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Dear Councillor

**EXTRAORDINARY FULL COUNCIL - WEDNESDAY, 24TH NOVEMBER, 2021**

I now enclose, for consideration the following report that was unavailable when the agenda was published.

**Agenda No    Item**

5.    **London Road Car Park (Pages 3 - 25)**

Report of the Chief Executive

7.    **London Road Car Park (Pages 26 - 30)**

Exempt Appendix to the Report of the Chief Executive

## **EXTRAORDINARY COUNCIL MEETING – 24 NOVEMBER 2021**

### **LONDON ROAD CAR PARK – PROPOSED EXTENSION**

#### **1.0 Purpose of Report**

1.1 This report provides information to support Members in considering the motion before the Extraordinary Meeting of Full Council on 24 November 2021.

#### **2.0 Background Information**

2.1 On 12 October 2021, Full Council considered the report as attached at Appendix A.

2.2 Following a comprehensive debate, Full Council considered 5 options and agreed to proceed with an extension to the London Road Car Park – Option B as set out in Appendix A. This decision was consistent with the terms of the current lease, with Datch Properties Limited (DPL), to build a car park and also in accordance with the current planning consent for the site.

2.3 Members acknowledged that this was an extremely difficult decision that had to take into account the contractual arrangements between the Council and the landowner, the financial implications of not progressing with the car park extension, and the non-financial value of retaining the trees and the green space. There was a significant amount of opposition to the removal of four trees that was necessary in order to extend the car park.

2.4 Since the decision of Full Council, officers have made progress to implement the car park extension. An updated ecology survey has been undertaken and fencing has been installed around the perimeter of the site. This was in preparation for the removal of the trees and the implementation of planning permission.

2.5 In the periods before and after the last meeting of Full Council, campaigners have continued to press for the trees to be protected and for the proposed car park extension to be abandoned. An online petition “Stop the Chop and Save our Trees” has, at the time of preparing this report, gathered 4,959 signatories. This petition calls for the Council to:

- Pause the felling of the trees;
- Undertake, and publish the findings of, the promised car parking review with stakeholders including the Newark Civic Trust and Protecting Newark’s Green Open Spaces;
- Hold the promised consultation on the development of the site, given its high value to local people; and
- Undertake a full bat survey next spring in May 2022 when the weather is warm enough for bats to fly at night.

#### **3.0 Revised Offer**

3.1 On the day that the Council’s Ecologist visited the site (Friday, 12 November 2021) the Council received a revised offer from DPL for the Council to purchase the freehold of the site earmarked for the car park extension. The relevant area of land is shown on the plan at Appendix B.

- 3.2 As reported to the last meeting of Full Council, the previous best and final offer for the Council to purchase the site was for a sum of £600,000. The revised offer from DPL has reduced the price to £450,000, on condition that the Council did not implement the planning permission to create the car park extension and retained the land as green space.
- 3.3 The revised offer provides a very significant reduction in price - £150,000 or 25% less than the previous best and final offer.
- 3.4 From a purely financial perspective, this offer still does not represent best value to the tax payer. In November 2016, the Council sold the Municipal Buildings and the land now earmarked for the car park extension (between the former municipal building and the library) for £450,000. The revised offer is to buy back just the land earmarked for the car park extension for the same amount of money.
- 3.5 However, it is accepted that the land has environmental and social value and there is considerable local support to retain the four trees and the green space on which they are located.
- 3.6 The landowner has made it clear that his revised offer is in response to both the local representations and his desire to consider environmental alongside financial considerations.
- 3.7 The proposed Heads of Terms, which set out detailed provisions regarding the potential purchase, are included as Appendix C to the report.

#### **4.0 Financial Implications/ S151 Officer Comments**

- 4.1 On 12 October 2021, Council considered 5 options (Appendix A) for the land between the former municipal building and the library on London Road. In summary, the options included: doing nothing; building the car park extension as required by the terms of the lease with DPL; partially building out the car park; purchasing back the site for £600,000 and entering a new lease for an extended period of 30 years at £25,000 per annum.
- 4.2 The decision made by Council at this meeting was to proceed with an extension to the London Road Car Park, as per the approved scheme – Option B in the attached report (Appendix A). This was at an estimated development cost of £246,000 with an estimated fee income of £48,141 per annum. The net annual income after the lease payment of £30,000 was therefore £18,141 per year, or £399,102 over the remaining 22 year term. This option therefore projected a positive revenue contribution of £153,102 over the remaining 22 year term, or just under £7,000 per year.
- 4.3 Since the meeting date, the estimated development cost has been further revised due to delay in implementation and increases in material costs advised by the short-listed contractors. The development cost now is £260,627, an increase of £14,627 against the original estimated cost.
- 4.4 The land owner, DPL, has now proposed a revised sale price for the land (subject to the current lease) of £450,000. This has been revised down by 25% from the purchase price of £600,000 considered by Council at the meeting of 12 October. This is a significant reduction; however, from a financial perspective, it still does not provide value for money to the residents of the district. The Council would be purchasing the land for the same price as it

sold the whole demise (Municipal Building and associated land) in November 2016. In addition to the cost of the purchase there would be an estimated liability of £12,000 payable in respect of Stamp Duty Land Tax. There will also be a land registration fee payable of £540.

