

MEETING:	CABINET
MEETING DATE:	19 SEPTEMBER 2013
TITLE OF REPORT:	PROPOSED BUTTERMARKE REFURBISHMENT
REPORT BY:	ASSISTANT DIRECTOR – ECONOMIC, ENVIRONMENT AND CULTURAL SERVICES
CABINET PORTFOLIO:	CORPORATE AND ASSETS

1. Classification

Open

2. Key Decision

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.

NOTICE has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

3. Wards Affected

Principally Hereford City, but visitors to the Buttermarket come from the wider County, and beyond.

4. Purpose

To establish the future way forward with regard to the Buttermarket project.

5. Recommendations

THAT:

- (a) Herefordshire Council actively negotiates to transfer the ownership, operation and future redevelopment of the Buttermarket to Hereford City Council and other interested parties;
- (b) In the event that the basis of an asset transfer is not agreed by 19 December 2013 the redevelopment of the market hall is implemented by Herefordshire Council;

- (c) Prudential borrowing is pursued to finance a redevelopment carried out by Herefordshire Council and is recommended for inclusion in the Capital Programme;
- (d) The procurement process for a Development Partner to deliver the project is commenced this would be a capital cost;
- (e) Permission is sought from HMRC to elect the Buttermarket for VAT; and
- (f) Further work is carried out on the options for an interim market location whilst refurbishment works are taking place.

6. Alternative Options

- 6.1 The Hereford Buttermarket Preliminary Business Plan details a number of alternative options. The alternative options considered are;
- Market Closure
 - Do Nothing Scenario - continuing with limited investment for essential repairs
 - Market Relocation
- 6.2 The alternative post development management options are similarly considered within the Preliminary Business Plan.

7. Reasons for Recommendations

- 7.1 The proposed asset transfer reflects the desire to work closely with town and parish councils to devolve appropriate services.
- 7.2 The proposed redevelopment of the Buttermarket will secure its longer-term future.
- 7.3 A refurbished Buttermarket will help to safeguard the vibrancy and viability of High Town both in its own right and once the Stanhope, Old Livestock Market site opens in 2014.

8. Key Considerations

- 8.1 The Hereford Buttermarket was built in 1860 when there was a need to ensure the provision and distribution of healthy food for the city's growing population. The market is well positioned within the retail core of the city centre and enjoys frontage to both High Town and Maylord Street. The market has suffered from limited capital investment over recent years and the building now requires substantial investment to allow continuation of operation.
- 8.2 In 2011 Hereford Futures were asked to bring forward a financially viable scheme which would deliver the refurbishment of the Buttermarket. Cabinet Member for Highways, Transportation and Waste approved the appointment of Wrenbridge-Trebor LLP as the preferred developer for the redevelopment. Hereford Futures working with Wrenbridge-Trebor completed a feasibility study which presented a number of recommendations for consideration. Hereford Futures indicated that a recommendation to finance the proposed redevelopment through Prudential borrowing

