

# AGENDA

## Community Services Scrutiny Committee

Date: **Monday 13 July 2009**

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Time: **10.30 am**

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Place: **The Council Chamber, Brockington, 35 Hafod Road,  
Hereford**

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Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

**David Penrose, Democratic Services Officer, Tel: 01432  
383690**

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# Agenda for the Meeting of the Community Services Scrutiny Committee

## Membership

**Chairman**                    **Councillor TM James**  
**Vice-Chairman**           **Councillor KG Grumbley**

**Councillor DJ Benjamin**  
**Councillor GFM Dawe**  
**Councillor BA Durkin**  
**Councillor DW Greenow**  
**Councillor KS Guthrie**  
**Councillor MAF Hubbard**  
**Councillor B Hunt**  
**Councillor RH Smith**  
**Councillor RV Stockton**

**Non Voting**                    **Mrs Gillian Churchill**                    HALC  
**Mrs. J. Evans**                    National Farmers Union  
**Mr P Hands**                    Visit Herefordshire  
**Mr Gary Woodman**               Hereford and Worcester Chamber of  
Commerce

## **GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS**

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is. A Councillor who has declared a prejudicial interest at a meeting may nevertheless be able to address that meeting, but only in circumstances where an ordinary member of the public would be also allowed to speak. In such circumstances, the Councillor concerned will have the same opportunity to address the meeting and on the same terms. However, a Councillor exercising their ability to speak in these circumstances must leave the meeting immediately after they have spoken.

## AGENDA

	Pages
<p><b>1. APOLOGIES FOR ABSENCE</b></p> <p>To receive apologies for absence.</p>	
<p><b>2. NAMED SUBSTITUTES</b></p> <p>To receive any details of Members nominated to attend the meeting in place of a Member of the Committee.</p>	
<p><b>3. DECLARATIONS OF INTEREST</b></p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
<p><b>4. SUGGESTIONS FROM MEMBERS OF THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY</b></p> <p>To consider suggestions from members of the public on issues the Committee could scrutinise in the future.</p>	
<p><b>5. CALL IN OF THE CABINET DECISION ON THE EDGAR STREET GRID RETAIL QUARTER DEVELOPMENT AGREEMENT</b></p> <p>To consider the Cabinet Decision Reference No: 2009.CAB.036 to conclude negotiations and enter into the Edgar Street Grid (ESG) Retail Quarter Development Agreement between Herefordshire Council, ESG Herefordshire Ltd, and Stanhope following an initial European procurement process and subsequent detailed financial and programming negotiations agreed at the Cabinet Meeting on 25 June 2009 that has been called in by three Members of the Committee.</p> <p><b>EXCLUSION OF THE PUBLIC AND PRESS</b></p> <p>In the opinion of the Proper Officer, the next item will not be, or is likely not to be, open to the public and press at the time it is considered.</p> <p><b>RECOMMENDATION:</b></p> <p>That the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act as indicated below.</p> <p><b>ESG RETAIL QUARTER DEVELOPMENT AGREEMENT APPENDICES THREE AND FOUR</b></p> <p>Not for Publication: This item discloses information relating to the financial or business affairs of any particular person (including the authority holding that information).</p>	<p>1 - 16</p>



## **PUBLIC INFORMATION**

### **HEREFORDSHIRE COUNCIL'S SCRUTINY COMMITTEES**

The Council has established Scrutiny Committees for Adult Social Care and Strategic Housing, Childrens' Services, Community Services, Environment, and Health. A Strategic Monitoring Committee scrutinises corporate matters and co-ordinates the work of these Committees.

The purpose of the Committees is to ensure the accountability and transparency of the Council's decision making process.

The principal roles of Scrutiny Committees are to

- Help in developing Council policy
- Probe, investigate, test the options and ask the difficult questions before and after decisions are taken
- Look in more detail at areas of concern which may have been raised by the Cabinet itself, by other Councillors or by members of the public
- "call in" decisions - this is a statutory power which gives Scrutiny Committees the right to place a decision on hold pending further scrutiny.
- Review performance of the Council
- Conduct Best Value reviews
- Undertake external scrutiny work engaging partners and the public

Formal meetings of the Committees are held in public and information on your rights to attend meetings and access to information are set out overleaf

## **PUBLIC INFORMATION**

### **Public Involvement at Scrutiny Committee Meetings**

You can contact Councillors and Officers at any time about Scrutiny Committee matters and issues which you would like the Scrutiny Committees to investigate.