- 4.5 Further, as reported in the financial implications section of the report to Council on 12 October 2021 (Appendix A, paragraph 7.1), a total cost of £7,593 was incurred on planning scoping works (ground investigation, surveys, planning fee, landscaping etc) in 2018/19. Since the Council meeting on 12 October, the Council has incurred further costs of £15,773 on ecology surveys, hoarding and security. Should the currently approved scheme not go ahead then this total cost of £23,336 will need to be written off to the General Fund as abortive costs.
- 4.6 Taking into account the increase in the development costs of £14,627 stated in paragraph 4.3 and the additional “abortive” costs of £23,336 in paragraph 4.5, the projected net income from building out the car park reduces the positive revenue contribution, as described in the report to Council on the 12 October, from £153,102 to £115,139, or £5,233 per year.
- 4.7 In summary, the total cost to the Council in purchasing the land is the asking price of £450,000 together with SDLT, legal costs and land registration fee totals £467,540. In addition to the costs of purchasing the land, the Council will not be receiving any future income from constructing the car park. This lost income, net of the abortive and additional development costs as per paragraph 4.6, is £115,139. This future loss in anticipated income has not been incorporated into the medium term financial plan and therefore will be no immediate impact on the financial plans of the Council.

## 5.0 **RECOMMENDATION**

**That Full Council be recommended to determine the motion included on the agenda having regard to the contents of this report and the attached Heads of Terms and Plan, and to note that if the motion is agreed, that the necessary changes will be made to the General Fund Capital Programme and in year General Fund expenditure.**

### Background Papers

Nil

For further information please contact John Robinson on Ext 5200.