- would mean Wrenbridge-Trebor could not be appointed as development manager for the project as it would fall foul of the OJEU procurement process procedures specified for this project.
- 8.3 The Council is sustaining annual losses against its budgeted income stream from the Buttermarket. The 2013/14 income budget for the Buttermarket is £273k. The expenditure budget including those staff specifically associated with the Buttermarket is circa £150k. Further annual costs associated with maintenance and repairs are circa £25k - £35k based on average spending over recent years.
 - 8.4 The freehold valuation of the Buttermarket is estimated at approximately £1 million. Freehold disposal will require an amount equal to the value of the dilapidation schedule, estimated at £1.25 Million, to be deducted from this valuation. Although it is difficult to estimate the future valuation of the Buttermarket following refurbishment the net receipt might be as much as £4m.
 - 8.5 As part of the Devolved Services programme with local councils interest has been expressed by Hereford City Council in the future operation of the Buttermarket, including redevelopment of the site retained as a market. This would enable localised management of the site as part of the city centre offer. The City Council would need to know the full risks and liabilities, balanced with the current and future opportunity for income generation. These discussions are on-going.
 - 8.6 Any proposed asset transfer must support the aims and priorities of the Council. Critical to the success of any transfer is having a clear rationale demonstrating the ability of the recipient to manage the asset effectively, including an assessment of the financial and organisational capacity of the organisation.
 - 8.7 Quarterbridge Project Management Ltd, one of the UK's leading independent consultancies dealing with market improvement projects, has been commissioned to help evaluate the various future scenarios. A preliminary business plan outlining these scenarios for the future viability of the Buttermarket has been produced.
 - 8.8 A redeveloped Buttermarket will help to create a vibrant centre for independent retailers and caterers. It will also provide new business start-up opportunities and create employment providing Hereford's largest centrally located trading opportunity for local and regional independent businesses.
 - 8.9 The recommendation involves significant works to the market's shop-floor, creation of a new entrance feature to the Maylord Street entrance, new retail and catering units, a demonstration area as well as ceiling treatment and mechanical and electrical services. Also, the basement will be decommissioned and the Guildhall, situated within the Buttermarket, refurbished for back-of-house facilities.
 - 8.10 An estimated investment of £3.3m is required expected to be financed through Prudential borrowing. This scheme is currently not included in the capital programme.
 - 8.11 Following an assessment of the financial risk involved and further discussions with Quarterbridge it was suggested that to provide sufficient security for the Council to appoint a main contractor it should commence work pre-letting 50% of lettable space with conditional agreement for leases before appointing the contractor. Following the

appointment of the contractor the period of the construction programme, assumed to be twelve months, will allow the pre-letting agent time to increase occupancy to an opening rate target of 80%.

- 8.12 A full team of pre-contract professionals; architect, quantity surveyor, M&E consultant and structural engineer will be required to advance the project pre-tender stage. To reduce risk and limit fees, in event of pre-contract exit, conditional agreement with the various professionals to limit fees at pre-contract tender stage should be sought. Using this form of risk lay off the Council will be in a position to exit the contract development at a cost of circa £230k in the event that circumstances change for whatever reason. This will be included as a capital cost but in the unlikely event of the project being aborted it would become a revenue cost. To enable these pre construction works to be undertaken promptly, the Council would be able to utilise the West Midlands Construction Framework which should not only produce procurement savings but also surety of cost and substantial reductions in mobilisation timescales.
- 8.13 The appointment of a Development Partner to deliver the project on behalf of the Council is recommended. The Development Partner will be a multi-disciplined organisation or consortium which includes or is headed by a market specialist organisation and will be responsible for delivering pre-letting, obtaining the necessary professional input and delivering the proposed scheme on budget.
- 8.14 Post-development options have been explored and it is recommended that either the City Council or this Council retain ownership with external market management assistance for a period of time suitable to allow the establishment of a profitable and worthwhile market.
- 8.15 In order to secure the recovery of associated value added tax, the building will need to be elected to be registered with HMRC for VAT. Refurbishing the market would result in the Council incurring exempt input tax of approximately £700k. The Council is only able to recover exempt input tax when this totals less than 5% of the total input tax recovered, the higher the exempt input tax incurred the more likely this 5% limit is breached, resulting in a VAT repayment bill of approximately £1 million. To overcome this additional cost the Council can elect to tax the building securing VAT recovery. Quarterbridge have advised us that tenants are used to paying VAT on rental charges and this VAT is usually recoverable by them therefore opting to tax should have no impact on attracting tenants.
- 8.16 An on-going 'do-nothing' scenario would require essential repairs to be factored in particularly with regard to the current state of the fabric of the building as well as health & safety issues in particular the poor state of repair to the Guildhall and continued use of the basement as trader storage and preparation areas. A dedicated on-going maintenance budget of £25k - £35k p.a. will be required following an initial investment of £1.25 million in the current dilapidation schedule in order to cover essential backlog maintenance and health & safety obligations. The options appraisal has assessed this and considers that there is a significant risk of the market generating trading losses.
- 8.17 Full closure of the Buttermarket during any refurbishment is recommended on health and safety grounds. Phasing the redevelopment will increase the capital budget by

approximately 15%-20%. It is estimated the building will be closed for eight months during the refurbishment.

