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11 May 2018

ST EDMUNDSBURY CABINET - TUESDAY 27 MARCH 2018

The following documentation (attached) has now been published as it is no longer considered to be exempt under paragraph 3 of Section 100(A)(4) Of The Local Government Act 1972 (as amended) in respect of *Information relating to the financial or business affairs of any particular person (including the authority holding that information)*:

- Report No: CAB/SE/18/026: Investing in our Commercial Asset Portfolio
- Decisions Notice: Decision of Cabinet made at its meeting on 27 March 2018, in respect of the above report.

Note: In accordance with the Constitution, the reporting of the Use of the Chief Executive Urgency Provisions and the utilising of the Cabinet's Special Urgency provisions were provided to Council on 24 April 2018.

Yours sincerely

Claire Skoyles
Democratic Services Officer
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Cabinet



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	EXEMPTION REMOVED: Investing in our Commercial Asset Portfolio	
Report No:	CAB/SE/18/026	
Report to and date:	Cabinet	27 March 2018
Portfolio holder:	Alaric Pugh Portfolio Holder for Planning and Growth Tel: 01787 279024 Email: alaric.pugh@stedsbc.gov.uk	
Lead officer:	Ian Gallin Chief Executive Tel: 01284 757009 Email: ian.gallin@westsuffolk.gov.uk	
Purpose of report:	To advise Cabinet of the opportunity that has arisen to purchase a property in Haverhill and to seek Cabinet endorsement for the Chief Executive to use his urgency powers to facilitate the purchase of the property at auction.	
Recommendation:	<p>It is <u>RECOMMENDED</u> that Cabinet:</p> <p>(1) considers the options set out at paragraph 2.3.3 of Exempt Report No: CAB/SE/18/026 regarding the purchase of the identified property at 20 High Street, Haverhill;</p> <p>(2) subject to recommendation (1) above, endorses the Chief Executive to use his powers of urgency to negotiate at auction, the purchase of the identified property at 20 High Street, Haverhill;</p> <p>(3) notes that subject to this endorsement, the Chief Executive would authorise a budget up to a maximum of £2,004,000, to be made available to facilitate the purchase, including fees and Stamp Duty Land Tax, to be funded from the Investing in the Growth Agenda fund; and</p> <p style="text-align: right;"><i>Continued overleaf...</i></p>	

	(4) notes that should the purchase be made, the Council’s Section 151 Officer will make the necessary changes to the Council’s prudential indicators as a result of Recommendation (3).
Key Decision: <i>(Check the appropriate box and delete all those that do not apply.)</i>	<p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>Yes, it is a Key Decision - <input checked="" type="checkbox"/></p> <p>No, it is not a Key Decision - <input type="checkbox"/></p> <p>(a) A key decision means an executive decision which, pending any further guidance from the Secretary of State, is likely to:</p> <p>(ii) result in any new expenditure, income or savings of more than £50,000 in relation to the Council’s revenue budget or capital programme;</p>
<i>In this instance, the required 28 days’ advance notice of the above decision being taken has not been met. Following agreement obtained by the Chairman of the Overview and Scrutiny Committee, a Special Urgency Notice was published on 22 March 2018 providing reasons why the taking of this key decision in private session cannot reasonably be deferred. This Notice can be found here</i>	
Consultation:	<p>As this is a decision of special urgency, the Chairman of Overview and Scrutiny has been consulted and agreed that this matter cannot be reasonably deferred, and a decision may be made. The Chairman of Overview and Scrutiny has also consented that any call-in rights made be waived due to the nature of the decision.</p> <p>Local ward members have been consulted prior to the release of the Cabinet paper.</p>
Alternative option(s):	The Council could choose not to take part in the auction. However, there are limited opportunities to purchase this type of strategic/investment property in this location given the Council surrounding land holdings.
Implications:	
<i>Are there any financial implications? If yes, please give details</i>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <ul style="list-style-type: none"> A capital budget of £2,004,000 would be required funded from the Council’s Investing in our Growth Agenda Fund
<i>Are there any staffing implications? If yes, please give details</i>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <ul style="list-style-type: none">
<i>Are there any ICT implications? If yes, please give details</i>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <ul style="list-style-type: none">