John Robinson  
Chief Executive

**COUNCIL MEETING - 12 OCTOBER 2021**

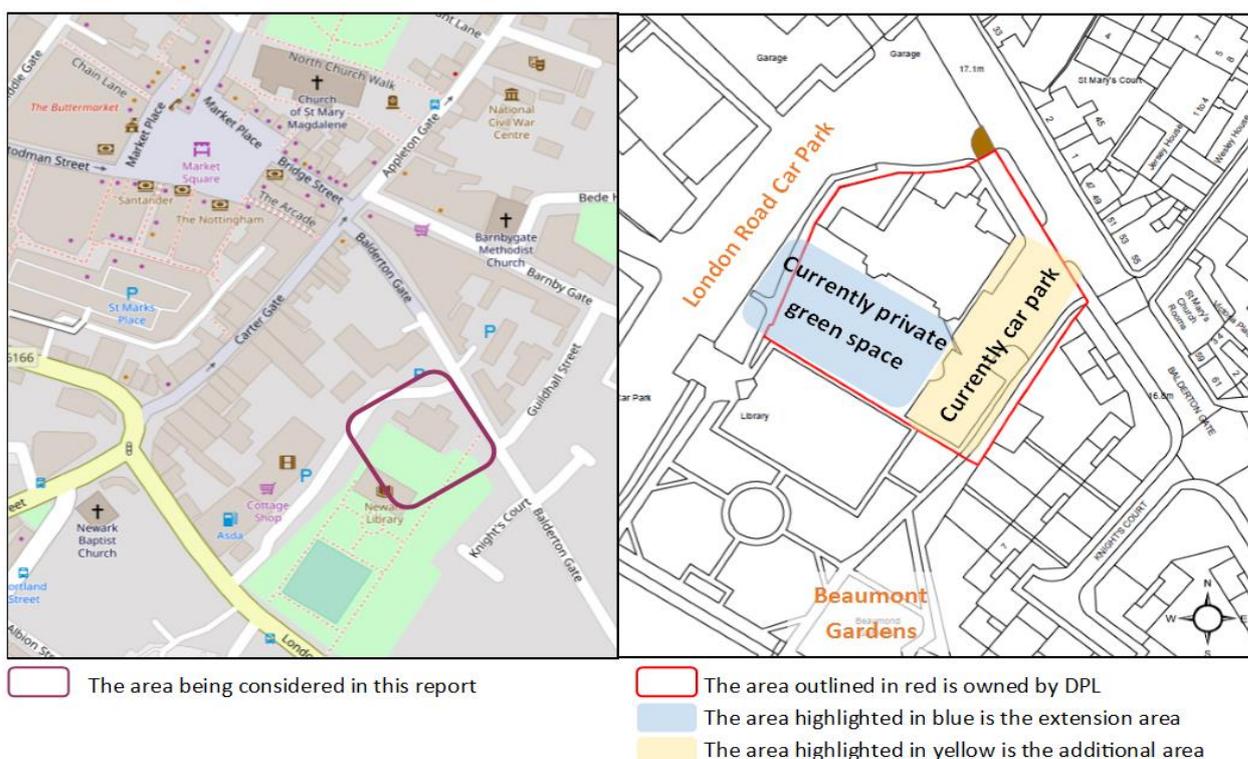
**LONDON ROAD CAR PARK**

**1.0 Purpose of Report**

- 1.1 To update Members on the London Road Car Park extension scheme, including a range of potential future options moving forward.
- 1.2 Members will be aware that this matter was presented to the Policy & Finance Committee on 23<sup>rd</sup> September 2021. Following the receipt of late information it was resolved to refer this item to Full Council for a debate and decision. For completeness, this report contains new information with respect to Option A, a new Option E (which reflects that received late prior to the Policy & Finance Committee), and a correction to table 2 which contains errors from the originally published version. An Exempt Appendix including the confidential information was also provide to the Members.

**2.0 Background**

- 2.1 A review of the London Road Car Park extension scheme was requested in response to a petition presented to Full Council on 7 March 2019 entitled ‘help to halt plans to turn a town centre garden into a car park.’ This report presents to members options following this review.
- 2.2 *Fig One: A map of the area/s in question below:*



## Timeline

- 2.2 Following a period of marketing the Council sold the former Municipal Buildings and its associated green space to Datch Properties Ltd. (DPL) on 1 November 2016 for £450,000.
- 2.3 The current London Road Car Park has 163 car parking bays. 149 of these 163 bays are chargeable car parking spaces plus 12 disabled bays. Two bays are assigned to the Royal Air Force Association (RAFA) club and there is one motorcycle bay (not a full bay). The net income between April 2019 and March 2020 from this car park was £284,996.89
- 2.4 The Council had, up until 2019 also been running the car park next to the former Municipal Buildings, known as the London Road Annex (consisting of 28 spaces surrounding the building, the area in yellow on figure one) on a 50-50 profit share basis with DPL. This secured circa £15k of income for the Council per annum as exemplified by the £30,791.26 net income between April 2018 and March 2019 (with £15,395.63 less cost of that income being paid to DPL as a result of the 50-50 profit share arrangement).
- 2.5 During the operation of the London Road Annex, DPL approached the Council to suggest an extension to the London Road car park utilising existing green space between the former Municipal Buildings and Library (the area highlighted in blue in figure one above). The proposals for this extension were presented to Policy & Finance Committee on 30 November 2017 which consisted of a 25 year lease, started on 22 January 2019, for the land at £30k per annum (following a 2 year lease-free period) together with indicative construction costs of £115k for the provision of 36 additional spaces. This proposal was forecast to generate expected additional income of £59k per annum; hence, the Council would generate an additional £29k net income per annum. For awareness, the proposed scheme would create 36 spaces, but only 31 net additional spaces due to the loss of spaces on entry to the site via London Road Car Park.
- 2.6 The Committee unanimously approved the recommendation and the relevant budgets were added into the Capital Programme and revenue budgets accordingly.
- 2.7 The agreement for the lease obliges the Council to (once planning permission had been granted) develop the land into a car park.
- 2.8 Following the grant of planning permission for the car park extension at the Planning Committee in November 2018 (8 votes for, 5 votes against and 1 abstention) lease terms were finalised with DPL.
- 2.9 The lease for this land which includes the creation of a car park was signed between the Council and DPL on 22 January 2019. This lease requires the Council to:
  1. Create the car park at its expense after grant of permission.
  2. After a rent free period of 2 years to pay to DPL, or any successor in title, £30,000 per annum for a minimum period of 25 years (regardless of whether or not the land has been developed as a car park).

2.10 The lease explicitly states that the first opportunity the Council has to break the lease is after 15 years with a 6 months' notice. This means the Council is tied to the current arrangements until January 2034, unless an alternative is negotiated.

**Background Information and Data – Use and Income of the London Road Car Park**

2.11 Across the Council's car parks there has been an 1.79% increase in parking income between 2019 and 2020, indicating an increase in the number of cars/trips to park in Newark (on the basis that parking tariffs have remained the same since 2017). The impact of the Covid Pandemic in March 2020 and lasting through to June 2021 has made any assessment of car park usage impracticable due to the nature of the lockdown effecting the town centre economy. Therefore, this review can only consider data and information up to March 2020.

