
Decision Maker: EXECUTIVE

**FOR PRE-DECISION SCRUTINY AT THE RENEWAL,
RECREATION AND HOUSING PDS**

Date: Tuesday 16 November 2021
Wednesday 24 November 2021

Decision Type: Non-Urgent Executive Key Non-Key

Title: ORPINGTON WALNUTS REGENERATION PROGRAMME

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Chief Officer: Director of Housing, Planning, Property and Regeneration

Ward: Orpington;

1. Reason for report

To provide officers with a steer in relation to Member's preferred option for the provision of leisure as part of the Areli/Tikehau Capital development proposals at the Walnuts Shopping Centre in Orpington.

2. **RECOMMENDATION(S)**

That Members of the Renewal, Recreation and Housing PDS:

2.1 Note the contents of the report and provide comments to the Executive.

That Members of the Executive:

2.2 Provide feedback on the preferred option of the provision of leisure as part of the Areli/Tikehau Capital development proposals on an 'in principal decision' pending in the future.

Impact on Vulnerable Adults and Children

1. Summary of Impact: The Walnuts is a public centre providing low cost access to leisure.
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Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment Vibrant, Thriving Town Centres Healthy Bromley Regeneration
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Financial

1. Cost of proposal: See Part 2 Report
 2. Ongoing costs: potential reduction in rental income
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: £N/A
 5. Source of funding: TBD
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Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: There are no direct procurement implications.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The leisure centre receives 19,500 visits per month.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: Ward Cllrs have been fully engaged through the development of the proposals, and, given the extent of the development, surrounding Ward Cllrs have also been included in briefings. The Ward Cllrs for Orpington are overwhelmingly in favour of Option 1, full reprovision of the existing facilities should the developer be successful in their planning application.

3. COMMENTARY

- 3.1 The Walnuts shopping centre sits behind Orpington High Street and whilst the freehold is owned by the Council, the leasehold of the centre was acquired by Tikehau Capital, and their development Partner, Areli Real Estate Ltd in 2019, when the former leaseholders relinquished their interest in the site.
- 3.2 As can be seen from Appendix 1, the Council has significant property interests in the town centre, as well as a wider interest in the economic and regeneration objectives for the area. Appendix 2, outlines Areli's intentions of redeveloping the shopping centre site, to deliver a major new retail offer combined with residential development. The co-location of the shopping centre with other facilities such as the leisure centre and the day care centre, broaden the regeneration opportunities of the site.
- 3.3 Due to the scale of the development being proposed, the significant Public assets involved, as well as wider impact on the economy, the Regeneration team has been working with Areli, to steer the direction of work. In February 2021 (report No HPR2021/009) a report outlining this work and the appointment of Montagu Evans as expert consultants was presented to the Executive. Since then Areli has held several public engagement events to reshape their proposals further.
- 3.4 We are now at a point in the discussions with Areli where officers require a steer from Members to inform the future leisure provision as part of the Walnuts scheme.
- 3.5 Knowing which option Members are minded to support will strengthen the Council's ongoing negotiations with Areli to ensure the terms are as advantageous as possible and will also ensure the planning application reflects the likely way forward for the site.
- 3.6 Additionally it will also support the Council's own time pressures in relation to the dilapidated leisure centre building and provide us with an opportunity to assess the options prior to any backlog maintenance spend.
- 3.7 Council investment in the Walnuts leisure centre would be a strategic and policy led decision:
- Orpington is specified as part of the Cray Valley within the Local Plan as one of the borough's five renewal areas.
 - The Local Plan specifically seeks to maximise opportunities for Orpington as a Major Town Centre, particularly its community services and leisure economy.
 - The regeneration of the Walnuts site in Orpington, specifically the provision of a new leisure centre, is also in the adopted Regeneration Strategy.
- 3.8 Council investment will also support the future of the town centre. Orpington's vacancy rates are increasing at a higher rate than anywhere else in the borough, with a 2% increase in the quarter up to July alone. The Walnuts is a very dilapidated site and this has a huge impact on the economic health of the town centre. Therefore Areli's £500m private inward investment provides a huge opportunity for the regeneration of the borough's second most important town centre.
- 3.9 The economic regeneration benefits of the Areli scheme are significant. It is expected to deliver:
- 2800 construction jobs during the development, and almost 300 new permanent jobs in Orpington.
 - 870 new homes, including 50% affordable on Council land.
 - £12m additional annual local spend by new residents, supporting existing town centre shops and businesses.

The regeneration of the Walnuts will be a catalyst for the wider town centre and attract further private investment, particularly in the night time economy. Flexible short term leases for the retail units will enable innovation and more independent shops and start-up businesses, which are more likely to support the ambitions of local people. The proposed development also includes 2.3 acres of new landscaped public realm, and leisure provision to support wellbeing and public health, which will attract footfall into the town centre.

