



REPORT TO: COUNCIL

DATE: 8 DECEMBER 2022

REPORT OF THE: PROGRAMME DIRECTOR FOR PLACE AND RESOURCES,
PHILLIP SPURR

TITLE OF REPORT: POTENTIAL SALE OF WENTWORTH STREET CAR PARK,
MALTON

WARDS AFFECTED: MALTON

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to consider a Motion submitted to Council by Cllr P Andrews on 6 October 2022 requesting: 'That Council enter into negotiations with Fitzwilliam Malton Estate (FME) to sell Wentworth Street Car Park to FME, subject to the use being restricted to car parking only and the sale price to be approved by the District Valuer.'
- 1.2 At its meeting on 6 October 2022 Full Council determined that 'the Motion be referred to the next available meeting of the Policy and Resources Committee [for consideration] as instructed by the Constitution.'
- 1.3 However, on 10 November 2022 Cllr Andrews submitted a Requisition requesting that an Extraordinary General meeting of Council be called to consider this issue. This meeting of Council has been called in response to this Requisition.

2.0 RECOMMENDATION

2.1 It is recommended that:

- Council does not agree the proposal to enter into negotiations with the Fitzwilliam Malton Estate to sell Wentworth Street Car Park to FME, subject to the use being restricted to car parking only and the sale price to be approved by the District Valuer.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 As required under the Constitution, Part 4 – Rules of Procedure s11.4 a Motion submitted by an Elected Member is automatically referred to the next available Policy and Resources Committee meeting for consideration.
- 3.2 It was intended that Cllr Andrews' Motion would be considered at the Policy and Resources Committee meeting on 9 February 2023 (this being the first available P&R meeting). However, following receipt of the Requisition on 10 November 2022, this Extraordinary meeting of Council has been called to consider the issue.
- 3.3 The recommendation set out at s.2.1 is that Council does not agree the proposal to enter

into negotiations to sell the car park to the FME, because to do so would compromise the requirement to achieve best value for the authority, and because any decision on the future of the car park is now one best made by North Yorkshire Council (NYC) as the new unitary authority for North Yorkshire. The basis for these recommendations is set out below in the main body of the report.

4.0 SIGNIFICANT RISKS

- 4.1 As set out below, there is a duty on public bodies to achieve best value in the disposal of any asset. The normal way to achieve best value would be to dispose of an asset via an open market sale seeking bids from interested parties. This Motion proposes that this is not done, but that an 'off market' disposal is made direct to an identified purchaser. Agreeing such a proposal would leave the authority potentially open to challenge.
- 4.2 Under the Local Government Act 1972 General Disposal Consent 2003, Annex 2 (a) a Local Authority is permitted to avoid the best value requirement to dispose of an asset for an 'under value' if that disposal is for;
- (i) The promotion or improvement of economic well-being;
 - (ii) The promotion or improvement of social well-being;
 - (iii) The promotion or improvement of environmental well-being.
- 4.3 However, any Local Authority who relies upon the provisions contained in the General Disposal Consent 2003 must do so on the basis of a robust business case and democratic decision.
- 4.4 Given the proximity to Local Government Reorganisation, it is recommended that decisions on the future use/disposal of any significant asset, such as the Wentworth Street car park, are best left to the new unitary authority, informed by its asset management, economic development, and other forward strategies. In the event that RDC should wish to proceed with a sale any disposal would require a S.24 consent via NYCC, and it is not entirely clear that this consent would be forthcoming.
- 4.5 Finally, it should be noted that following the October 2022 Council Motion, the authority has received other approaches from parties interested in the Wentworth Street car park site (this information is exempt and is not contained in this report, but, has been made available via an exempt Briefing Note). These unsolicited enquiries clearly demonstrates interest in the site reinforcing the point that an 'off market' sale made to a single, identified purchaser should not be progressed.

5.0 POLICY CONTEXT AND CONSULTATION

- 5.1 Ryedale's 'vibrant market towns' are identified within the 2020-2024 Council Plan as one of Ryedale's key 'opportunities' and a 'positive feature we embrace'.
- 5.2 The need to support our market towns is clear as the heart-beat of our district for both residents and visitors alike. The Communities Priority within the Council Plan recognises Ryedale as being a 'place like no other to work, visit and invest. Within this Priority a key aim is to 'support our market towns to thrive by ... delivering a new car parking strategy with residents and visitors at its heart'. Progress is being made in delivering the car parking strategy, with various initial works such as lining, signage, and vegetation tidying underway.
- 5.3 As highlighted above and set out in detail in the Legal Implications section, s.7.1.b, in other than exceptional circumstances (which are not met in this instance) Councils are required to achieve best value in the disposal of assets.