Table 1

<b>Parking Tariffs 2020/21</b>			
<b>Inner Town</b>		<b>Outer Town</b>	
30 min	£0.50		
1 hour	£1.00	1 hour	£1.00
2 hours	£1.50	2 hours	£1.50
2-3 hours	£2.50	2-4 hours	£2.00
3-4 hours	£4.50	4- 5hours	£2.50
Over 4 hours	£7.50	Over 5 hours	£3.00
After 6pm	£1.00	After 6pm	Free

Table 2

<b>Car Parking Income - NSDC Car Parks Comparison 2017 – 2021</b>					
		<b>2017-2018</b>	<b>2018-2019</b>	<b>2019-2020</b>	<b>2020-2021</b>
<b>Inner Town</b>	<b>London Road (163 spaces)</b>	£292,982.91	£283,426.45	£284,996.89	£65,961.78
	<b>London Road Annex (28 spaces)</b>	£27,169.52	£30,791.26	£34,587.57	£336.66
	<b>Town Wharf (60 spaces)</b>	£108,583.98	£102,069.98	£89,552.30	£20,366.51
	<b>Appleton Gate (59 spaces)</b>	£85,117.02	£85,369.43	£82,316.97	£29,386.93
<b>Outer Town</b>	<b>Riverside Arena (135 spaces)</b>	£80,403.72	£79,246.04	£82,146.55	£19,021.69
	<b>Riverside (219 spaces)</b>	£78,214.38	£78,402.18	£84,602.11	<del>£19,021.69</del> <b>£15,271.81</b>
	<b>Livestock Market/Castle House (103 spaces)</b>	£30,690.39	£78,819.55	£93,112.50	£10,801.93
<b>TOTAL INCOME</b>	<b>Total for NSDC Parking</b>	<b>£703,161.92</b>	<b>£738,124.89</b>	<b>£751,314.89</b>	<del>£164,897.18</del> <b>£161,147.31</b>
	<b>Income Increase / decrease</b>		£34,962.97	£13,190.00	- <del>£586,417.71</del> <b>£590,767.58</b>
	<b>Percentage Increase / decrease</b>		<b>4.97%</b>	<b>1.79%</b>	<del>-78.05%</del> <b>-78.54%</b>
	Note: The parking tariff has remained consistent throughout. The London Road Car Parks accounts for 38% to 42% of the total usage/inciome of the town centre car parks - Figures updated following an error in the previously published report-presented to				

Table 3

CAR PARK	LONDON ROAD AND LONDON ROAD ANNEX CAR PARK TICKETS SOLD		% Increase / decrease from previous year	LONDON ROAD AND LONDON ROAD ANNEX CAR PARK TICKETS SOLD		% Increase / decrease from previous year	LONDON ROAD AND LONDON ROAD ANNEX CAR PARK TICKETS SOLD		% Increase / decrease from previous year
	2017 - 2018	2018 - 2019		2018 - 2019	2019 - 2020		2019 - 2020	2020 - 2021	
London Road Car Park	189878	227432	19.78%	227432	196392	-13.6%	196392	169831	-13.5%
London Road Annex	20438	22090	8.08%	22090	21161	-4.2%	21161	20701	-2.2%
London Road Car Park Total	210316	249522	18.64%	249522	217553	-12.8%	217553	190532	-12.4%

2.12 This is similarly reflected in the 19.8% increase in the number of tickets purchased at London Road overall between 2018 and 2019. However, this has reduced in 2019/20. There has been an 8.08% increase in parking in the London Road Annex during 2018/19. The increase in the use of the Annex demonstrates that visitors were, prior to the Pandemic, using the overflow car park more frequently.

2.13 The planning permission allowed the formation of 36 additional spaces at London Road Car Park. The actual net gain is actually 31 spaces, as there is loss of spaces due to access to the site from the existing London Road Car Park.

2.14 As part of this review the Council commissioned an independent count of the London Road and Annex car parks in autumn 2019. This review noted the number of available spaces at half-hourly intervals throughout the day. A mix of term time, school holidays, weekdays, and weekends was used as part of an overall sample. The review did not have regard to driver behaviour in terms of whether a space may appear 'tight' to manoeuvre into. On both weekends and weekdays, between 10.30am and 3pm, typical usage resulted in the car park being 60-70% full at any one time.

2.15 It is clear that the London Road car parks remain the busiest in terms of ticket sales and overall income.

2.16 **Representations**

2.17 Members will be aware of the petition presented to Full Council in 2019. Since that time a number of additional representations have been made by Members of the public and other organisations raising objections to plans to continue with implementing the car park extension.

