



## Record of Officer Executive Decision

**Date of Decision:** 09 October 2019

ADUR & WORTHING  
COUNCILS

If you have any questions about this decision please contact Democratic Services on 01903 221006 or email [democratic.services@adur-worthing.gov.uk](mailto:democratic.services@adur-worthing.gov.uk)

<b>Record of Decision:</b> HMP&I/009/19-20 Disposal of land at West Buildings Shelter
<b>Decision taken by:</b> Head of Major Projects & Investment
<b>Declaration of Disclosable Pecuniary Interests:</b> I do not have a disclosable pecuniary interest, or conflict of interest.  Delegated Authority:  3.13.3 of Worthing Council Constitution's "Officer Scheme of Delegation" specifies the Head of Major Projects & Investment has delegated authority "To dispose of land in connection with the Council's functions and to grant leases, easements, licenses and wayleaves of, in, or over buildings or land in connection with the Council's functions".
<b>Decision:</b> To grant a long-lease of the derelict seafront shelter together with adjoining land to The Restaurant Marine Parade Limited who are undertaking to construct a 6,500sq ft restaurant on two floors.
<b>Key Decision:</b> No
<b>Reason For Decision:</b> 1.0 Summary and Background  1.1 It is proposed to dispose of the site known as West Buildings Shelter, Worthing on a 200 year long lease. Will pay the Council no premium for the land, but will offer to the Council 5% of the passing rent from the premises (currently estimated to amount to £00 per annum)  1.2 The paragraphs below provide key information on how the proposed disposal accords with the Council's objective and recommends that the Council should proceed with the transaction.  2.0 Reason for the Decision  2.1 The regeneration of Worthing's seafront is a core objective for the Borough Council as set out in 1.7.1 of Platforms for our Places. In response the Council have prepared The Seafront Investment Plan (adopted in 2017) which highlights the opportunity to renew,

upgrade and activate the seafront to support the overall economic well-being of the town. The development of a new high-quality restaurant at West Buildings Shelter provides a significant opportunity to deliver on this strategy.

2.2 This private sector investment represents an opportunity to initiate a significant change in Worthing's offer, most notably the expected positive effects to the evening and night-time economy by providing a new attractive restaurant offer in a prominent location that will act as a destination. Furthermore, due to its proximity to the town centre, this project also has the ability to support the high street by attracting greater footfall to support businesses in the town.

2.3 The proposed development opportunity was the subject of an extensive marketing exercise in 2017 which resulted in eight offers being received for the site. Following a selection exercise including financial analysis and interview the Council selected Next Colour Limited (parent company of The Restaurant, Marine Parade Limited) as the preferred developer. Subsequently the Council have been working to negotiate the terms of the agreements required to bring the development forward.

2.4 The overall project meets a number of the Council's core objectives of greater utilisation of our assets, attracting private sector investment and creating greater economic value in our urban centre.

### 3.0 Detailed Considerations

#### 3.1 Description of the site and buildings

3.1.1 The application site is located immediately south of Marine Parade in Worthing, sitting on the Promenade and overlooking the south coast. The site is situated opposite the junction of Marine Parade and West Buildings, approximately 500m west of Worthing Pier.

*See document – Situation of Site Photograph*

3.1.2 The existing structure on the site is a 1920s seafront shelter which has been identified as being of local interest in the Worthing Local Interest Study (2003), with a similar shelter also located on the eastern side of the pier.

3.1.3 The existing shelter occupies a prominent site on the Promenade, which is largely clear of built form to enable views of the beach and the ocean. However, the shelter has been underused and subsequently fallen into disrepair.

*See document – View of Existing Shelter Photograph*

3.1.4 To the north of the site, along Marine Parade, the majority of the adjacent buildings comprise four to five-storey terraced structures with an art-deco design, which are primarily used for residential / hotel purposes.

*See document – Aerial View Photograph*

3.1.5 Due to its location along the Promenade, access to the site is made on foot – either directly from the Promenade, the beach or via the pedestrian links to the highway of Marine Parade. Ample parking is also provided along Marine Parade in the form of on-street parking.

3.1.6 The site is also located sustainably in terms of public transport provision, with bus

stops located immediately west of the site. These bus stops are served by service numbers '8', '8A', '700', '743' and 'connect7', which provide access to Brighton and Littlehampton, as well as local destinations such as Lancing and Salvington among others.

3.2 Description of the authority's tenure and a summary of the details of any leases, encumbrances, such as easements etc, to which it is subject. To the north of the site a major sewer located under the Promenade which may prevent any new development on the same footprint as the existing shelter.

3.2.1 The Council holds the land freehold for the purposes of recreation and amenity as it comprises part of the seafront promenade.

3.2.2 The land is identified as being public open space for the purposes of S123 of the Local Government Act 1972 and an appropriate advertisement has been undertaken in September 2017 and no objections received.