<i>Are there any legal and/or policy implications? If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> The Legal Team has reviewed the documentation associated with this property and their advice is set out below in 2.3. 	
<i>Are there any equality implications? If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> 	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Purchase price beyond budgetary provision	Low	As the property will be at auction, we have established the maximum acceptable bid for the council.	Low
Purchase of property without Building and Structural Surveys or formal valuation undertaken due to timescales.	Medium	In-house Building Surveyor and Strategic Property Surveyor (RICS Registered Valuer) have viewed the property internally. Supporting commentary provided in paper.	Low
Council successfully purchases the property. The tenant (Iceland) goes into administration or negotiates early surrender.	Low	Strategic value remains. Negotiated surrender would help offset loss of revenue. Estate Management team will take pro-active measures to secure another tenant alongside reviewing opportunities to re-develop/reconfigure.	Low
Risk of unknown leaseholder of land fronting the High St having a ransom position in the event the property is redeveloped.	Medium	Please refer to options set out in 2.3 of this report (Legal Considerations).	Medium
		All Haverhill Wards	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		West Suffolk Growth Investment Strategy – Executive Summary Haverhill Masterplan	
Documents attached:		Appendix A - Location and site plan Appendix B - Photographs	

1. Key issues and reasons for recommendations

1.1 The Opportunity

- 1.1.1 The Council has the opportunity to purchase the freehold of 20 High Street, Haverhill, which will be auctioned by Acuitus in London on Wednesday 28 March 2018. The guide price is £1.75 - £1.8m.

This paper sets out: the opportunities to the Council from the proposed purchase; provides details of the property, occupier and investment; the decision making process and timescales; the auction process; provides the supporting financial case; and highlights the main legal considerations.

- 1.1.2 A successful purchase would provide the Council with a property offering both strategic and investment potential. In the short to medium term the property would provide an income from the current tenant, whilst in the longer term there would be the opportunity to help shape the High Street and improve pedestrian circulation and connectivity in the retail core.

1.1.3 Links with Haverhill Masterplan

One of the objectives set out in the masterplan is to be "Ready for Growth". A successful purchase would provide the Council with the opportunity to directly develop in the longer term to meet the needs of the town.

To support the development of an attractive environment in the retail centre of Haverhill, this provides the opportunity to influence/refurbish frontage, with links to the current work stream regenerating the High St and Queens Street.

In terms of longer term (current lease runs until 2028) strategic value, there is a longer term potential to redevelop the property to create links with the Town Hall car park and support wider pedestrian circulation for the new Jubilee Place Development. Any such development would be subject to a separate business case.

1.1.4 Links to the West Suffolk Growth Investment Strategy

A successful purchase would demonstrate "increasing influence" through providing the Council with the opportunity to have a direct landowner influence in the shaping of the town centre.

Given that the property provides a revenue stream in the form of rent received from the tenant, it can be demonstrated to provide a small net financial return (after taking into account the cost of borrowing) in addition to the wider strategic potential presented by this opportunity.

1.2 The Property

- 1.2.1 The property comprises a ground floor retail space with ancillary accommodation above in the first floor. The total building size is approximately 1,175 sq m (12,646 sq ft). There is small, shared service area to the rear that adjoins the Council-owned Town Hall Car Park.

- 1.2.2 The property is let on a 15 year Full Repairing and Insuring (FRI) lease from 13 September 2013 to Iceland Foods Ltd. There are rent reviews in September 2018 and September 2023 and the lease expires on 12 September 2028. There are no break clauses on either the Landlord or Tenant's side. The current rent passing is £115,000 per annum.
- 1.2.3 The lease to Iceland Foods Ltd is a protected one under the Landlord and Tenant Act 1954. This means the tenant has the right to renew the lease at the end of the current term. Should the Council successfully purchase the property, vacant possession could take place at lease expiry in 2028. This is providing clear intention to re-develop can be demonstrated. If earlier possession was required, this would need to be through negotiation with the tenant (Iceland) and there would likely be a cost attached to this to buy them out of the remainder of their lease.
- 1.2.4 We have reviewed the quality of Iceland Foods Ltd covenant. A Dunn & Bradstreet Report has been obtained and reviewed by the Council's Audit Team. The headlines from this are:
- Iceland Foods Ltd have a tangible net worth of £784m resulting in the highest rating for financial strength of 5A.
 - Minimum risk of business failure – calculated as a probability of 0.28% (which is of course very low).
 - Values, financial ratios and trends, based on the 2017 accounts are generally strong.
 - Maximum credit of £24.75m is recommended (total value of goods and / or services the 'average' creditor should have outstanding at any one time with an organisation).

