

Report to:	Cabinet	Date of Meeting:	Thursday 4 th February 2016
Subject:	Klondyke Regeneration Strategy; Penpol Commercial Site, Mel Inn and 1-9 Harris Drive shops	Wards Affected:	Litherland;
Report of:	Chief Executive		
Is this a Key Decision?	Yes	Is it included in the Forward Plan?	Yes
Exempt/Confidential	No		

Purpose/Summary

To outline proposals to amend the adopted Housing Market Renewal 'Strategy' relating to the Klondyke/Hawthorne Road corridor, specifically the future of the Mel Inn and the shop units at 1 - 9 Harris Drive and the use of the Penpol commercial site.

Recommendation(s)

- (1) That the revised plan for the properties and sites, as outlined in Section 2 of the report, be approved.
- (2) That the Mel Inn be declared surplus to requirements and the Head of Corporate Support together with the Head of Regulation and Compliance be authorised to negotiate and implement the disposal of the Mel Inn to the former owners.
- (3) Officers explore options for the future of the shop units at 1-9 Harris Drive, and submit a further report for consideration.
- (4) That the Head of Corporate Support together with the Head of Regulation and Compliance be authorised to negotiate the terms of disposal of the former Penpol commercial site to Bellway homes, and complete the disposal.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		X	
2	Jobs and Prosperity	X		
3	Environmental Sustainability	X		
4	Health and Well-Being		X	
5	Children and Young People		X	
6	Creating Safe Communities		X	

7	Creating Inclusive Communities		X	
8	Improving the Quality of Council Services and Strengthening Local Democracy		X	

Reasons for the Recommendation:

Officers do not have authority to take the recommended actions.

Alternative Options Considered and Rejected:

Implement the original strategy Option and develop the scheme as originally planned. Should the decision be made to develop the original Masterplan the estimated cost provided by Bellway indicates the requirement for capital gap funding of circa £1.5m. Council officers have also recently carried out an exercise to do an outline design for a new club and shops, and estimate the cost at over £2m. There is little realistic chance that capital resources to implement this option could be secured.

What will it cost and how will it be financed?

(A) Revenue Costs

No additional revenue costs are anticipated as a result of proposals contained in this report

(B) Capital Costs

Provision currently exists within the HMR budget to relocate the Mel Inn and Harris Drive Shops, and to remediate these sites for housing. These resources should be sufficient to be used to settle any outstanding compensation claim submitted by the Mel Inn club and Harris Drive shop keepers. Therefore, there should be no increase in overall expenditure. Officers could also explore the use of these resources to fund improvements to the Harris Drive shops.

Even though a capital receipt may be generated from the sale of the Penpol commercial site to Bellway Homes, under the terms of a Grant funding agreement with the Homes and Communities Agency, any receipts obtained from this site are repayable to them.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Financial

Existing capital resources within the HMR Budget should be sufficient to implement the proposed course of action

Legal

As the land in question was acquired as part of a CPO the Council will need to follow a strict legal protocol should it be decided that a variation to the Masterplan is the best option going forward. The CPO has already been made so the land has vested in the Council. If the land would now be deemed to be surplus to requirements such that it would in the usual way be sold on the open market then the Council ought to offer it back to the original owners. There is a process that the Council ought to follow before it goes to the open market. This process is known as "Crichel Down Rules."

Human Resources	
Not applicable	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact of the Proposals on Service Delivery:

Implementing the revised plan will offer certainty to the businesses operating in the current premises, and will help secure the completion of the Klondyke regeneration scheme

What consultations have taken place on the proposals and when?

The Chief Finance Officer has been consulted and notes the report indicates at this stage no direct financial implications for the Council. Under the proposed revised plan Officers will continue to explore means to undertake enveloping works within existing available Council resources. Any proposals will be the subject of a further report. (FD 3988/16)

Head of Regulation and Compliance has been consulted and her comments are included in the report. (LD 3271/16)

Cabinet Member Communities & Housing has previously been consulted on the options for the future of these sites, as have local Ward Members. Discussions have also been held with the HCA, Bellway Homes and Mel Inn club committee.