- 8.18 Legal advice indicates that the Council can temporarily close the Buttermarket without an obligation to provide an alternative. This is subject to business tenancies being successfully terminated, by agreement, by way of a break clause in their lease, or their lease coming to the end of its term. In any event, those tenants that are business tenants would receive the relevant statutory compensation under Part II of the Landlord and Tenant Act 1954.
- 8.19 A compensation budget will be required for eligible traders. Quarterbridge suggests that it is rare to pay the full amount as traders wishing to take space within the redeveloped market waive compensation claims. They also indicate that the majority of successful, existing traders will wish to secure space in the redeveloped scheme.
- 8.20 A key element of a wider refurbishment project will be the need to identify an interim trader location for the market traders who would eventually be relocated in the refurbished building; further work will be required in this regard.

9. Community Impact

- 9.1 A reinvigorated Buttermarket will support the Community Strategy by helping to create an environment for enterprise to thrive and business to grow and help provide a flourishing and diverse local economy for the residents of the County.
- 9.2 In addition, the market will support the priority of the Corporate Plan 2013/2015 by helping to create and maintain a successful economy that has vibrant town centres with shops, that keep people spending locally and makes Herefordshire more attractive to younger age groups.

10. Equality and Human Rights

- 10.1 No specific issues arise at this stage.

11. Financial Implications

- 11.1 The detailed financial impacts of devolving the operation of the Buttermarket to the City Council remain to be determined.
- 11.2 Quarterbridge has provided an assessment of the financial implications of the various options available to the council including a detailed assessment of the cost of the redevelopment option. The continued preferred option is to refurbish the market through Prudential borrowing and the utilisation of grants where available, to generate an expected net operating surplus per annum. The expected surplus per annum is a reduction in the current base budget position initially but expectations are the position will continue to improve year on year.

A summary of the financial implications detailed in the options appendix is given below:-

	Redevelop market	Close market	Do nothing	Relocate market
Cumulative expected cash position at year 5	242,766	(390,000)	(119,405)	(94,768)
Cumulative expected cash position if asset sold in year 5	1,268,277	No impact as dilapidation liability exceeds asset value	No impact as dilapidation loan balance would exceed asset value	No impact as dilapidation loan balance would exceed current asset value and new base would be leased

11.3 The figures represented in the table above compare the expected cumulative cash flow position for the five years following the option decision.

- Refurbishment Option; the calculations take account of income based on expected annual occupancy rates for the period starting at a 80% occupancy rate in year one following redevelopment. There would be an approximate loss of rental income of £200k whilst the site is closed for refurbishment – this will be a revenue budget pressure and is not included in the table above as this does not represent a cash expense. Deductions are made for; service charges, establishment costs in years one and two and annual loan re-payments. The annual loan repayments are based on a capital budget of £3.3m expected to fund all capital work costs, services, fees and includes a 10% contingency sum. To negate the risk of under occupancy in the refurbished site it is recommended to achieve a pre-letting target of 50% prior to letting the works contract. Using the assumptions above an approximate 75% pa occupancy rate is required to achieve break even during the first five years post development. There is an expected positive cash position after year one which increases annually.
- Close Option; this option considers the maximum trader compensation claim in year one and the expected annual rates payment. It excludes the receipt of income that will be lost from the cessation of the market. This loss of income

will result in a revenue budget pressure. Therefore an expected negative cash outflow position is expected over this period.

- Do-nothing Option; the income total is based on a best case scenario and could be significantly lower. Deductions consider the expected service charge, an annual maintenance budget and loan repayment required to deal with the current dilapidation schedule. There is an expected negative cash position over this period.
- Option to re-site the market; this is based on a notional 15,000 sq. ft. city centre location yet to be identified and considers income based on expected income based on net lettable area. Deductions are required for service charges including occupational rent and loan re-payments required for the building fit out. There is an expected negative cash position over this period. If this option was selected as the preferred option a site would need to be identified along with a decision on what to do with the current site which may result in incurring the close market liabilities stated under the close option.