Based on the above, the attached, and the fact that we are unaware of any current significant negative financial news regarding the company there is no reason to consider that this company is a significant risk in terms of meeting the £115,000 per annum rental payment.

- 1.2.5 The Council's Strategic Property and Building Surveying officers have viewed the property internally and externally, although formal Building and Structural Surveys have not been undertaken given the timescales between becoming aware of the opportunity, consulting Members and the auction date.
- 1.2.6 The building itself appears to be a concrete framed construction with ribbed deck floors. The infill sections comprise a combination of brickwork and blockworks construction. The ground floor area utilised by Iceland has been internally clad so access to inspect the structure was not possible.

The first floor level appears of sound construction with localised signs of damp ingress to the rear and left flank walls. This is likely to be due to maintenance issues with external rainwater goods etc. The service area to the rear has a commercial walk in freezer / fridge along with individual offices, store rooms and services cupboards. A service lift is located to the rear corner of the building.

The roof is a bitumen felt covered flat roof which appears to be in good condition.

The Asbestos Survey Report provided in the legal pack (February 2009) recorded the presence of significant areas of Amosite AIB to the ground floor ceiling tiles. On inspection it appears that this AIB has been removed previously although other areas of Chrysotile to the floors and floor finishes, wall finishes, gaskets and equipment may still remain although to lesser quantities. This would require planned removal prior to any major structural works to the building although this type of Asbestos is considered to be low risk.

1.2.7 A plan of the property showing its position in the High Street and context with other land owned by the Council is attached as **Appendix A**.

1.2.8 Photographs of the property are attached as **Appendix B**.

1.3 **Timescales and Decision Making**

1.3.1 The property is being auctioned by Acuitus in London on Wednesday 28 March 2018 and is listed in the catalogue at Lot 16. The auction starts at 1.30pm and it is envisaged that the bidding by the Council will be carried out online.

1.3.1 Given the need to meet with the auction timescales, Cabinet endorsement will be required for the Chief Executive to use his urgency powers to facilitate the purchase of the property at auction.

1.3.2 Councillor Diane Hind, Chairman of the Overview and Scrutiny (O&S) Committee has been briefed and has confirmed that she is content with the acquisition. The Chairman of the O&S Committee has agreed that this matter cannot be reasonably deferred, and a decision may be made. The Chairman of the O&S Committee has also consented that any call-in rights may be waived due to the nature of the decision.

1.3.3 Haverhill Members were briefed on Friday 22 March 2018 and were supportive in principle to the potential purchase. Questions were raised on the commercial viability of the proposed purchase and the funding route. These are addressed in the Financial Case (see Section 2.2 below).

2. **Additional supporting information**

2.1 **The Auction Process**

2.1.1 The auction is being held at the Raddison Blu Portman in Portman Square, London, W1. It is intended that the Council will undertake bidding online.

2.1.2 Once the Auctioneer's hammer goes down, the successful bidder is bound under contract and is required to pay the deposit (typically 10% of the purchase price) and sign the Sale Memorandum. It is for the bidder to carry out due diligence prior to the auction and satisfy themselves that they are prepared to purchase the property.

2.1.3 Completion for the purchase of this property is set out as six weeks from the auction date.

2.2 Financial Case

2.2.1 A financial appraisal of the property has been carried out, based upon a projected returns. An assumption has been made that the current retail occupiers remain in place and the rental income for the Council would be £115,000 per annum.

2.2.2 The table below shows the financial implications of purchasing the property, based on three different sale price scenarios. Details of these scenarios are below:

Scenario 1: The auction guide price of £1,750,000 plus Stamp Duty Land Tax (SDLT) and fees.

Scenario 2: The auction guide price of £1,800,000 plus SDLT and fees.

Scenario 3: The estimated market price for the property based on the income as currently let, plus SDLT and fees.