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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Background Papers:

None

Useful information

Klondyke Supplementary Planning Document 2004.

<http://www.sefton.gov.uk/planning-building-control/planning-policy/supplementary-guidance.aspx>

(click on Klondyke section on this page to find this document)

1. Introduction/Background

- 1.1 In 2005, Sefton Council issued Compulsory Purchase Orders (CPO) known as the Sefton Metropolitan Borough Council (Klondyke and Hawthorn Road) Bootle Compulsory Purchase Order 2005, on a number of different land and property interests in the Hawthorne Road/Klondyke area in order to progress regeneration proposals for the area under the former Housing Market Renewal programme. On 30 May 2007 the Secretary of State confirmed (with modifications) the CPO.
- 1.2 The CPO was made for the purposes of facilitating the carrying out of development, re-development or improvement of land to create a mixed use scheme comprising mixed tenure houses and apartments, retail and community facilities, open space provision, new pedestrian linkages to the canal and associated public realm works thereby achieving the promotion and/or improvement of the economic, social and environmental well-being of the area under s226(1)(a) of the Town and Country Planning Act 1990.
- 1.3 There were a number of sites included within this CPO, and much of the subsequent redevelopment of these sites has now been carried out. The CPO was sought under planning legislation, and the Klondyke SPD provided much of the basis/case for the CPO.
- 1.4 The Council has not paid any compensation to the Mel Inn, on the basis that 'equivalent premises' would be provided as part of the proposed redevelopment. The acquisition costs for the shops at Harris Drive have all been paid and the only sums potentially outstanding are minor sums set aside for outstanding disturbance compensation claims to the former owners of two of the shop units and one leasehold occupier.
- 1.5 The approved 'Strategy' included proposals to demolish the existing Mel Inn social club and the existing Harris Drive shops, and replace these with a new social club (including community facilities) and new shops. A small site (the Penpol commercial site) has been left undeveloped, on the basis that the new buildings will be provided, allowing the displaced businesses the opportunity to relocate, should terms to do so be agreed.
- 1.6 The rest of the CPO lands have been developed out by Bellway to provide new, mixed tenure housing.
- 1.7 The downturn in the property market significantly affected retail values and at the point of securing a development agreement with our developer partners, Bellway Homes, the commercial scheme on the former Penpol site showed a significant gap funding requirement of approximately £1.5m. The end of the HMR programme in March 2011, meant that the Council was unable to meet the gap funding requirement for the scheme. The scheme has remained stalled ever since and despite a number of attempts to deliver the scheme as originally intended, including two failed Regional Growth Fund applications, it has not been possible to do so.

- 1.8 It is fair to say that the envisaged completion of the former HMR programme and budget (as stated in the Cabinet report, June 2011) were based on an assessment of
- ".... the bare minimum requirement to meet contractual and existing commitments and to remove liabilities in order to bring the programme to a controlled end."*
- When the programme and budget were set in 2011, the priority activities were to rehouse remaining residents, complete the acquisition of properties in the Klondyke, assemble ownership of sites, demolish the properties and provide sites for new housing development. There were also outstanding commitments from the first CPO, involving the future of the Mel Inn, Harris Drive shops and the Penpol commercial site. However, No budget provision has existed in the post 2011 HMR programme to deliver the preferred scheme on these sites.
- 1.9 The continued uncertainty regarding the new commercial scheme on the former Penpol site has meant that businesses operating in the Mel Inn Social Club and 1 - 9 Harris Drive shop units have endured an uncertain future, with no clarity from the Council when they can move to new premises, or even whether such a move would be achievable at all.
- 1.10 The Masterplan for the Klondyke area was adopted nearly a decade ago, in July 2004. Since that time the economy, both locally and nationally, has changed significantly, as has the needs and requirements of the local community. Of particular note is the development of a major retail superstore, only 750m from the proposed site of the retail units on the Penpol Commercial site, and the decline of demand for smaller retail units, particularly locally. Since the Council vested ownership of the Harris Drive shops, the council offered lease terms to allow the shop businesses to continue to trade. The Council has provided very favourable terms and low rents. The ability for small businesses who operate out of Harris Drive, or similar small businesses, to sustain themselves paying market rents in any new retail units on the Penpol Commercial site is questionable. There would be the risk of having 'new' retail units empty in a high profile location, which will not reflect well on the wider area or the Council's regeneration plan.

