

EXECUTIVE BOARD DECISION



REPORT OF: Executive Member for Finance and Governance,
Executive Member for Growth and Development

LEAD OFFICERS: Strategic Director of Place

DATE: Thursday, 11 February 2021

PORTFOLIO(S) AFFECTED: Growth and Development
Finance and Governance

WARD/S AFFECTED: Blackburn Central;

KEY DECISION: Y

SUBJECT:

Acquisition of Former Thwaites Site and Joint Venture Opportunity

1. EXECUTIVE SUMMARY

The Former Thwaites Brewery site in Blackburn Town Centre is a key strategic redevelopment opportunity of a brownfield site. Thwaites vacated the site in 2018 when the business relocated to new purpose-built premises for their brewery, offices and stables. Demolition of the brewery buildings subsequently commenced and site clearance was completed in 2020.

This report recommends involvement by the Council as a minority shareholder in a new Special Purpose Vehicle (SPV) along with Maple Grove Developments Ltd (Maple Grove) as majority shareholder who has now secured exclusivity of the site from the vendors. Maple Grove are a local and well regarded development company and a partner on the Council's Growth Framework.

The site is ideally located and has the potential to have a significant impact on boosting the vitality and vibrancy of Blackburn Town Centre, providing opportunities for a range of redevelopment options including land for new businesses, leisure or housing, and inward investment for the Borough.

The minority shareholding by the Council will help to ensure the site is master planned and delivered in a way which maximises positive outcomes for the local area, and also to allow a holistic strategy to be developed, to include the adjacent Council-owned former Blackburn Markets site and other Council assets in the area.

2. RECOMMENDATIONS

That the Executive Board:

- i. Notes the Former Thwaites Brewery site represents a key strategic redevelopment site;
- ii. Approves the Council to join the Special Purpose Vehicle (SPV) as a minority 49% shareholder for the purposes of acquiring the site, preparing the site for development and disposing of land parcels to 3rd parties for development;

- iii. Approves the acquisition of Properties 2 and 3 shown on Plan A by the Council from the SPV;
- iv. Delegates authority to the Growth Programme Director in consultation with the Executive Member for Growth and Development to commission works such as refurbishment, repair, alteration or demolition works necessary to make Property 3 safe and bring it back into use;
- v. Approves the terms of the Put Option and Options to Purchase;
- vi. Notes the potential for the development to include a mix of commercial, leisure and residential end uses;
- vii. Approves a capital allocation to commit to the SPV which will be in accordance with Council's accounting framework;
- viii. Delegates authority to the Growth Programme Director in consultation with the Strategic Director of Place and Executive Member for Growth & Development to agree final terms for the Shareholders Agreement and legal, financial and ongoing management arrangements of the SPV;
- ix. Delegates authority to the Chief Executive to appoint and remove Council Directors to the SPV; and
- x. Notes that any further acquisitions outside of the Put Option or disposals outside of the Options to Purchase will be subject to Council approval via the usual appropriate mechanisms.

3. BACKGROUND

3.1 Site Location

The site is located in Blackburn Town Centre and is circa 2.97 hectares or 7.33 acres in area. The site is bounded by Barbara Castle Way to the north and north east, Penny St to the west, and Salford and Starkie St to the South. Plan A attached contains a site location plan with Plan B attached showing the adjacent Council owned parcels, which are subject to an existing exclusivity agreement with Maple Grove.

3.2 Site Context

The site was formerly home to Thwaites Brewery before its demolition and is now cleared with the exception of a training centre and a former public house which front Penny Street.

The site represents a major strategic redevelopment opportunity in a highly prominent gateway location in Blackburn Town Centre and is identified as one of the Council's "Big Six" highlighted growth opportunities of the draft Local Plan, which is presented for public feedback until 19th February 2021.

3.3 Site Ownership

The site is currently owned by Daniel Thwaites PLC.

3.3 Planning History

No planning permissions are currently in place for development of the site, however the below provides a summary of the recent activity with regards to planning.

Planning reference 10/15/0915 – Planning permission granted for demolition of buildings and structures within the brewery site.

Planning reference 10/10/0914 – Planning permission granted for demolition of buildings and structures within the brewery site.