There are also two other ways in which you can directly contribute at Herefordshire Council's Scrutiny Committee meetings.

#### **1. Identifying Areas for Scrutiny**

At the meeting the Chairman will ask the members of the public present if they have any issues which they would like the Scrutiny Committee to investigate, however, there will be no discussion of the issue at the time when the matter is raised. Councillors will research the issue and consider whether it should form part of the Committee's work programme when compared with other competing priorities.

Please note that the Committees can only scrutinise items which fall within their specific remit (see below). If a matter is raised which falls within the remit of another Scrutiny Committee then it will be noted and passed on to the relevant Chairman for their consideration.

#### **2. Questions from Members of the Public for Consideration at Scrutiny Committee Meetings and Participation at Meetings**

You can submit a question for consideration at a Scrutiny Committee meeting so long as the question you are asking is directly related to an item listed on the agenda. If you have a question you would like to ask then please submit it **no later than two working days before the meeting** to the Committee Officer. This will help to ensure that an answer can be provided at the meeting. Contact details for the Committee Officer can be found on the front page of this agenda.

Generally, members of the public will also be able to contribute to the discussion at the meeting. This will be at the Chairman's discretion.

(Please note that the Scrutiny Committees are not able to discuss questions relating to personal or confidential issues.)

## **Remits of Herefordshire Council's Scrutiny Committees**

### **Adult Social Care and Strategic Housing**

*Statutory functions for adult social services including:  
Learning Disabilities  
Strategic Housing  
Supporting People  
Public Health*

### **Children's Services**

*Provision of services relating to the well-being of children including education, health and social care.*

### **Community Services Scrutiny Committee**

*Libraries  
Cultural Services including heritage and tourism  
Leisure Services  
Parks and Countryside  
Community Safety  
Economic Development  
Youth Services*

### **Health**

*Planning, provision and operation of health services affecting the area  
Health Improvement  
Services provided by the NHS*

### **Environment**

*Environmental Issues  
Highways and Transportation*

### **Strategic Monitoring Committee**

*Corporate Strategy and Finance  
Resources  
Corporate and Customer Services  
**Human Resources***

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- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
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**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

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Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

## **CALL-IN OF CABINET DECISION ON THE ESG RETAIL QUARTER DEVELOPMENT AGREEMENT**

**Report By: Deputy Chief Executive**

### **Wards Affected**

Central Ward.

### **Purpose**

1. To consider the Cabinet Decision Reference No: 2009.CAB.036 to conclude negotiations and enter into the Edgar Street Grid (ESG) Retail Quarter Development Agreement between Herefordshire Council, ESG Herefordshire Ltd, and Stanhope following an initial European procurement process and subsequent detailed financial and programming negotiations agreed at the Cabinet Meeting on 25 June 2009 that has been called in by three Members of the Committee: Councillors DJ Benjamin, GFM Dawe and MAF Hubbard.

### **Reason For Call-In**

2. In accordance with Standing Order 7.3.1 and the Scrutiny Committee Rules set out at Appendix 2 of the Constitution, the Cabinet's decision on 19th February 2009 on this issue has been called in for consideration by this Committee.
3. The stated reasons for the call-in are:
  - There being no previous indication that a 250 year lease was being considered, and insufficient explanation as to why this was necessary.
  - The 'Masterplan' was negotiated before the start of the credit crunch and there has been no public re-negotiation of plans for the Retail Quarter since those events.
  - With due regard to matters of commercial confidentiality, there is insufficient information about the structure of the financial arrangements in relation to the Retail Quarter itself, and also between the Retail Quarter and other parts of the ESG project.
4. The draft decision notice (No: 2009.CAB.036), together with the report to Cabinet on 25 June are appended to the report as Appendix 1.
5. An extract from the draft Minutes of Cabinet held on 25 June will be made available as soon as possible.
6. It is for the Committee to decide whether it wishes to accept the decision of Cabinet or to refer the decision back to Cabinet for further consideration and if so what recommendations to Cabinet it wishes to make.
7. The Report to Cabinet on 25 June 2009 included two exempt appendices (Appendix 3 and 4). It is intended that these documents will be considered by the Committee as

they were addressed at the Cabinet meeting on 25 June 2009, namely in private session.

### EXCLUSION OF THE PUBLIC AND PRESS

**Not for Publication: the following two appendices are exempt from publication on the grounds that they disclose information relating to the financial or business affairs of any particular person (including the authority holding that information). The appendices will be tabled at the meeting in confidential session.**

Appendix 3 Synopsis of Development Agreement – ESG Herefordshire Ltd

Appendix 4 ESG Programme Finance Proposals

### Background Papers

None identified.