	Purchase 20 High Street, Haverhill	Purchase 20 High Street, Haverhill	Purchase 20 High Street, Haverhill
Capital Implications			
Purchase Cost of building	1,750,000.00	1,800,000.00	1,900,000.00
Buyers Administration Fee	500.00	500.00	500.00
Stamp Duty (SDLT)	77,000.00	79,500.00	84,500.00
Purchase costs at 1% of Capital Value	17,500.00	18,000.00	19,000.00
Total Capital Cost	1,845,000.00	1,898,000.00	2,004,000.00
Revenue Implications			
Ongoing building maintenance (0.5% of capital cost)	8,750.00	9,000.00	9,500.00
Total cost per annum	8,750.00	9,000.00	9,500.00
Lease income	(115,000.00)	(115,000.00)	(115,000.00)
Total income per annum	(115,000.00)	(115,000.00)	(115,000.00)
Overall (surplus)/deficit per annum before borrowing	(106,250.00)	(106,000.00)	(105,500.00)
Borrowing - Interest	50,700.00	52,200.00	55,100.00
Borrowing - MRP	46,100.00	47,500.00	50,100.00
Overall (surplus)/deficit per annum after borrowing	(9,450.00)	(6,300.00)	(300.00)

2.2.3 The figures in the table above include the full cost of prudential borrowing, however, actual borrowing would only take place when the Council's treasury management activities identify such a need. For example, this could be when the Council's cash flow management activities anticipate that an external cash injection is required to maintain the appropriate level of cash balances for the council to operate and fulfil its budget and service delivery requirements.

2.2.4 Each of the three scenarios show at least a small surplus position on an annual basis, after taking into account borrowing costs. It is possible that interest from potential purchasers could increase the auction price to £1,900,000 as detailed in Scenario 3 as this value reflects our assessment of the commercial market value for the property. Therefore the Council needs to be prepared to extend to this price in order to compete effectively in the auction process. The maximum offer authorised for this property would be £1,900,000 plus SDLT and fees. This would mean a total cost to the Council of £2,004,000. Note that any applicable VAT would be reclaimed.

- 2.2.4 In arriving at the above figures, we have carried out an investment appraisal and reviewed market levels for similar properties in this location. As the market will treat this type of property as an investment, we have paid particular attention to the comparable evidence for gross yields (the return on capital in the form of the annual rental income received).
- 2.2.5 The maximum purchase figure set out above of £1,900,000 would reflect a gross yield of just over 6%, which we believe reflects the potential market level, given the quality of the tenant and the length of remaining term. Clearly with an auction there is the possibility of the bidding becoming highly competitive and pushing the price higher (and the yield lower), but we have assessed the maximum price we would be prepared to bid up to and still provide a surplus after any borrowing.

2.3 **Legal Considerations**

2.3.1 The Council's legal team have reviewed the documents provided in the Auctioneer's legal pack and have raised the following matters:

2.3.2 *Second lease issue*

In addition to the lease to Iceland there is additionally a 99 year lease from 25 March 1962 (43 years left to run, expires 24 March 2061) on an undetermined area referred to as "Land fronting High Street". This is listed on the title of the property but no details are provided. Officers have reviewed the title plans and made further enquiries with the Vendor's solicitors, but no information exists as to the nature the lease or the demise it covers. Although the lack of knowledge and information about this lease suggests it is not an active interest, there remains a risk that, in the event of redevelopment, the leaseholder could come forward, claim an interest and effect a ransom position.

2.3.3 There are three options to address this risk.

a/ accept the risk in purchasing the property at auction.

b/ purchase the property and take out an insurance to indemnify the Council in the event that the leaseholder did come forward at the point any potential redevelopment being proposed.

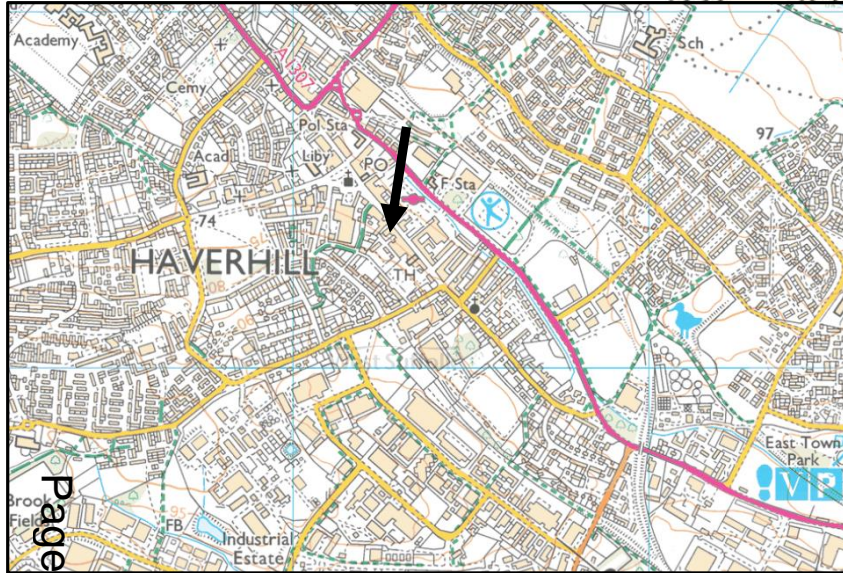
c/ decide not to proceed with bidding for the property. Should the property not sell at auction, we could enter into negotiations to purchase the property by private treaty and would seek an indemnity from the vendor.