- 2.18 It is understood that Members have received representations directly. This report captured representations received direct, including any which have been provided to Officers by members of the Committee.
- 2.19 Representations to date are captured below. Any received prior to the Council meeting (provided they are received prior to 12 noon on 12 October) will be circulated in full to all Members.
- 2.20 At the time of writing 81 objections have been received, 22 of which have been via the local MP. These build upon the 1,700 signatory petition previously reported to Full Council in 2019. Concerns raised include:
- Any assessment of 'value for money' should acknowledge that trees and green space are of 'value' which cannot be monetarised but which are more important in this case that simply the financial implications of not implementing the car park
  - Newark has very little open space, particularly in the town centre and the little which it has should be protected
  - The trees to be removed have been there for many years, could be there for many more years and have significant carbon capture that would be lost if they were removed
  - Any replacement trees would take decades to establish and make anywhere close a contribution in visual and carbon terms
  - The loss of the green space and trees will detrimentally and irreversibly affect the setting of the Municipal buildings and the wider area
  - There is no need for additional car parking for the town and even if there were there would be more appropriate sites available to provide expanded car parking for the town
- 2.21 DPL have also written to all Members outlining chronology, context, and history from a DPL perspective. The representations made confirm that DPL have presented a range of options, some of which have been withdrawn given the sale of the former Municipal Buildings to JAJ Developments (Directors – Mr J Derry & Mr A Derry). Other options which remain available are presented below.

### **3.0 Wider Context**

- 3.1 The Newark Town Investment Plan and NSDC Economic Growth Strategy 2021-2026 include objectives that seek to repurpose town centre properties for residential use, and to increase footfall, dwell time and spend in the town. Newark will see a population increase over the coming years (9080 new homes by 2033) as a growing town, and it is appropriate to ensure that the infrastructure is suitable and utilised within the Town. It is also worth noting that the Municipal Buildings adjoining the site, which had remained vacant for over 3 years, have now been developed into residential apartments.
- 3.2 It is clear, as a matter of fact and law, that the Council remains in a contractual position where it is required to implement a car park on the land. There are ways in which the Council can negotiate its release from this contractual position should it consider this appropriate. To aid debate and discussion Members are presented with a range of options, however each of these alternative options involve additional costs to the Council. The

financial, legal, and other consequences of each option are explored in section 4 below. However, before considering these options, the following relevant factors should be borne in mind:

**3.2.1 What level of demand is there, or is there likely to be?** Demand has shown to rise between years April 2017 to 31 March 2020. However due to the Pandemic in 2020 the data has shown a significant reduction in usage. This anomaly should be discounted, however it will be important to monitor and evaluate the impacts of shopper trends post pandemic through to 2025. As data has shown income and ticket, sales at London Road have increased year on year identifying it as an accessible location that is well used. Even during the pandemic, the car park on London Road maintained the trend of accounting for 40% of the total usage of town centre car parks.

**3.2.2 What do our communities want from our car parks?** In July 2020, the Community Consultation for the Town Investment Plan received a good response rate. On reviewing the data and responses it is worth noting at figure 5.1 'What people want to see more of' that approximately 60% of respondents wanted more car parking with only 10% stating they would like to see less. The key words in responses to the question on existing car parking included; 'Poor,' 'free,' 'more,' and 'better.'

**3.2.3 Parking & Movement Strategy.** In late 2019, there was an intent to develop a Parking and Movement Strategy as part of the development of the Newark Town Investment Plan. Consultants were tasked to undertake the Town Investment Plan in January 2020 and to provide a town wide review of appropriate interventions to best make a transformation impact on the town. This included but was not limited to car parking and movement. In November 2020, formal consultation also took place on the proposed A46 Newark northern bypass. Due to the nature of the pandemic, Officers received advice from transport consultants in the development of the Town Investment Plan that a study would be abnormal until such time that national restrictions are lifted and a more accurate assessment could be established. Moreover, it is necessary and appropriate to develop the Towns Fund projects and understand their impacts and influence on movements as part of developing future movement, spaces, and wayfinding strategies for the Town.

**3.3** As part of the submitted petition to Full Council residents have made clear an expectation that any review of whether the Council should proceed with the London Road car park extension should involve a holistic analysis of all car parking within the town, specifically the volume of vacant spaces at various times and days. It is argued that additional car parking is not required if spaces are available in town centre car parks elsewhere. In the disputed event that spaces are unavailable at London Road it has been argued that additional car parking space should be provided for elsewhere rather than at London Road, or dealt with by alternative interventions such as promotion and provision of sustainable means of transport. A wider review of all car parks has not been undertaken in this instance. Should the Council choose not to build the car park extension it does not automatically follow that spaces on other car parks will be utilised. It is clear that London Road remains the busiest in terms of ticket sales and overall income.