6.0 REPORT DETAILS

- 6.1 In February 2022 a request was received by the Council from the Fitzwilliam (Malton) Estate enquiring as to whether: 'there was any opportunity to acquire Wentworth Street Car Park and secure its role as car parking / community space to benefit the town, then the Estate would be open to a conversation.'
- 6.2 This request was followed by an email from Cllr P Andrews supporting the request and advising, "I believe they [the FME] would accept restrictive covenants which would ensure that, if resold for any purpose other than car parking or community use, the Council would be entitled to an additional capital sum. It is clearly in their interests to buy this property, and I would have thought that there is an opportunity to obtain a good price from them. In my view, it is also clearly in the interest of the town for one body to have control over most of the town's main car parks".
- 6.3 For Council's information, the Wentworth Street car park is the largest of the ten car parks owned by RDC. The car park total 1.06 hectares (2.6 acres) and has a total of 381 parking spaces. The car park currently has four electric vehicle charging points and 11 coach/HGV parking spaces. In March 2022, the Council obtained a valuation of the car park. This valuation information is exempt, the details of which may be found in the exempt Briefing Note, together with full details of the parking ticket sales for the period 2019-2021.
- 6.4 Following consultation on the FME proposal with the Chair of the Policy and Resources Committee and the Chief Executive, a response was sent to the FME in early March advising that the Council did not wish to pursue a sale and that if the Estate wished to follow up its interest this would be an issue to be pursued with the new North Yorkshire Council when in place. The FME responded to advise: 'Many thanks for your response and clarification of the position which is understandable and not unexpected. It was worth asking just for our own peace of mind on the matter and ensuring we explored the opportunity.'
- 6.5 Despite the response from the FME Cllr Andrews advised that he had been asked by the Estate to pursue the matter further. On 7 April Cllr Andrews handed a handwritten Notice of Motion to the Chief Executive signed by himself and Cllr Burr. This Motion was due to be considered by Full Council on 29 June, but the Motion was withdrawn by Cllr Andrews shortly before the meeting following receipt of advice from the Assistant Chief Executive (Legal and Democratic Services) North Yorkshire County Council, which stated that the proposal potentially breached the duty to obtain best value, and also that there would need to be a very clear rationale for the proposal in order to secure approval through the NYCC S.24 process. This advice was provided to Members on the evening of the Council meeting on 29 June 2022.
- 6.6 In August 2022 a meeting was held between the Monitoring Officer, Programme Director, Cllr Andrews, Cllr Thackray, and the FME, to discuss the Motion. Officers reiterated that guidance set out above – i.e. that we understand there is no appetite to sell the site, but that if a sale was to be progressed it would need to be on the basis of an open market sale, rather than a direct disposal to a named purchaser. It was made very clear, however, that this was a Member decision and that Cllr Andrews was at liberty to put his Motion forward for consideration should he wish to do so.
- 6.7 Following this meeting, on 6 September Cllr Andrews confirmed that he did wish his Motion to go forward for consideration at Full Council on 15 September. As Members will be aware, the Council meeting scheduled to be held on 15 September was adjourned due to the passing of Her Majesty, The Queen, with the meeting rescheduled for 6 October, at which time the Motion was considered. As set out at s.1.1, the Motion requests: That Council enter into negotiations with Fitzwilliam Malton Estate (FME) to

sell Wentworth Street Car Park to FME, subject to the use being restricted to car parking only and the sale price to be approved by the District Valuer.’

- 6.8 Council agreed on 6 October that the Motion be referred to the next available meeting of the Policy and Resources Committee for consideration, which was to be the meeting of 9 February 2023.
- 6.9 On 10 November 2022 Cllr Andrews submitted a Requisition, counter-signed by four other councillors, requesting an Extraordinary General meeting of Ryedale District Council to debate the Motion to sell Wentworth Street car park to FME. The reason for calling the meeting set out in the Notice of Motion was “An Extraordinary meeting is required to address this business because at the Extraordinary Meeting of 6 October 2022, the Notice of Motion was referred to the Policy & Resources Committee and was not included in the agenda of the Policy & Resources meeting of 10 November, and it is feared that if the matter is not dealt with now, it will not be discussed before the New Year and, if it is agreed, then there could be insufficient time to implement it before 1 April.
- 6.10 As the Motion has been discussed by Council within the last six months and referred to the Policy and Resources Committee, legal advice was sought from NYCC, the advice received stating that an Extraordinary General meeting could be called on the basis that the Requisition was supported by one-quarter of Councillors. On 17 November Cllr P Andrews advised that this number had been achieved with seven Councillors supporting the Requisition.
- 6.11 As highlighted above, following the Motion to Council on 6 October 2022 the authority has been contacted by other parties regarding Wentworth Street car park. In October 2022 the Council received correspondence from a prospective purchaser expressing an interest in purchasing the site and committing to retain it as a car park. This was followed up by the same prospective purchaser expressing an interest in acquiring any other RDC car park on the same terms. This prospective purchaser has been advised that the Council is not currently looking to progress any car park sales. In early November an enquiry was received from second party (this information is exempt and can be found in the exempt Briefing Note). This company requested a meeting to discuss ‘the potential for a lower scale of mixed use development at Wentworth Street’. This meeting is scheduled to be held on 1 December, and Council will be updated on its outcome.
- 6.12 Cllr Andrews has been in contact with the District Valuer (DV) seeking advice on an off market disposal in line with a valuation provided by the DV. It is accepted that a disposal can be undertaken at an ‘under value’ if that disposal is for specific purpose as set out at s.4.2.
- 6.13 In addition to any RDC consent it must be noted that a S.24 consent for any disposal would be required through NYCC. Given the proximity to Local Government reorganisation it is unlikely that such consent would be given by NYCC in advance of determination of its asset management, planning, economic development, and other relevant strategies. It was proposed by Cllr Andrews that a disposal could be undertaken at a value of less than £100,000 in order to avoid the need for a S.24 consent. Advice received is that if the District Council has sold any land since 2007 which in totality has been valued at over £100,000 which it has, then any disposal of future land will need S.24 consent, not just land over £100,000. This is because section 27 of the Local Government and Public Involvement in Health Act 2007 provides that “in determining whether the limit specified in a direction by virtue of Section 24(1)(a) is exceeded in the case of a disposal of land by a relevant authority, the consideration with respect to any other disposal of land made after 31 December 2006 by the relevant authority is to be taken into account.” Therefore, as the District Council has sold land after 2007, the **total** value being over £100,000, the Council cannot make any future land disposals without specific S.24 consent from the County Council. Even if the land was sold for £1 or given