Background

- 3.10 The acquisition of the Walnuts Shopping Centre, by Tikehau Capital, and their development Partner, Areli Real Estate Ltd in 2019 was predicated upon the redevelopment of the shopping centre.
- 3.11 The sale of the Walnuts Shopping Centre offers the opportunity to enable to regeneration of the town centre and at the time of the sale the Developer indicated that its proposed Development would include wider land interests than the Centre; notably the Council's interests in the Walnuts Leisure Centre (Leisure Centre) and Saxon Day Care Centre. These now form a substantive and integral part of the Development proposals.
- 3.12 The Developer does not propose to acquire the Council's interests for cash, although the Council could request this, but instead to re-provide new community facilities of the same value within the Development. The Council's interests are valued at approximately £6.5m.
- 3.13 In addition, if the development goes ahead, the Council will receive a CIL payment from the Developer. It is an obvious point, but if there is no development, there is no CIL payment. CIL is the payment a developer makes to the Council for the benefit of being able to undertake the development. The CIL payment is likely to be approximately £7m. The purpose of CIL funding is to deliver community infrastructure to support the impact of the development.
- 3.14 Due to the potential community benefit of this scheme, officers from Regeneration have worked closely with the Developer and the Council's appointed development consultants Montagu Evans, to draw out the developer's proposals and to ensure best value for the community interest and benefit. As part of these negotiations is the specification and financial proposal specifically related to the reprovision of the leisure centre. The leisure centre is the costliest and most complex of the community facilities.
- 3.15 This means, in total, if the development goes ahead the Council will receive £13.5m for the reprovision of community facilities and/or capital receipt. It is noted that the delivery of a new leisure centre, exceeds this value and therefore options are included in Part 2 of this report for Members to consider.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 The Walnuts leisure centre is a community leisure centre which offers a range of activities at a lower price point than the private sector.

5. FINANCIAL IMPLICATIONS

See Part 2 Report

6. LEGAL IMPLICATIONS

- 6.1 In relation to the current and proposed land and buildings set out in the report, the Council has various statutory powers to provide, maintain and improve housing (Housing Act 1985), leisure facilities (Local Government (Miscellaneous Provisions) Act 1976, day centres (Care Act 2014,

National Assistance Act 1948) and public realm (Highways Act 1980, Open spaces Act 2006). The report has mentioned the Council's Public Health duties. In addition, the council has the power of general competence to do anything an individual could do under section 1 of the Localism Act 2011 together with the councils local regeneration and housing policies.

- 6.2 It is apparent from this report that as part of the proposals (which also includes significant land transactions) certain building works will be undertaken under each option. The public building works would appear to involve the re-provision of a leisure centre, day centre, new 50% affordable housing on council land, and public realm.
- 6.3 The Public Contracts Regulations 2015 (Regulations) apply to the acquisition of works above a threshold (currently £4,733,252). This is likely to be the case whether the works are carried out indirectly by a developer or directly by the Council. The report is suggesting that the works will be carried out by the developer as part of the overall development agreement.
- 6.4 A contract purely to operate a leisure centre is likely to be characterised as a service contract under the Regulations or a Concession Contract under the Concession Regulations (note £4,733,252 threshold) or possibly a disposal of an interest in land outside the Regulations.
- 6.5 As to whether these works fall within the Regulations is a matter which will require further detailed analysis and professional expert advice. On the face of it (without further analysis) the works would appear to be public works requiring a procurement by way of a public works contract in that there will be a contract for a pecuniary interest concluded between an economic operator (developer) and a contracting authority (Council) and having as their object the execution of works. Works is further defined to include the realisation by whatever means of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type of design of the work.
- 6.6 An example of where a Contracting authority is usually thought not to have decisive influence is where a section 106 planning agreement dictates the requirements and specification or where the provision of works is the usual incident of landlord and tenant relationship.
- 6.7 It is possible, subject to further analysis, that the development Agreement could be characterised as a mixed contract where part would fall within the Regulations and part outside. The Regulations regard the acquisition and disposal of an interest in land as being either exempt or not a public contract. Where this is so, the Regulations apply the 'main object' test to the mixed contract where each part of the contract is objectively not separable.
- 6.8 In a recent case (R Faraday Development Ltd v W Berkshire Council [2016]) the Court held that the Council had contractually committed itself to procuring works from the developer even though the obligation on the developer to carry out the works would only arise later if and when it drew down on the land. The development agreement was set aside by the Court and declared ineffective under the Regulations. Naturally such a structure should be avoided. It is therefore essential that the Council and the developer thoroughly undertake an analysis of each option so as to be satisfied as to best to approach to adopt in the structure of any proposed development agreement to ensure the Regulations are addressed. It is advisable that this undertaken by an external expert.
- 6.9 The report set outs developer public engagement to date, if the Council considers an option that impacts on leisure or other community provision, the Council will need to consider its own public consultation.

7. PROCUREMENT IMPLICATIONS

- 7.1 This report sets out a range of options for consideration on how to proceed with the Orpington Walnuts Regeneration Programme. All the options have significant procurement implications

requiring full tendering processes, with options 1-4 requiring above-threshold tendering processes.

7.2 A detailed report will follow. In terms of Procurement, the detailed report should consider the timetable for the implementation and establish the procurement route to be followed for the chosen proposal. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

8. PROPERTY IMPLICATIONS

See Part 2 Report

Non-Applicable Sections:	Personnel implications; Policy implications;
Background Documents: (Access via Contact Officer)	HPR2021/009 (Part 2) Appendix 1 – Ownership Plan Appendix 2 – Summary of Proposals Appendix 3 – Leisure Centre Specification Appendix 4 – Leisure Centre Options