This review has given regard to the following important facts:

- 3.4 **Legal Position:** Under the terms of the Agreement for Lease, signed on 22 January 2019, the Council is obliged to carry out the works to create the car park. The Council are unable unilaterally to break from the 25 year lease obligations, which include the payment of £30,000 rent per annum (after the initial two year rent free period) for 23 years from 2021. The first opportunity to break the contract is in January 2034. The Council are able to seek a negotiated surrender of the Lease, however the terms of this surrender or 'buy-out' will depend on the negotiating positions of both parties and the other opportunities open to DPL. Most landlords will require a premium to compensate them for the loss of an assured income stream over 23 years. In any event, planning permission for a car park will still exist and be capable of implementation given that planning permission runs with the land and not with the applicant. The only way to secure full control would be to negotiate a freehold purchase.
- 3.5 **The Annex:** The 50-50 profit share on the annex has not been continued since the sale of the Municipal Buildings, which have been awarded planning permission for residential development. This development is near completion with a number of the flats sold with allocated parking spaces. The Council made an in principle offer (subject to member approval) to lease the additional land owned by DPL in January 2021 through the Council's s151 Officer, however this offer was rejected by DPL.
- 3.6 **Loss of Green Space approved:** In the car-parking scheme approved by Planning Committee in November 2018, it was clear that the four trees (detailed further at paragraph 3.8) would be removed, in addition to the grassed areas. Replacement planting includes four Rowan trees to be planted around the car park, a new hedgerow to be planted on the southern side and approximately additional 16 new trees to be planted in suitable nearby green space. This is a total of 20 trees in all, a net increase of 16. Further, there is also potential to install and create new cycle infrastructure on the site with funds received as part of the Town Fund.
- 3.7 **Planning Permission:** In November 2018, Planning permission was granted for the creation of a car park on the site, and this permission will lapse in November 2021. There are a number of options with this: 1) The Council allows this to lapse and seeks to secure new planning permission. This has the risk of not being approved, which will inevitably lead to the risk of repayment of the full capital value of the lease by DPL of the remaining term of the lease. 2) The Council undertakes a minimal start on site that adheres to the following with regard to work started for a planning permission to be kept active:
- (a) Any work of construction in the course of the erection of a building;
  - (b) The digging of a trench which is to contain the foundations, or part of the foundations, of a building;
  - (c) The laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
  - (d) Any operation in the course of laying out or constructing a road or part of a road;
  - (e) Any change in the use of any land, which constitutes material development.

It is recommended that work is undertaken on site under one or more of these points before November 2021 to ensure the planning permission does not lapse.

- 3.8 An arboriculture assessment and tree survey was undertaken as part of the planning application for the car park extension. The report highlights a number of minor defects to the affected trees. The four trees to be removed as part of the approved scheme are:

1. Sycamore, category B, identified as 'moderate' quality with an estimated remaining life expectancy of at least 20 years.
2. Sycamore, category A (tree to be preserved in option C) identified as 'high' quality with an estimated remaining life expectancy of at least 40 years.
3. Common Lime, category A, identified as 'high' quality with an estimated remaining life expectancy of at least 40 years.
4. False Acacia, category B, identified as 'moderate' quality with an estimated remaining life expectancy of at least 20 years.

#### 4.0 Options Appraisal

4.1 The review that has been undertaken in response to the petition has covered the background to, and the reasons for, the original decision made in 2017 as well as the review of town centre car parks referred to above. In addition, considerable effort has gone into reviewing a wide range of options that are an alternative to the original decision. These options are set out below:-

- a) Seek to enter into negotiations to buy back the Land;
- b) Implement the scheme which has planning permission (implement the 'Approved Extension' including the associated tree removal);
- c) Implement a revised scheme (implement the 'Approved Extension' but retain one tree nearest the Municipal Building) subject to planning permission
- d) Do nothing and provide a car park at some point prior to the end of the current lease.
- e) Enter into a new lease and retain the land as open space

4.2 Indicative costs/additional revenue generated for each option are captured in the table below. The expected Income represents the estimated additional income after the lease payment has been made over the remaining 22-year term of the lease (as the council is already in it's third year of the lease). This modelling does not assume any increase in the ticket value over that term or an increase in ongoing revenue maintenance costs, nor does it assume any annual fluctuations to behaviour. Hence, the total cost column represents the additional expected income over the lease less the capital cost required. Actual receipts from the London Road Car park during 2019/20 (the last full year of consumption) have been used to approximate the annual value of an individual chargeable bay, which has then been extrapolated over the additional chargeable bays in each of the scenarios below.