12. Legal Implications

- 12.1 A right exists, under a Royal Charter of 1597, and under the Hereford Markets Act 2003, to hold a market at the Buttermarket. If the market is not held there is a risk that the charter right could be taken back by the Crown, or that the Council will not be able to enforce those rights against a rival market.
- 12.2 However the Buttermarket can be closed temporarily as, by implication, the Hereford Markets Act 2003 gives the right to improve the markets. This should be subject to consultation with the market traders and any other interest parties the Council believe are likely to be affected by the temporary closure, or relocation. Such temporary closure will also be dependent on those that have business tenancies being successfully terminated, by agreement, by virtue of a break clause in their lease, or their lease coming to the end of its term.
- 12.3 A review and advice upon the current tenancies in place at the Buttermarket will need to be provided by Legal in-house. Consideration can also be given to agreements to surrender with payments reflecting statutory compensation amounts in the case of leases with security of tenure.

Operation of break clauses in leases with protection of the 1954 Act will serve to bring forward the end of their term but the appropriate statutory procedure will still need to be followed. Herefordshire Council would need to rely on the landlord's right to oppose the renewal of a business tenancy on the ground the landlord intends to demolish or reconstruct the premises (section 30(1) (f), Landlord and Tenant Act 1954 (LTA 1954)).

Section 30(1)(f) (Ground (f)) of the Landlord and Tenant Act 1954 (LTA 1954), states that the landlord can oppose a lease renewal if:

"... on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof

that he could not reasonably do so without obtaining possession of the holding." (Section 30(1) (f), LTA 1954 (Ground (f)).)

To satisfy this ground there must be a genuine firm and settled intention to carry out the works and a reasonable prospect of them being carried out within a reasonable time from the end of the tenancies and it is for the Landlord to prove that it has the requisite intention. The more that a redevelopment plan is progressed the better. The more pre-requisites for the development that have been obtained the better i.e. planning permission for the development and third party consents, a building contract and arrangements for financing.

Statutory compensation is calculated as a multiplier of the rateable value of the property. Where the tenant and any predecessor that carried on the same business have been in occupation for business purposes for 14 years or more, the compensation is calculated as a multiplier of twice the rateable value.

Redevelopment must take place by the actual Landlord that issues the notices and terminations of tenancies. Either these are dealt with by Herefordshire Council before it commences redevelopment or if there is to be a freehold transfer to Hereford City Council it would be for that organisation to carry out both the redevelopment and notices/terminations.

13. Risk Management

13.1 The on-going issue of the Buttermarket income is already on the Environment, Economy and Culture Services risk register (RSK.EEC.04). A refurbishment project will initiate a separate entry being made on the service's risk register with regard to this regeneration proposal.

13.2 In summary the risk associated with this project will be as follows;

- The potential of the City Council to manage both the Buttermarket in its current condition, and its future proposed redevelopment.
- Agreement of a suitable alternative trading location for traders wishing to return to the refurbished Buttermarket.
- The reputation of the Council's management of the market will come under scrutiny as part of this project. This will be mitigated by close project management and regular updates to the traders and press.
- Officer capacity to oversee the project. This will be mitigated by appointing specialist project management capacity and knowledge to oversee the project.
- The financial risk of exiting the contract development prior to appointing a main contractor. This is mitigated by industry experts considering a 50% pre-letting target prior to appointment of the main contractor being a very achievable target.

14. Consultees

- 14.1 Hereford Futures, Quarterbridge Project Management Ltd and the Buttermarket Traders via a series of meetings.

15. Appendices

None.

16. Background Papers

- 16.1 None. However, Quarterbridge Hereford Buttermarket Preliminary Business Plan is relevant to this report. This document is classified as Exempt by virtue of Paragraph 3 of the Access to Information Procedure Rules set out in the Constitution, pursuant to Schedule 12A Local Government Act 1972, as amended. Paragraph 3, the reason for the exemption, states that it is because the document contains “information relating to financial or business affairs of any particular person”. The exemption means that the document cannot be made publically available.