As the property is being offered at Auction there is no realistic opportunity to negotiate with the vendor to provide an indemnity. The risk around the second lease is most likely to arise in the event of re-development so will be less of a concern to any bidders simply looking at the property as an investment, or for the Council in the medium term as we plan to honour the existing lease.

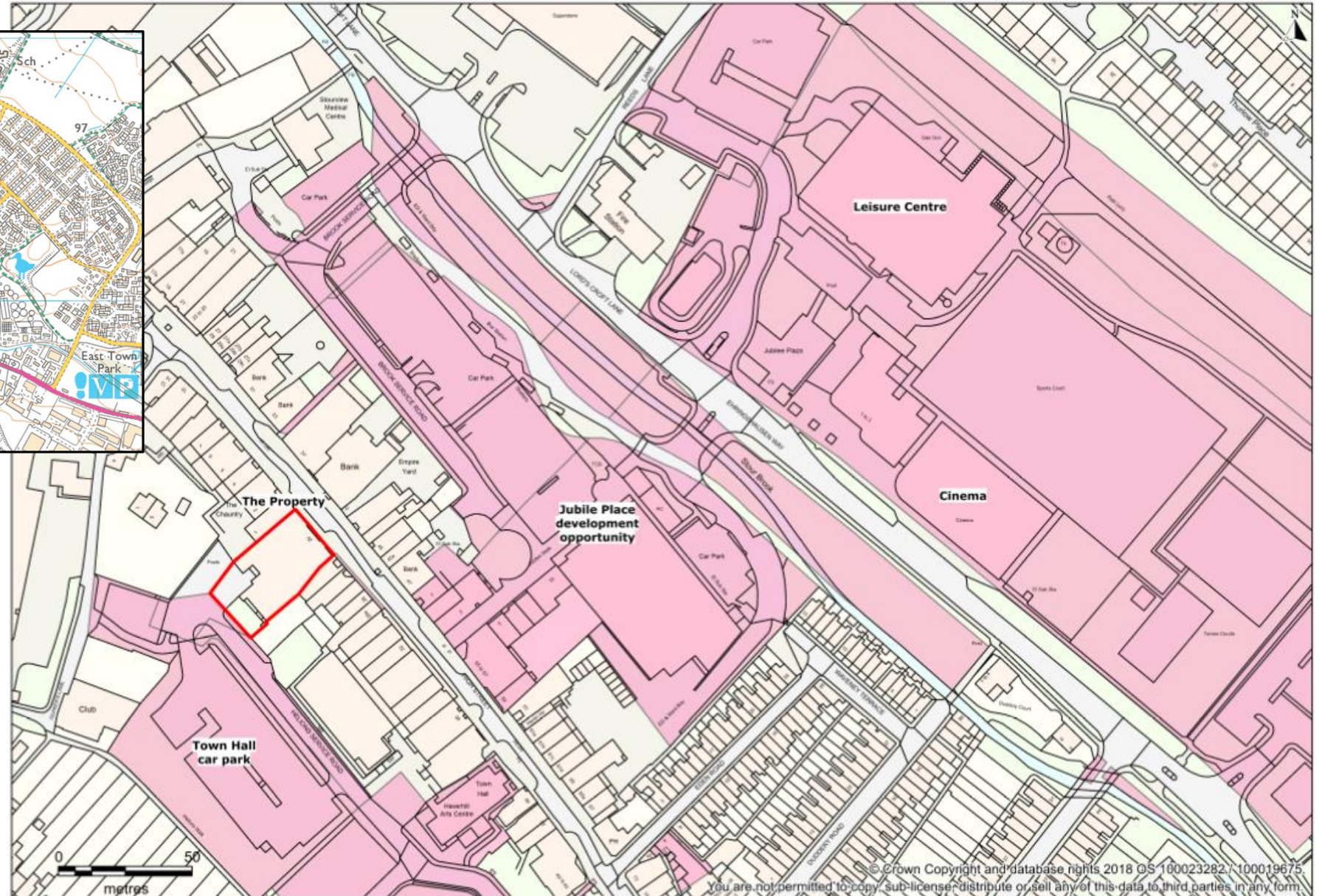
2.3.4 **Members are asked to consider the risk and advise on their preferred option.**

2.3.5 No other significant concerns have been raised by the Council's legal team, other than reference to the Asbestos Report, which is addressed above in 1.2.5.