Table 4

Option	Additional Chargeable Bays where income is received by NSDC	Capital Spend Required (estimate)	Lease Cost (per annum)	Estimated Additional NET Income (per annum)	Expected Income over Lease	Total Cost +Surplus or - Deficit (minus lease & capital spend)
A*	0	£675,000	0	0	0	-£675,000 -£600,000
B	█	█	█	█	█	+£153,102

C**	█	██████	██████	██████	██████	-£51,872
D	█	██████	██████	█	█	-£690,000 + Capital costs of implementing car park (plus inflation)*** & ****
E	0	£0	£25,000	£0	£0	-£750,000****

- \* This represents the landowners expectation for freehold purchase price.
- \*\* Large Tree at Municipal Building retained
- \*\*\* Estimated as not procured
- \*\*\*\* In option D & E no cost has been provided for maintaining the trees or greenspace

**An un-redacted version of Table 4 is provided at the Exempt Appendix.**

### 4.3 Option A: Buy out of the Lease/ Purchase the Freehold interest of the Land

- 4.4 The Council is unable to unilaterally break from the lease obligations. Accordingly, this option would require the Council to seek a negotiated surrender or 'buy-out' from DPL. The lease term runs to 2044 and has break options in favour of the Council in 2034 and 2039. However, there would be little incentive for DPL to agree to a surrender of the lease as the £30,000 per annum is effectively guaranteed by the Council and the council is under obligation to provide a car park before the end of the 20 remaining period of the 25 year lease term. This represents a significant value to DPL. The surrender payment would therefore be significant – perhaps up to the number of years, (22 years), remaining in the lease i.e. £660,000.
- 4.5 For the avoidance of doubt a decision of this Council to 'buy-out' the lease would not mean that the car parking extension would not take place. A planning permission runs with the land and not with the applicant. Consequently DPL could implement the car parking (with another provider) to secure an income. In such circumstances, the greenspace and trees would be lost in any event.
- 4.6 It is recommended that lease buy-out is not appropriate.
- 4.7 The Council could instead seek to negotiate the freehold acquisition of the site. Officers have asked the landowner, and were initially informed, as reported on the P&F agenda that the asking price is £675,000. This was amended to £650,000 24 hours before the P&F meeting. Following Policy and Finance Committee meeting on 27 September, Officers went back to the landowner and asked for the "best and final offer". At the time of publication of this agenda the landowner has responded by reducing the price further to **£600,000 "on the condition that the sale proceeded in a timely fashion"**. In August 2021, Officers instructed a professional valuation that stated the site ██████████  
██████████ If the land was to be retained as open space it would be worth a negligible value with little market demand for such a use.

#### **4.8 Option B: Do the scheme as proposed (including removal of trees)**

4.9 The Council is obliged under the terms of the lease to construct the car park before the lease comes to an end, subject to planning permission being granted. Permission was granted in November 2018.

4.10 The planning permission includes the removal of the trees from the site and represents a net gain in car parking provision under the Councils management creating 31 spaces.

4.11 London Road car park is one of the most popular car parks serving the town centre – this has been demonstrated through an increase in ticket sales.

4.12 The estimated additional income from this option is [REDACTED] This option results in a **net gain of £153,102** over the remaining term of the lease as shown in the table above over the remaining period of the lease.

4.13 Whilst the car parking survey shows capacity within the existing car park, growth forecasts for the town up to 2033 and the very clear aspirations that visitor numbers and ‘dwell time’ in the town centre will continue to increase (linked to the Town Investment Plan, Community Plan, Economic Growth Strategy and Destination Management Plan for Newark) demonstrates the need for extra spaces. On this basis, implementing the scheme as already approved is legitimate. This is also in accordance with the terms of the lease the Council have already committed to.

4.14 As stated in 4.9, the Council have a legal obligation to construct the car park and pay DPL a rent of £30,000 per annum under the terms of the lease, which commenced on 22<sup>nd</sup> January 2019.

4.15 This option generates the maximum net income return to the Council, provides the maximum number of additional spaces, has planning permission and if not implemented would put the Council in breach of a legally binding agreement with DPL. On review of the current lease the Council does not have to build the car park before 2043, however this is not recommended as costs for development will increase, and no income will have been generated to offset the continued lease charge.

#### **4.16 Option C: Do the scheme as proposed, but retain one tree nearest the Municipal Building:**

4.17 This option would complete the scheme as approved but retain the largest tree nearest the Municipal Building. However, this would not amount to carrying out the works in full as per the lease.

4.18 This option would still remove a number of trees and as with Option B, would create a period of potentially adverse public response.

4.19 The number of spaces created would be 27. The net income generated would be proportionately reduced although the headline rent payable to DPL would remain the same.

4.20 This option would create a “one in, one out” approach to the car park, as it is not an approved access with the Highways Department at Nottinghamshire County Council stating

this is not satisfactory. This has a range of secondary issues including, bottlenecks within the car park, and the potential reduction and loss of 3 spaces.