**WRITTEN STATEMENT OF A KEY DECISION  
CABINET**

<b>ITEM:</b>	<b>ESG RETAIL QUARTER DEVELOPMENT AGREEMENT</b>
Members Present:	Councillors: RJ Phillips (Leader), LO Barnett, AJM Blackshaw, H Bramer, JP French (Deputy Leader), JA Hyde, JG Jarvis, PD Price, DB Wilcox.
Date of Decision:	25 June 2009
Exempt:	No
Confidential	No
This is a key decision because It is likely to result in the Council incurring expenditure above agreed budgets for the service or function (shown as a line in the budget book) to which the decision relates but allowing for virements between budget heads and savings within budget heads of up to £500,000	
The item was included in the Forward Plan.	
Urgency/Special Urgency: (As defined in Constitution)	No
Purpose:	To seek approval to proceed to conclude negotiations and enter into the Edgar Street Grid (ESG) Retail Quarter Development Agreement between Herefordshire Council, ESG Herefordshire Ltd, and Stanhope following an initial European procurement process and subsequent detailed financial and programming negotiations.
<b>Decision:</b>	<b>THAT:</b>  <b>(a) the substantive terms of the Development Agreement so far negotiated as described in this report be approved; and</b>  <b>(b) approval be given for negotiations to be finalised on the basis of those substantive terms and for the finalised Development Agreement to be signed under the authority of the Director of Regeneration.</b>
Reasons for the Decision:	The Retail Quarter is one of the principal elements of the Edgar Street Grid (ESG) redevelopment. Signature of the Development Agreement will tie both parties into the development process and give greater certainty that this mixed-use scheme will progress within a structured timeframe. The signature of the Development Agreement represents the conclusion of an open market process that started with a developer selection procedure that recommended Stanhope as

	<p>the preferred developer.</p> <p>The ESG Herefordshire Ltd (ESG) Board and Advantage West Midlands (AWM) have been involved in the selection process alongside senior Herefordshire Council Officers. This report summarises the terms of the Development Agreement and the financial implications for the Council.</p>
Options Considered:	<ol style="list-style-type: none"> <li>1 To not sign, or to delay the signing of, the Development Agreement with Stanhope.</li> <li>2 Not signing the Development Agreement has direct implications for the rest of the ESG development in terms of delivery and financing. In the current economic climate, government agencies and private developers require confidence that redevelopment schemes are progressing to programme. Non signature of the Development Agreement may cause both Stanhope and AWM to review their investment in the Retail Quarter, and, should this be delayed, the whole of the ESG scheme including the essential investment in local infrastructure.</li> <li>3 Additionally either alternative option would have implications for the role and integrity of the ESG Herefordshire Ltd Board and Company. A decision not to progress the proposal would result both in damage to the reputation of the authority and loss of significant resources to support the regeneration of the city.</li> </ol>
Declaration of Interest:	
Date the key decision is due to take effect:	3 July 2009

<b>COUNCILLOR RJ PHILLIPS</b> .....	<b>Date: 25 Jun 2009</b>
<b>LEADER OF THE COUNCIL</b>	

<p><b>To be completed by officer:</b></p>	
<p>Date consent received from Chairman of Community Services Scrutiny Committee:</p>	
<p>Subject to Call-in:</p>	<p>This Decision was not called in <b>OR</b> This Decision was called in on <b>DATE</b> by Councillors <b>NAME</b>, <b>NAME</b> and <b>NAME</b> The call in meeting of the <b>.....Scrutiny</b> Committee was held on <b>DATE</b></p>
<p>Was the decision modified?</p>	<p>Yes/No</p>
<p>If yes Cabinet Member (.....) decision reference:</p>	
<p>If no any comment(s) to be noted</p>	
<p>Date original decision took effect:</p>	<p><b>DAY AFTER SCRUTINY MEETING</b></p>





# ESG RETAIL QUARTER DEVELOPMENT AGREEMENT

## PORTFOLIO RESPONSIBILITY: ECONOMIC DEVELOPMENT AND COMMUNITY SERVICES

CABINET

25 JUNE 2009

### Wards Affected

Central

### Purpose

To seek approval to proceed to conclude negotiations and enter into the Edgar Street Grid (ESG) Retail Quarter Development Agreement between Herefordshire Council, ESG Herefordshire Ltd, and Stanhope following an initial European procurement process and subsequent detailed financial and programming negotiations.

