creative Space Management to establish a business case and the content design for the Development. Such brief will invite Creative Space Management to report upon:
 - the factors making the Development a cultural quarter as opposed to a mixed use development;
 - how can the Development can be made commercially viable;
 - the approach to lettings, site management, demand, mix and the use of public space; and
 - the optimum objectives and specification for the creative business centre.
- ❖ Within two months of the commencement of this agreement prepare an indicative interview schedule.
- ❖ Complete and publish the business case and preliminary content design by 31 December 2007.
- ❖ Review draft financial appraisal monthly until agreement of Heads of Terms.
- ❖ Complete all other elements of the PID by 15 January 2008.
- ❖ Agree Heads of Terms (including key financial terms) for the proposed development agreement and lease and finalise key financial terms by 31 January 2008.
- ❖ Enter into the development agreement in accordance with the Heads of Terms agreed pursuant to the above provisions by 29 February 2008.

4.3 Advice from the Council's valuers, NPS, confirms that the financial structure agreed between the parties offers the best opportunity for the Council to benefit from the longer term growth expected from this type of development, whilst still benefiting from some immediate income. This financial structure must also be assessed alongside the key deliverables in terms of the regeneration of this area: 120 new homes, a new 120 bed hotel, a Creative business centre for approximately 20 new businesses and circa 290 employment opportunities created from the commercial/retail space. As mentioned above, the design will continue to evolve as consultation progresses and therefore Cabinet will be required to consider a further report prior to the signing of the development agreement to ensure that the best consideration criteria has still been met.

- 4.4 The various amendments to the scheme design do have impacts on the financial position of the project and the level of return to the developer. Although viability of the current scheme is still subject to uncertainty in the current climate, the developer is prepared to continue to move forward the project to the next stage, which will include the preparation of significant design work towards a planning application and in doing so, will be required to input significant resources. The developer will continue to work at risk until a Development Agreement is completed.

5. Proposals

- 5.1 The Council proposes to agree Heads of Terms with Garbe Real Estate Limited for the development of a Cultural Quarter scheme on land adjacent to the firstsite building in the St. Botolph's regeneration area. The Heads of Terms will form the basis of negotiations in respect of the Development Agreement, due for completion within three months from the Heads of Terms approval date. The agreement of the Heads of Terms represents the achievement of one of the key milestones set down in the Collaboration Agreement, entered into by the parties in September 2007.
- 5.2 The Heads of Terms are based upon the scheme put forward by the Ash Sakula/Garbe team which won the Council's development competition in respect of this site and were agreed by Cabinet as its preferred developer in July 2007. However, following the formal agreement of Heads of Terms, a significant design process will be undertaken and the scheme may still be subject to changes following the public and stakeholder consultation process, which may in turn affect the final terms of the Development Agreement. Cabinet will therefore be required to consider a final report prior to the signing of the Development Agreement, which will highlight any substantial changes from these Heads of Terms.
- 5.3 The draft Heads of Terms, which have been negotiated with the Developer, are attached to this document. In negotiating these we have been minded to ensure that the proposed terms are structured on the basis that key development risks and responsibilities rest with the Developer.
- 5.4 As this project moves into the legal documentation phase there will be a number of detailed matters to discuss and agree and in due course a report will be brought back to the Council confirming agreed terms for the purposes of entering into the Development Agreement.

The proposed financial terms as set out in the Heads of Terms will provide the Council with an immediate income upon the sale of the residential accommodation and hotel elements of the scheme, in the form of a fixed ground rent. In addition, a geared ground rent will be secured from the commercial element of the scheme which may be

increased on a percentage share basis of the developer's profits if they exceed expected profit levels.

6. Strategic Plan References

- 6.1 Colchester's Renaissance is a priority for the Council and the St. Botolph's area is detailed in the Strategic Plan as being a key project which is to be given financial and resource priority.

7. Consultation

- 7.1 Substantial consultation was undertaken prior to the approval of the St. Botolph's Quarter Masterplan. In addition, further consultation has been carried out during the competition process including public exhibitions and discussions with key stakeholders, English Heritage Inspire East, EEDA, firstsite, Essex County Highways and the local transport operators in respect of the current scheme.
- 7.2 Once the design options are finalised then the proposals will be subject to the normal consultation process through the planning application route due later this year. As previously mentioned, the developer remains sensitive to the Council's concerns, particularly in respect of the quality of architecture and materials used, the creation of a suitable setting for the firstsite building and the creation of a unique environment for people to visit, work and live.

8. Publicity Considerations

- 8.1 The original competition process attracted significant publicity both locally and nationally and the public have been kept informed of progress during the Collaboration Agreement period through press releases, presentations to local groups and newsletters to traders in the area.
- 8.2 The Council will continue to ensure that contact is maintained with the trader's informing them of the latest position and a copy of the St. Botolph's Traders Newsletter will be issued detailing the way forward.
- 8.3 A campaign to fill the empty buildings on the site with temporary uses which provide complementary activities to firstsite and begin to develop the area as a Cultural Quarter even before construction starts, is already underway and a leaflet has been sent to all potential users such as the University and Institute.
- 8.4 The Developers are proposing a public exhibition later in the year from which comments can be fed in to the scheme prior to the submission of a planning application by the autumn.

9. Financial Implications

- 9.1 The detailed financial proposals in respect of the Heads of Terms are highlighted in the report by NPS, attached as a confidential background paper to this report.
- 9.2 However, in summary, in spite of the viability issues surrounding this type of development, the developers have accepted the need to provide an immediate income to the Council for the site from the sale of the residential units. They have also accepted that the Council should share financially in the overall success of the development, although any income on this basis must be viewed as a long term gain.

The preferred proposal includes both a rental payment upon the sale of the residential units at the completion of the scheme and the option of either an increased income share from the development or capital payment if the overall profit level is higher than anticipated. CBC costs are initially restricted to the project management costs and professional fees. These costs have been allowed for within the Council's Capital Programme as part of the St. Botolph's funded project costs.

10. Human Rights Implication

No implications can be identified at this stage, however as matters progress to a Compulsory Purchase, it is likely that concerns will be raised over Human Rights issues.

11. Community Safety Implications

None identified at this stage

12. Health and Safety Implications

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

13. Risk Management Implications

- 13.1 The agreeing of the Heads of Terms with the developer does not guarantee progression of the project to planning application stage or the signing of a development agreement. If the developer fails to meet the deadline in respect of the development agreement set out in the Heads of Terms the Council has the right to treat with another party, but this will add further delays to the regeneration of this area.
- 13.2 The overall development of the scheme is reliant upon the relocation of the bus station and delays in securing this could lead to delays in certain phases of the development.
- 13.3 The current economic climate does mean that nationally all development projects are more vulnerable in terms of viability and due to the nature of this scheme, there is a risk that the developer may

choose not to proceed. In addition, any income due to the Council is at risk if values continue to fall and costs rise

Appendices

1. Ash Sakula winning Scheme concept drawing
2. Draft Heads of Terms including principal terms for Estate Management Strategy and Lettings Policy