3.3 Description of the existing use, current planning consents and alternative planning uses(s) that are likely to be permitted

3.3.1 The shelter is currently used as a piece of public infrastructure providing seating, shelter and general amenity. It has previously been used for the storage of seafront type equipment including bike rental and the promenade land train used for tourism.

3.3.2 Relevant planning decisions applicable to the site and surrounds will give an indication or alternative planning uses that are likely to be permitted. These are summarised in the table below:

Ref	Decision	Proposal
07/0345/CAC	Approved – 19/04/2007	Application for Conservation Area Consent for the demolition of existing public shelter in connection with redevelopment to provide a single storey building to provide a restaurant (Use Class A3)
07/0141/FULL	Approved – 19/04/2007	Demolition of existing public shelter and redevelopment with a single storey building to provide a restaurant (Use Class A3)
05/0802/FULL	Withdrawn – 20/01/2006	Alternations and change of use from shelter to restaurant (Class Use A3)

3.3.3 The approved planning applications outlined above (07/0141/FUL and 07/0345/CAC), whilst not implemented, confirm that the principle of the development of the site for restaurant use is acceptable. It is likely that other similar A3/A5 uses would receive planning permission, while suitable A1 retail would also stand a strong chance of success.

3.4 A summary of the proposed transaction, noting the key terms and any restrictions to be imposed by the authority;

3.4.1 The Council will grant a 200 year lease of the land and existing building, in return the lessee is obliged to obtain all necessary consents and construct the proposed restaurant. In the event that construction has not been completed within 5 years the Council will be able to terminate the leases.

3.4.2 The building has been designed for occupation by Le Bistro Pierre Ltd an established chain of restaurants which currently trades from 25 restaurants in England and Wales. Le Bistro Pierre have recently opened a restaurant in Eastbourne of a similar size to the subject scheme.

#### 4.0 S123 - Best Consideration Reasonably Obtainable

4.1 Section 123 of the Local Government Act 1972 sets out the expectation that land should be sold for the best consideration reasonably obtainable. Consideration in section 123(2) is confined to transaction elements which are of commercial or monetary value. As a result, in coming to the view as to whether best consideration reasonably obtainable has been achieved in a transaction the Council cannot take into account factors such as job creation, or regeneration which do not have a direct or monetary value to the Council.

4.2 Suitable professional advice has been received from SHW with regards to whether best consideration reasonably obtainable has been achieved from the transaction. The letter (see appendix B) highlights that since the marketing exercise in 2017 that the developers have developed their design proposals, received cost advice and reappraised the viability of their scheme. As a result, they have entered into negotiations to revise their initial offer which has resulted in the premium offered being reduced from £100,000 to £25,000 and the rent payable reduced from 10% to 5% of the passing rent of the building. The advice follows:

Having considered the renegotiated terms, we discussed with you the possibility of re-marketing to establish whether better terms could be obtained. We advised that in the current market conditions, in both the general property market terms and the restaurant sector specifically, there could be no certainty that any new offers would be forthcoming, nor better terms achieved. It is well recorded that few recognised restaurant brands that might be thought suitable for the subject location, are currently seeking additional premises.

In the circumstances you have decided to proceed with the proposed transaction on the best terms that can be negotiated. The developers have stated that they are not prepared to improve the negotiated terms.

We are thus unable to report that the proposed transaction represents best value.

The advice letter offers in summary:

For the reasons set out in the report below we have concluded that because the developer substantially reduced the rent and premium during renegotiations over the last 2 years and it was decided not to re-market the land, we are unable to confirm that the agreed terms represent best value. However, having reviewed your Worthing Seafront Investment Plan and related policies we are satisfied that you are justified in proceeding with the transaction as it will support your objectives of improving the seafront and the town generally.

4.3 In a recent relevant court case pertaining to S123 (R (Faraday Development Limited) v West Berkshire Council [2016] EWHC 2166 (Admin)) the judgement rehearsed key principles, 'distilled' from relevant case law. Amongst the principles the judgement highlighted that the deliverability or credibility of a bid, or the care with which it has been prepared, are commercial factors which are relevant to an assessment of whether the 'consideration' offered is the best reasonably obtainable. Likewise, the highest offer on the table need not represent the best 'consideration', because an authority may conclude that 'a bird in the hand is worth two in the bush'.

4.4 Given the advice from SHW that no new offers may be forthcoming if the Council were to remarket the site, and taking into account the detailed information provided by the

developer on:

- development construction costs,
- overall scheme viability, and
- detailed design considerations

It is considered that the proposals before us have a high level of credibility which demonstrates the deliverability of the project and that the consideration offered by the lessee is likely to be the best consideration reasonably obtainable.