### Key Decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in Herefordshire in an area comprising one or more wards.

It was included on the Forward Plan.

### Recommendation

#### THAT:

- (a) **the substantive terms of the Development Agreement so far negotiated as described in this report be approved; and**
- (b) **approval be given for negotiations to be finalised on the basis of those substantive terms and for the finalised Development Agreement to be signed under the authority of the Director of Regeneration.**

### Reasons

The Retail Quarter is one of the principal elements of the Edgar Street Grid (ESG) redevelopment. Signature of the Development Agreement will tie both parties into the development process and give greater certainty that this mixed-use scheme will progress within a structured timeframe. The signature of the Development Agreement represents the conclusion of an open market process that started with a developer selection procedure that recommended Stanhope as the preferred developer.

The ESG Herefordshire Ltd (ESG) Board and Advantage West Midlands (AWM) have been involved in the selection process alongside senior Herefordshire Council Officers. This report summarises the terms of the Development Agreement and the financial implications for the Council.

## Considerations

### Background

- 1 The Retail Quarter lies in the south western corner of the Edgar Street Grid area and is shown outlined in red on the plan at Appendix 1; the site includes the Council assets of the Livestock Market and associated business premises, Garrick House, the New Market Tavern, and the multi-storey and surface car parks adjacent to Garrick House. The Herefordshire UDP and ESG SPD identify that the entire Retail Quarter site should be considered for redevelopment as a mixed-use site.
- 2 At its meeting on 28 February 2008 Cabinet approved the selection of Stanhope as the preferred developer for the Edgar Street Grid Retail Quarter and authorised detailed negotiations with them prior to consideration of a full Development Agreement.
- 3 Herefordshire Council land ownerships within the Retail Quarter are shown in Appendix 2 and amount to approximately 4 hectares (9.9 acres). As a condition of the Development Agreement Stanhope will be expected to fund the acquisition, within the Retail Quarter, of any further land and property required to progress the redevelopment.
- 4 After signing of the Development Agreement, Stanhope will be refining their design proposals and confirming the ownerships within the Retail Quarter necessary to progress their scheme. Such land may be vested in the Council pending redevelopment

### Negotiations

- 5 Since their selection as preferred partner in February 2008, Stanhope have been in negotiation with Herefordshire Council, ESG Herefordshire Ltd, and AWM with regard to the final development mix and designs for the site, and over the detailed financial considerations.
- 6 This period has seen a significant deterioration in the economy and therefore the terms of the Development Agreement have been amended to reflect the requirements of both Herefordshire Council and Stanhope.
- 7 Of particular note is that negotiations have included the consideration of a phasing mechanism that will have the result of delivering retail development on a staged basis. The phasing programme and critical delivery path will require some months of refinement and evaluation and when agreed will be incorporated in the Development Agreement.
- 8 The proposed Development Agreement with Stanhope comprises of the following:-
  - Development Agreement with around 20 appendices and over 10 schedules;
  - CPO Indemnity Agreement (to be concluded at a later date); and
  - 250 year Head Lease.

Should Cabinet approval be given to this report, the Development Agreement will be in a position to be signed shortly, with the CPO Indemnity Agreement to follow later in the year once the phased scheme has been agreed. The 250 year Head Lease will not be granted to Stanhope until the scheme has been practically completed.

- 9 This Cabinet report and its appendices summarise the terms of the Development Agreement with Stanhope and the procedure that has been followed, with the major implications to the Council highlighted. The detailed synopsis of the Development Agreement is attached in Appendix 3 which is a confidential document and exempt from publication and will be tabled at the meeting during the confidential session.

### **Development Programme**

- 10 The wider Edgar Street Grid programme should be viewed in the context of an area wide infrastructure framework with individual development projects, such as the Retail Quarter, “plugged” into the wider infrastructure on a phased basis.
- 11 The infrastructure framework consists principally of: off-site flood mitigation, the Link Road, on-site flood alleviation and re-alignment of Widemarsh Brook, and the new livestock market construction. The major development projects are the Retail Quarter, Urban Village, Transport Hub and New Area.
- 12 The capital sum received from Stanhope for the Retail Quarter forms a proportion of the overall funding package required to finance the wider Edgar Street Grid redevelopment. Details of the redevelopments expenditure and income can be seen in Appendix 4 – ESG Programme Finance which is a confidential document and exempt from publication and will be tabled at the meeting during the confidential session.
- 13 Advantage West Midlands and Herefordshire Council have already made significant financial investment within the Edgar Street Grid development, principally on land and property acquisitions, and preliminary infrastructure design.
- 14 The Development Programme identifies elements of the redevelopment unfinanced by either Herefordshire Council or AWM. Discussions are underway between Herefordshire Council, ESG Herefordshire Ltd, and the Homes and Communities Agency (HCA) with a view to the latter providing the necessary financial contribution.