3.4 Development Proposals

The focus for the overall site is to unlock potential redevelopment opportunities and desirable inward investment, with a strategy to be developed once the site has been secured.

3.5 Regeneration Opportunity

Maple Grove submitted a confidential bid to the site owners which is agreed in principle.

The invitation from Maple Grove is for the Council to acquire a minority share ownership in the SPV and to work in partnership with Maple Grove to prime it for future development. The purpose of the SPV is to proactively promote development and regeneration. The SPV will ensure this happens by preparing all necessary surveys and permissions to ensure the site is ready for development in accordance with an agreed strategy.

Maple Grove has secured exclusivity of the site from the vendors and is prepared to commence a legal process to transfer the ownership of the site into a new SPV.

4. KEY ISSUES & RISKS

4.1 Title Information

The site is made up of numerous freehold and leasehold title parcels, so a solicitor's detailed report on title is to be commissioned in order to fully understand any charges or covenants.

4.2 Preventative Action

Acquisition of the site by the SPV will ensure the site does not pass to a developer or investor which may propose undesirable uses, or a party who does not share the Council's aspirations for the site and the surrounding area.

4.3 Wider Regeneration Opportunities

Being a shareholder in the company that acquires the site presents the Council with the opportunity to explore additional options by combining the site with the adjacent Brown St development site and other Council land assets.

4.4 Ground Conditions

A phase one desktop survey has been obtained, with a phase two intrusive site investigation currently being undertaken. Any significant issues identified will be addressed prior to completing the purchase of the site.

4.5 Planning

The site is located within Blackburn Town Centre according to the Council's adopted Local Plan (2015), and is illustrated as a key investment opportunity within the adopted Blackburn Town Centre Supplementary Planning Document (2018).

A draft new Local Plan has been published for consultation (until 19th February 2021), in which the site is identified as one of the plan's "Big Six" growth highlights - a unique opportunity to boost the vitality of Blackburn Town Centre.

4.6 Financial Risk

The draft agreement includes a 'put' option, as described in section 6 below, which may oblige the Council to acquire Maple Grove's shares at a future point in time for an agreed percentage of the value of the site acquisition shared cost.

5. POLICY IMPLICATIONS

Acquisition of the site as part of a joint venture will provide the Council greater control over future redevelopment options, helping to ensure that the proposals are in compliance with Local Planning policies and policies of the Council's Corporate Plan.

6. FINANCIAL IMPLICATIONS

Maple Grove has secured exclusivity with the vendors for the acquisition of the site based on a financial offer payable on completion of the land purchase transaction. This site value is supported by an independent valuation report carried out by CBRE and issued in November 2020. CBRE is a national property consultancy providing commercial valuation and advisory services. The SPV is also considering purchase of the adjacent training centre at a future date for a reasonable sum which will not exceed the remaining Joint Venture working capital, subject to establishing what additional benefits this acquisition would provide. The Council could benefit from the increased economic regeneration opportunities and additional synergistic value by combining with the wider site, and acquisition of the training centre also prevents the property falling into the hands of a less scrupulous landlord which could blight the wider site.

The former Fleece Inn on Penny St (Property 3) is also to be acquired as part of this transaction. Following acquisition the property will be immediately bought solely by the Council (outside of the SPV) for the purchase price and held for future regeneration purposes. An independent valuation has not been obtained, but when viewed in the context of the acquisitions of the Blackamoor Inn in 2019 and The Jubilee in 2017 the value is considered reasonable.

Acquisition of the site by the SPV will mean that the reversionary freehold interest of the Council's leasehold car park on site will transfer to the SPV. The freehold of the car park area (Property 2) is to be immediately disposed of to the Council following completion of the site acquisition at the apportioned Purchase Price and held by the Council as a car park with potential for future redevelopment. With the Council acquiring the freehold interest in the car park, the existing lease will be extinguished, as the Council cannot simultaneously be both Landlord and Tenant.

Maple Grove's invitation to the Council is for a 49% ownership of the SPV shares.

The Council will make a financial commitment in return for a 49% ownership in the SPV with the commitment used to support the acquisition of land and working capital requirements.

Maple Grove will make a financial commitment in return for a 51% ownership in the SPV with the commitment used to support the acquisition of land and working capital requirements.