away free, the way the legislation works is that the District Council will need specific S.24 consent.

7.0 IMPLICATIONS

7.1 The following implications have been identified:

a) Financial

Should the car park be sold this would result in a loss of car parking ticket income to the council. (Details of ticket sales over the last three years are set out in the exempt Briefing Note.)

Should the car park be sold this may have a negative impact on the development potential and resultant development value of adjacent council-owned sites. It is not possible to quantify at this stage what this impact may be.

The council currently has contracts in place for enforcement and cash collection across its portfolio of car parks. Should Wentworth Street be disposed of there may be resulting contract variation/termination payments, but these are not known at this stage. There may also be financial implications in respect of refunds for those who have purchased car park permits if they are no longer able to utilise Wentworth Street. Once more, this cost is unknown at this stage.

b) Legal

Legal advice provided on 24 June 2022 by Barry Khan Solicitor and Assistant Chief Executive (Legal and Democratic Services) North Yorkshire County Council:

There are two issues with the Motion:

1. Best value consideration for land

(Assuming it is not public open space) section 123 of the Local Government Act 1972 provides as follows:

"(1) Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish. (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained."

Quoting from landmark chambers at: THE DUTY TO GET THE BEST PRICE ON THE SALE OF LAND (landmarkchambers.co.uk)

"Guidance on the general requirements to ensure that the best price is secured can be gained from cases regarding sales by mortgagees. They indicate that the vendor should normally ensure that the property is exposed to the market for an adequate length of time (Predeth v Castle Phillips Finance Co Ltd [1986] 2 EGLR 144, CA in which a period of 3 months was held to be appropriate), in appropriate publications (American Express International Banking Corp v Hurley [1985] 3 All ER 5644) and should obtain an open market valuation. It is not necessarily sufficient to advertise the property and sell it at auction. (Test Kwong Lam v Wong Chit Sen [1983] 3 All ER 54, [1983] 1 WLR 1349, PC)"

In addition from a subsidy control point of view, it is important to open up land transactions to open competition – sometimes it is not sufficient just to say we will get a district valuer to value it, as it may go for more when open to competition. Also, more importantly, the motion is restricting the use of the land as a car park and therefore restricting the monetary value that would be obtained for the land.

This is something that we need to be very careful off as this does not comply with the duty to get best value. In fact it goes completely against this and is in fact classed as a sale for an undervalue.

There are the general consents given by the Secretary of State to sell for an undervalue but it is necessary for the Council to demonstrate the relevant category it falls under.

The note does say you can get an independent expert evaluation if you don't follow the above process but I still think this is a hard situation to justify selling to a particular purchaser for a particular purpose unless you are relying on a general exemption– it does not provide a guarantee that you are getting the best value and the motion and the report does not justify why the Council would do this.

Therefore I think there is also an issue you may wish to discuss with the external auditor to determine whether such a sale would comply with the duty to get best consideration (as I believe it does not).

2. Section 24 Consent

The District would need to get NYCC's Executive consent for selling of land over £100k (even if it was worth less than that if specifically sold as a car park). The process for requesting this is for the S151 officer from the District to ask the Corporate Director of Strategic Resources, NYCC, who would then consult with all the other S151 officers.

I cannot fetter their discretion in considering such a future request, but a strong case would have to made about why the land would be sold just prior to transfer and why only sell to one particular purchaser and for one particular purpose, contrary to the requirement to get best value. There may well be wider benefits but this is not justified in the motion/report.

In addition any motion would need to address the fact that the Council could not sell the land without getting the express permission of NYC through the Section 24 direction. Also how it would demonstrate best value as identified above. A request can be made now to the Section 151 officer to get a formal view

Council would need to be advised on both points so that members were aware of what they were debating and how they are potentially breaching the duty to obtain best value.

- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

Other Issues are dealt with in the main body of the report.

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Background Papers:
N/A