### **Community Benefits**

- 15 The proposed development will bring a range of significant economic and social benefits to the county. These have been outlined in previous reports on the Retail Quarter. Benefits will be achieved over a number of years as the development commences.
- 16 In addition to proposed retail development, the scheme contains a multi-screen cinema and associated restaurants, car parking and high quality pedestrianised streets. The agreement also requires Stanhope to deliver very substantial improvements for pedestrians through extensive works to Blueschool Street and Newmarket Street in order to ensure excellent connections to the Maylord Centre and High Town.

### **ESG Board Position**

- 17 The ESG board has considered the redevelopment of the existing livestock market and adjoining land in considerable depth, both through debating reports at key stages in the selection and negotiation process and through scrutiny of the Stanhope proposals by the Retail Quarter sub-group which comprises board members and senior officers of Herefordshire Council and AWM. Following this lengthy consideration, the ESG board has considered the terms of the development agreement and concluded that the board should recommend Herefordshire Council

sign the agreement. The board is also of the view that the development of the site must be brought forward in carefully considered stages rather than as a single scheme.

## Legal Considerations

- 18 The contractual obligations and potential risks of entering into the Development Agreement are set out in Appendix 3 (which is exempt from publication and will be tabled in confidential session.)

## Financial Considerations

- 19 The financial implications for the Council are at Appendix 4, (which is exempt from publication and will be tabled in confidential session.)

## Risk Management

- 20 In order to ensure effective negotiations and minimise risk, external legal and retail development/ valuation advice has been provided by Pinsent Masons and Montagu Evans respectively, with the latter further supported by EC Harris, quantity surveyors. This will continue during the final negotiations.
- 21 The agreement contains a series of defined stages, at which both parties must take important decisions. In this way, both Herefordshire Council and Stanhope progressively make greater commitment as the development becomes more certain. This is a tried and tested means by which the public sector ensures delivery of high quality, complex commercial developments. These stages are described in detail at Appendix 3.
- 22 If at the end of the conditionality period all the other main pre-conditions have been satisfied but the Development Agreement has not gone unconditional because the Council have still failed to satisfy its livestock relocation condition (that is the Council have failed to relocate the livestock market from the Retail Quarter site), Stanhope can terminate the Development Agreement and the Council will be responsible for meeting Stanhope's abortive costs.
- 23 These costs will be substantive, hence the Council need to be absolutely certain that they can deliver vacant possession of the livestock market before they confirm they are satisfied, during the initial 18 month period, with the initial pre-condition relating to delivering vacant possession of the livestock market.
- 24 Should discussions with the Homes and Communities Agency be unsuccessful (paragraph 14) it will be necessary to realign the development and in particular reduce the infrastructure element. A secondary development programme has been worked up by ESG Herefordshire Ltd for implementation should the above scenario arise. Should this programme need to be implemented a further report will be brought back to Cabinet.

## Alternative Options

- 25 To not sign, or to delay the signing of, the Development Agreement with Stanhope.
- 26 Not signing the Development Agreement has direct implications for the rest of the ESG development in terms of delivery and financing. In the current economic climate, government agencies and private developers require confidence that

redevelopment schemes are progressing to programme. Non signature of the Development Agreement may cause both Stanhope and AWM to review their investment in the Retail Quarter, and, should this be delayed, the whole of the ESG scheme including the essential investment in local infrastructure.

- 27 Additionally either alternative option would have implications for the role and integrity of the ESG Herefordshire Ltd Board and Company. A decision not to progress the proposal would result both in damage to the reputation of the authority and loss of significant resources to support the regeneration of the city.

## Consultees

ESG Herefordshire Ltd has been integral to the selection of Stanhope as the preferred development partner and has been constantly involved throughout the negotiation process.