5.0 “Advice Note Items of Concern and Risk to the Council” from Senior Lawyer and Deputy Monitoring Officer

5.1 The Council’s Deputy Monitoring Officer has set out an advice note to the Director for the Economy and Head of Major Projects & Investment identifying a number of risks to the Council from the transaction which are summarised below:

The length of the lease

The reduction in the premium in the course of the negotiation and effect on best consideration

The tenant’s strength of covenant

Risk arising from the tenant not completing the construction

The time period for claiming liabilities and obligations from the tenant

That the lease does not contain an authorised guarantee agreement should the tenant choose to assign.

The amount of rent payable

The nature of the profit share agreement and the likelihood of the Council benefiting from this agreement

The granting of a vehicular right of way along the promenade that the tenant can use in exceptional circumstances.

The terms in the lease excluding other development from a 10m radius from the demise.

5.2 In evaluating the proposed transaction and resolving to enter into the lease these risks have been considered by the Head of Major Projects & Investment. It is noted that for a number of these items of concern and risk that the Deputy Monitoring Office has not commented on the likelihood of the risk or concern arising, nor commented on the impact of the risk or concern to the Council should they arise. A number of these items of concern around achievement of best consideration will now be superseded by the appropriate advice from SHW on the terms of the transaction.

5.3 The Council’s Seafront Investment Plan sets out a clear ambition for regenerating the seafront through development of a number of key sites. The advice received from SHW regarding the nature of the property investment market, and the restaurant development market in particular, provides insight into the challenging nature of this project. In the course of negotiating the lease, the Council have inevitably been required to compromise on elements of the transaction to ensure that the overall outcome of developing the site is achieved. These items of risk and concern need to be viewed in the wider context of the alternative options considered and by assessing the counterfactual risks and concern that the alternative options would involve should they be preferred. Some of these risks are summarised A strong counter argument exists that the nature of the transaction reduces the financial burden on the Council to deliver the development directly, and reduces the risk to the Council of any construction project not going to plan by passing this risk to the private sector.

5.4 Finally, it is noted that in bringing these various points to the attention of the decision taker, that the officers of the Council can actively monitor and manage these risks appropriately should materialise. In conclusion, it is considered appropriate to proceed with

the transaction.

**Alternative Options Considered:**

1. To not enter into the lease and re-market the site: One could resolve not to enter the lease and to re-market the site to see if more favourable terms could be achieved. The Council's Deputy Monitoring Officer has identified a number of risks with the current deal, and remarketing the scheme could be a means to resolve some of these issues. It is considered that in current market conditions, given the advice summarised above from SHW, there can be no certainty that any new offers would be forthcoming, nor better terms achieved. This is not the recommended option.
  
2. To not dispose of the site: the Council council could resolve not to dispose of the site and to leave the building as it is, or to refurbish it as a shelter. This would not lead to the achievement of the Council's regeneration objectives as set out in the Seafront Investment Plan and would add pressure to the Council's existing planned and reactive maintenance budgets to refurbish and maintain the premises. It would be unlikely to resolve the issues of anti-social behaviour that have been recorded at the site. This is not the recommended option.
  
3. To undertake a restaurant development directly: the Council could prepare plans, achieve planning permission and let a contract for the construction of a new restaurant directly. While this would lead to the achievement of the objectives in the Seafront Investment Plan, resolve issues around anti-social behaviour and would develop an income stream that would be able to cover the cost of planned and reactive maintenance, it is considered that development direct delivery of the development would hold a high level of risk, particularly in regards to construction costs given the sites seafront location, the uncertainty around securing a suitable operators given current market conditions, and the long delay in bringing forward the site that this option would entail render this not the recommended option. This is not the recommended option.

**Other Matters Considered:**

Legal Advice and Issues	x	Financial Advice and Issues	x
Sustainability Issues	x	Equality Issues	x
Community Safety Issues	x	Human Rights Issues	x
Reputation	x	Risk Assessment	x
Health & Safety Issues	x		

**Consultation:**

In line with the requirements set out in Worthing Borough Council's Constitution no formal consultation is required in making this decision.

However, the Chief Financial Officer, Head of Legal Services, Director for the Economy and Head of Place and Economy have been involved in the project throughout the process, and as the seafront is a designated open space, the disposal by granting the

lease was advertised to meet the requirements of s123(2A) of the Local Government Act 1972 for a period of two weeks. No objections were received.

**Background Papers:** Draft Development Agreement (exempt)  
Draft Lease (exempt)  
Planning Application (Ref: AWDM/1303/19- available on Council's website)  
Worthing Seafront Investment Plan  
Officer's Report  
Advice letter on S123 Best consideration from SHW Surveyors (exempt)  
Situation of Site Photograph  
View of Existing Shelter Photograph  
Aerial View Photograph

**Contact Officer:**

Cian Cronin  
Head of Major Projects & Investment

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**Call-in:** The call-in deadline for this decision will be 5:00pm on 16 October 2019.



**Signed:**

**Dated:** 9 October 2019

**Name:** Cian Cronin, Head of Major Projects and Investment

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