Appendix A – Location and Site Plan



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SEBC-owned land

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Appendix B – Photographs

Taken 22/3/18

Front of the property from the High Street



View from the roof looking down the High Street towards Jubilee Walk



Rear of the property/service yard onto Town Hall Car Park



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St Edmundsbury Borough Council

Cabinet Decisions Notice

(Published: 11 May 2018) (Previous Exempt Item – Publication now Permissible)

The following decision was taken in private session by the Cabinet on **Tuesday 27 March 2018**, however, in accordance with paragraph 14.4 of the Overview and Scrutiny Committee Procedure Rules contained in Part 4 of the Constitution, following agreement given by the Chairman of the Overview and Scrutiny Committee, and as set out in the Special Urgency Notice published on 22 March 2018 which provides the reasons for the urgency and why the taking of the decision was reasonable in all the circumstances, this decision is **not** subject to the call-in procedure detailed in the Overview and Scrutiny Committee Procedure Rules.

Should you have a query regarding the decision taken, contact should be made with the named officer in the first instance, either on the telephone number listed against their name, or via email using the format firstname.surname@westsuffolk.gov.uk. Alternatively, you may also contact the relevant Portfolio Holder on the telephone number listed against their name, or via email using the format firstname.surname@stedsb.gov.uk. Contact may also be made via Democratic Services, St Edmundsbury Borough Council, West Suffolk House, Western Way, Bury St Edmunds IP33 3YU.

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Agenda Item and Report No.	Declarations of Interest/Dispensations Granted	Decision(s) (including recommendations to Council)	Reason(s) for Decision(s)	Other Options Considered and Reasons for Rejection	Contacts
Item No. 17 EXEMPT CAB/SE/18/026 (para 3) (Notice of this decision being taken was detailed in a Special Urgency Notice published on 22 March 2018)	None	<u>Late Urgent Exempt Item: Investing in our Commercial Asset Portfolio (para 3)</u> RESOLVED: That: (1) subject to the inclusion of additional clarification that in the event the vendor fails to provide an indemnity to mitigate any risk presented by a pre-existing lease on the site, Option (b) of the options set out at paragraph 2.3.3 of Exempt Report No: CAB/SE/18/026 regarding the purchase of the identified property at 20 High Street, Haverhill, be agreed;	The Cabinet endorses the exercising of the Chief Executive's urgency powers for negotiating at auction, the purchase of a property in Haverhill. A successful purchase would provide the Council with a property offering both strategic and investment potential. In the short to medium term the property would provide an income from the current tenant, whilst in the longer term there would be the opportunity to help shape the High Street and improve pedestrian circulation and connectivity in the retail core. It also supports the aspirations of the Haverhill Town Centre Masterplan and accords with the	The Council could choose not to take part in the auction. However, there are limited opportunities to purchase this type of strategic/investment property in this location given the Council surrounding land holdings.	<u>Portfolio Holder:</u> Cllr Alaric Pugh 01787 279024 <u>Officer:</u> Ian Gallin Chief Executive 01284 757001

Agenda Item and Report No.	Declarations of Interest/Dispensations Granted	Decision(s) (including recommendations to Council)	Reason(s) for Decision(s)	Other Options Considered and Reasons for Rejection	Contacts
		<p>(2) subject to recommendation (1) above, the intention for the Chief Executive to use his powers of urgency to negotiate at auction, the purchase of the identified property at 20 High Street, Haverhill, be endorsed;</p> <p>(3) it be noted that subject to this endorsement, the Chief Executive authorises a budget up to a maximum of £2,004,000, to be made available to facilitate the purchase, including fees and Stamp Duty Land Tax, to be funded from the Investing in the Growth Agenda fund; and</p> <p>(4) it be noted that should the purchase be made, the Council's Section 151 Officer will make the necessary changes to the Council's prudential indicators as a result of Recommendation (3).</p>	West Suffolk Growth Investment Strategy.		

Leah Mickleborough
Service Manager (Democratic Services) and Monitoring Officer
11 May 2018