Legal

Asset Management and Property Services

Finance

## Appendices

Appendix 1 Site Map of Retail Quarter

**Appendix 2 Map of Herefordshire Council owned land and property within the ESG Retail Quarter**

## EXCLUSION OF THE PUBLIC AND PRESS

**Not for Publication: the following two appendices are exempt from publication on the grounds that they disclose information relating to the financial or business affairs of any particular person (including the authority holding that information). The appendices will be tabled at the meeting in confidential session.**

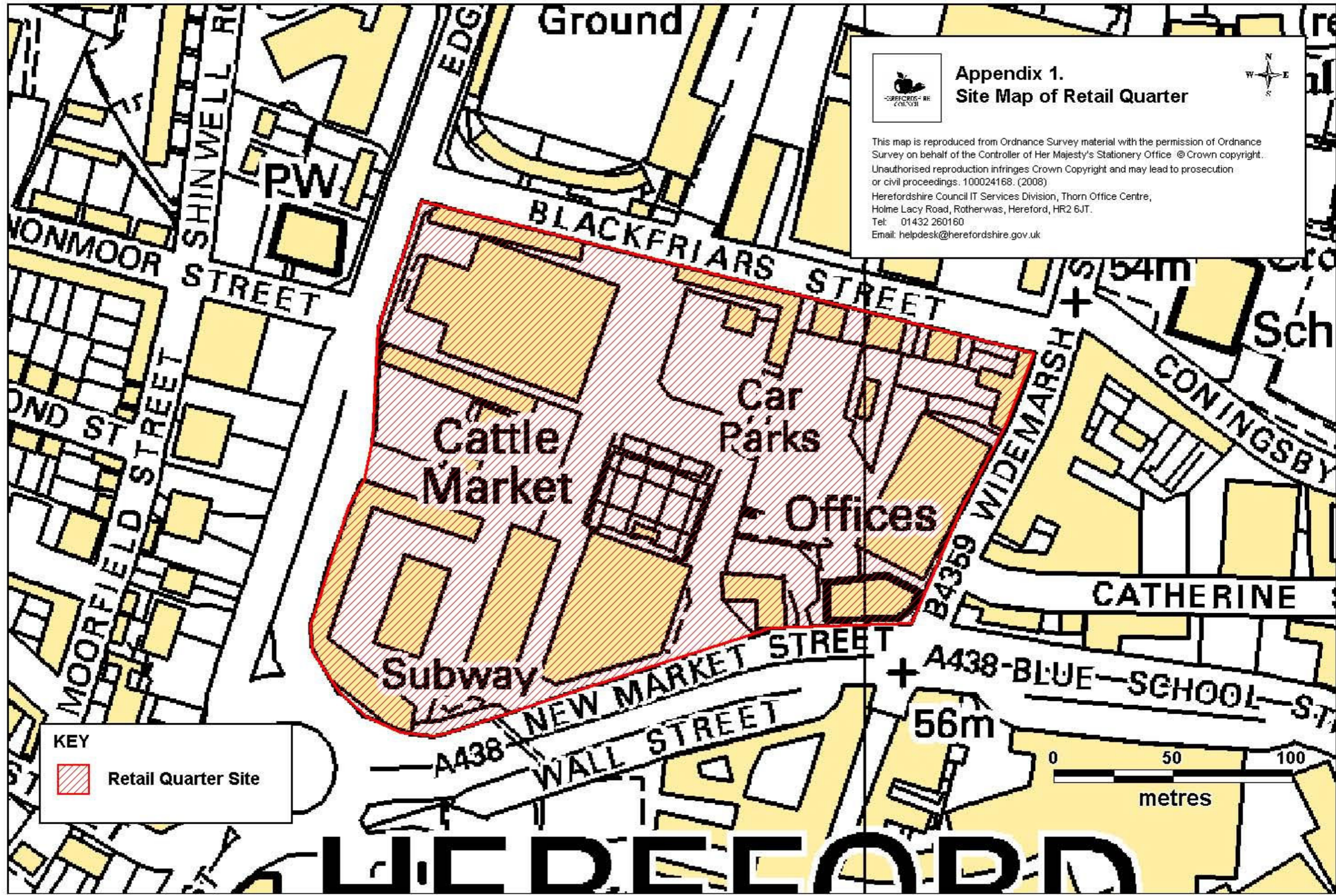
Appendix 3 Synopsis of Development Agreement – ESG Herefordshire Ltd

Appendix 4 ESG Programme Finance Proposals

## Background Papers

None identified.





**Appendix 1.  
Site Map of Retail Quarter**



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**KEY**

 Retail Quarter Site





**KEY**

 **Herefordshire Council Owned Land**



**Appendix 2.**  
**Map of Herefordshire Council owned land**  
**and property within the ESG Retail Quarter**



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