2. Revised Plan

- 2.1 At the present time there is no funding available, or likely to become available, to support the costs or gap funding required to deliver the original plan for the properties concerned. Given the inability of the Council to implement the original scheme, there has been the need to revisit the original (aspirational) proposals for the Mel Inn, Harris Drive shops and Penpol Commercial site, which achieves a satisfactory solution for all parties concerned and provides certainty for the future.
- 2.2 The revised option is based on retaining the existing Mel Inn and Harris Drive Shops and build new houses on the commercial site. This option would lead to the development of housing for sale (via Bellway) on the Penpol Commercial site, and retain the Mel Inn and Harris Drive shops in their current locations.
- 2.3 The Mel Inn, Harris Drive and Penpol commercial sites are part of Development Package 2 (DP2) under the terms of the Overarching Development Agreement with Bellway. Development Package 2 comprises Klondyke Phase 1, Mel Inn, Penpol and Tannery sites. Hence any solution for the sites needs to be agreed with Bellway. They have been consulted and support the revised approach. They

have also indicated their willingness to construct new houses for sale on the Penpol commercial site. Terms for disposal of this site will need to be negotiated and confirmed, within the terms of the ODA.

3. Implications of the Revised Plan

3.1 The main issue arising from the proposed revised plan, is the future ownership of the Mel Inn and Harris Drive shops. Appendix 1 outlines the Crichel Downs rules. It must be assumed that the starting position is that the properties in question are covered by the Crichel Down Rules. The Council would usually be required to offer the properties back to the former owners. If the Council wishes to avoid this, the following would have to apply:

- The Council should decide that the two sites are still required as part of the wider redevelopment proposals for the Order Land. This decision should be documented with clear reasons as to why this is the case;
- Then, within a reasonable period of taking the decision referred to above, the Council ought to give consideration to proposals for development for both sites that demonstrates that the land is not surplus to requirements.

While the regeneration purposes of the Klondyke CPO are wide and offer considerable scope to bring a variety of uses forward, whether alternative plans are desirable, justifiable and deliverable would be in question.

3.2 It is recognised that the poor visual appearance of the current Mel Inn building and the Harris Drive shops could detract from the quality of the final overall regeneration scheme. The Council could consider funding improvement works to these properties, prior to their disposal. However, this would influence how the properties are disposed of, and our ability to sell to previous owners. The Mel Inn committee have been consulted and advised of the Council's potential revised plan. Officers indicated that ownership would be likely offered back to them, on terms yet to be negotiated. They are keen that the ownership of their building is returned to them, and this also avoids the chances of the Council facing complicated and potentially expensive compensation claims from the club if it did not sell the building back to them.

3.3 In the case of the Harris Drive shops all compensation claims have been settled and the limitations period for claims passed in December (2015). If the Council left the shops as they are, it is likely that ownership would have to be offered to former individual owners in the first instance. However, 'if' the Council were able to fund improvements, this would materially change the character of the properties and could enhance the opportunity to dispose of the entire block as a single entity. If we were able to implement such improvement works, to avoid the need to offer the properties back to former owners, valuation and costing information ought to be obtained to demonstrate that the sale of the whole would be for substantially more than the sale of the individual shops back to the former owners.

3.4 Officers will continue to explore means to undertake enveloping works to the shops to improve their appearance, within existing available Council resources. Any proposals will be the subject of a further report. Officers will also explore any opportunities to help the Mel Inn social club to carry out improvements to the premises after disposal back to them. Such actions will help in order to try to fulfil the purpose of the original CPO to regenerate the area.