Working capital will cover the SPV's activities which, subject to approvals, could include the demolition of the training centre and site clearance and the associated work involved in securing approvals. Other activities will include surveys, feasibility studies and investigations.

A 'put' option is to be included in the terms of the joint venture which is summarised as follows:

Maple Grove may oblige the Council to acquire its shares for an agreed percentage of the value of the site acquisition shared cost.

Maple Grove may also dispose of its shares for an agreed percentage of the site acquisition shared cost to a third party, subject to the Council's prior approval, such consent not to be unreasonably withheld.

The 'put' option is exercisable from the 2nd to the 4th anniversary of the SPV's company registration.

Exclusivity Options to Purchase are to be granted to the SPV following company registration, summarised as follows:

The Council shall grant the new SPV three separate 5 year exclusivity Options to Purchase on Properties 4, 5 and 6 as referenced on Plan B at Nil Fee. This will ensure a comprehensive development proposal can be submitted for this important strategic town centre site.

The agreed purchase price for each of the options has been set.

The Options to Purchase will expire in the event of Maple Grove Developments exercising the Put Option.

7. LEGAL IMPLICATIONS

The SPV will be incorporated as a company limited by shares and will be registered at Companies House as a private company with Maple Grove appointed as Company Secretary. The Council will agree a Shareholders Agreement with Maple Grove to ensure the Council has protections and safeguards to ensure compliance with Council procedures. The Council will be represented by two Directors who will be appointed as Company Directors.

The SPV will not employ any persons and will instead have Service Agreements to cover any services required to operate the SPV. Services will be provided to the SPV by Maple Grove and the Council and will be by agreement.

The SPV will not undertake direct development and instead is a vehicle to acquire the site and then dispose of discrete parcels of land to developers and end users for development. The SPV will undertake surveys, investigations, demolitions and obtain any necessary approvals to assist in the process which may involve securing planning approvals. The procurement of these activities will be undertaken by either the Council or Maple Grove on behalf of the SPV.

Because the Council is intending to enter to a legal relationship with a legal person (a company) and commit the Council's resources to generate economic activity through that company then issues of public procurement have to be addressed. Subject to review by legal officers of the Shareholders Agreement it is not anticipated that the proposed arrangements would involve procurement by the Council which is subject to the Public Contracts Regulations 2015 as there is no obligation imposed by the Council for works or services to be performed. Similarly, subject to

review of the Shareholders Agreement, it is not expected that the SPV will be subject to procurement regulations as it will not be a body governed by public law.

The Council does have general capacity under the Localism Act 2011 to enter into any legal arrangements just like any other legal person subject to pre-existing legislation. However, in nearly all cases where government bodies use state resources to assist in economic activity and because of that assistance there is the potential to affect or distort competition, then State Aid must be considered. There are a number of acceptable State Aid exemptions which can potentially apply to any given scheme. In this case any potential State Aid arises by the fact that the Council is committing money into the SPV as set out in the financial implications section. Under the market economy investor principle (“MEIP”) the Council is entitled to undertake the economic activity if it operates in a similar financial manner to that of a private economic operator, most relevantly here, in terms of the risk versus reward considerations. This is because while it is acting within the market, its use of state resources do not distort competition because it is acting as any other entrepreneur might and there is no “unfair advantage” by the use of the state resources and would therefore not be State Aid. The financial implications have been detailed in respect of the potential returns on its commitment to form a conclusion on this point.

8. RESOURCE IMPLICATIONS

Current staff resources from the Council’s Growth, Property, Planning and Legal teams will be utilised to complete the agreement and subsequently work with Maple Grove towards delivery of the project.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

10. CONSULTATIONS

Public and stakeholder consultation on development of the site will take place as part of the planning application process. Borough-wide consultation on the identification of the site as a mixed use growth site within Blackburn Town Centre commenced on 8th January 2021, and continues until 19th February 2021. An analysis of the consultation feedback will be published after the consultation has been completed, and responses reviewed.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council’s Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

CONTACT OFFICER:	Simon Jones, Growth Programme Director, Department of Growth and Development
DATE:	January 2021
BACKGROUND PAPER:	None