1. CRICHEL DOWN RULES - GENERAL APPLICATION

1.1 The CricHEL Down Rules deal with the non-statutory arrangements for the sale of compulsorily acquired land (which for these purposes includes land bought by agreement in the face of a CPO) and when it has to be offered back to the previous owners. It should be noted that the Rules are not legally binding on the Council, but the Council would have to advance a strong argument as to why they will not follow them.

1.2 The general rule is that where a government department or public body with CPO powers (which includes the Council) wishes to dispose of land which has been acquired through the exercise of compulsory purchase powers and is deemed surplus to requirements for the reason it was acquired, former owners should be given a first opportunity to re-purchase the land at the current market value, provided that its character has not materially changed since acquisition.

1.3 The Rules apply to land if it was acquired by or under the threat of compulsion - threat of compulsion will be assumed in the case of a voluntary sale if the acquiring body possessed power to acquire the land compulsorily - i.e. possessing CPO powers is sufficient - the body need not have actually instituted compulsory purchase procedures or even to have actively "threatened" to use the powers for the Rules to apply - it is simply enough that they have statutory powers available for this purpose if they wished to employ them.

1.4 Importantly, in disposing of any property, the Council must not dispose of land for consideration that is less than the best reasonably obtainable unless it contains the consent of the Secretary of State. This is relevant, as the duty to obtain best consideration and the CricHEL Down Rules must be applied together. Where there is a conflict between primary legislation (ie. the duty to obtain best consideration) and the CricHEL Down Rules, then the primary legislation takes precedence.

1.5 Therefore, it appears that, in order to dispose the above sites to anyone other than the former owners, the Council will have to consider whether one or more of the specific exemptions contained in rule 15 apply to the proposed sales of the sites. This is considered further below.

2. RULE 15 - SPECIFIC EXCEPTIONS

2.1 Rule 15 contains certain circumstances (in sub-sections (1) - (7)) where the requirement to offer the land back to the original owner does not apply.

2.2 Rule 15(5) says that the obligation to offer back the land will not apply "where it would be inconsistent with the purpose of the original acquisition to offer the land back".

2.3 When seeking to rely on this exclusion, one should consider (1) the purpose of the original acquisition; (2) whether the land is being sold on for development, and (3) whether the proposed development will generally accord with the original purpose for which the land was acquired. Such an approach (i.e. assessing each site against the relevant matters) is consistent with the report issued on the subject by ODPM in 1999, where it is stated that Rule 15(5) should not be used as a "blanket" exemption - each case has to be looked at on its own merits.

2.4 Matter (1) in the previous paragraph is matter of fact and can readily be ascertained from the wording of the Order.

2.5 Matter (2) is less straightforward - ie. can it be said that either the Mel Inn or the Harris Drive shops are being sold on for development? The situation would be clear if the sale was to an identified developer and there was to be a development agreement in place which required development to occur, though this is not the case in respect of either of the two sites in this instance.

2.6 As regards matter (3), if developed, would the sites be developed for uses consistent with the purpose of acquisition by the Council? If the Council are not selling the properties for development purposes, this isn't applicable.

2.7 On this basis, Rule 15(5) would be difficult to apply to both the Mel Inn and the Harris Drive shops.

2.8 The second of the two exemptions that might be relied on is that contained in Rule 15(6). The exemption would relate only to the sale of the Harris Drive Shops.

2.9 Rule 15(6) applies where there is a disposal of a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings and there is a risk that a fragmented sale of the site (i.e. back to the former owners) would realise substantially less than the best price that can reasonably be obtained for the site as a whole.

2.10 Rule 15(6) continues, stating that in such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of a tenancy or licence).

2.11 As with the application of Rule 15(5) above, there is a need to show that a site is being sold on for development in order for the exemption in Rule 15(6) to apply. Subject to this being satisfied, and also receipt of appropriate valuation advice, the exemption in Rule 15(6) could apply to the Harris Drive shops and be relied upon by the Council.

3. CONSULTATION

3.1 Rule 16 makes it very clear that even where a public body is relying on an exemption in Rule 15, it must still notify the former owner that this is the case and that it proposing to dispose of the site.