- 4.21 Option C generates an estimated annual income of [REDACTED] after deducting the annual rental payment to DPL (option B generates an estimated annual income of [REDACTED]). This option results in a **net loss of £51,872** as shown in the table above over the remaining period of the lease.
- 4.22 This option would require a new planning permission and procurement exercise (**with associated costs**), which would extend the delivery time by 6-9 months. The risk is that the existing planning application lapses in November 2021 before this can be implemented and DPL seek compensation for the full value of the site should a new planning application not be approved. **This cost could be in excess of £30k x 22 years = £660,000.**
- 4.23 Officers recommend there is no real tangible benefit to pursuing this option in favour of Option B as this option C would create a period of potential adverse publicity with the loss of three trees, and would not amount to carrying out the works in full as per the lease. 4.23
- 4.24 Option D: Do nothing and provide car park back at 2044.**
- 4.25 The Council could also choose not to implement the Car Park construction until the end of the lease period. This is not recommended as the lease cost of £30,000 per annum would be ongoing until the term ends and the Council will be required to build the car park at the end of the lease. This would have the detrimental effect of **costing £660,000 in lease costs** over the remaining term of the lease with no income over that period, **and increased capital costs at end of lease period** which, given inflation data from 1999-2021 would equate to a minimum 56% increase on capital costs in comparison to 2021 when implemented in 2043. There would also be on-going revenue costs over the period of the remaining 22 year term in maintaining the green space
- 4.26 It is not recommended that this option D is pursued on the basis of costs and likely outcome that the car park, which has planning permission, will be implemented in any event without a freehold purchase. Moreover, the policy landscape in 2043/4 is unknown and may affect the ability implement the car park and satisfy its lease obligations.

#### **Option E: Enter into a new lease and retain the land as open space**

- 4.26.1 On 22 September 2021, DPL, via their legal representatives, proposed an alternative lease arrangement to the one presently in place. The proposed terms are that the Council lease the land for **30 (instead of the remaining 22 years) at a rent of £25,000 (instead of £30,000) per annum. This would mean a total cost over the lease term of 750,000 as opposed to the cost of £660,000 over the remaining 22 years of the lease.** Under this proposal, there would be no obligation to develop the land into a car park and therefore would be able to remain as public open space.
- 4.26.1 It is not recommended that this option is pursued on the basis that it would cost the Council more in rent overall, without any ability to generate income to offset against the cost of the lease. Moreover, the Council would be required to undertake management and maintenance of the space for the lease period. This option does not represent value for money for the tax payer.

#### **4.27 Alternative Options no longer available.**

For completeness, a number of options which have been discounted on the basis of discussions with the landowner and their legal representatives are also here:

- 4.28 Officers have reviewed other options for developing further or alternative car parking via Baldertongate. This has included the provision of public and residents car parking (the latter for occupiers of the former Municipal buildings), the possibility of relocating disabled parking bays from the exiting London Road car park, and the ability to install a 'bank' of EV parking spaces.
- 4.29 All such options are reliant on the availability of the additional land via Baldertongate, which is no longer available as confirmed by the landowner and their legal representatives.
- 4.30 The landlord originally proposed an alternative option upon which access is given via Baldertongate with a rear car parking being developed to allow for some additional car parking spaces without removal of 2 trees.
- 4.31 Under this option there would be an additional 6 spaces created and access to the remaining 13 spaces that the Council cannot access at present would be opened. This would create a total of 19 spaces.
- 4.32 The Car Park Manager advised that with this approach, the expected incomes generated per annum per space would be reduced from approximately [REDACTED] per space to approximately [REDACTED] per space due to the proximity for access and services, and a capital outlay would be required to create the new spaces. This has been estimated at [REDACTED]. The estimated additional net income that could therefore be generated would be [REDACTED] less than the lease payment the Council makes per annum to DPL.
- 4.33 Under this option the landlord would seek that 15 spaces would be designated for the owners of the flats and that a 'land swap' to the rear of the site could be undertaken for residents parking so that the spaces to the front of the property immediately adjacent to Baldertongate could be made for car park users.
- 4.34 This option is estimated to generate income of approximately [REDACTED] per annum, which will not cover the cost of the lease, and would therefore lose the Council in excess of £216k over the life of the lease.
- 4.35 This option would not have been recommended by officers. In any case, in late August 2021, the Landlord has responded that access via Baldertongate is not available and that this offer was time limited requiring a decision in June 2021.

#### **5.0 Recommended Option**

- 5.1 The recommended option is option B i.e. to develop the car park as per the scheme approved by Planning Committee (including the removal of the trees).
- 5.2 The Council have entered into a legally binding agreement, which requires the construction of a new car park accessed from the Council's existing London Road car park. It is

considered that the costs associated with “buying out” the Council’s obligations would be wholly disproportionate to the taxpayer by way of a surrender payment or to buy back the freehold.

- 5.3 Furthermore, the existing lease does not include a rent review clause and therefore under the terms of that lease the rent is fixed for the 25-year term.
- 5.4 Having carefully considered options relating to the subject site in isolation as well as increasing the car parking area by including the adjacent “yellow” land, it is clear that all variations of the scheme include the removal of all or some of the trees.
- 5.5 The economic and commercial benefits which the delivery of this scheme will bring to the wider town centre have been considered against the loss of green space and the understandable concerns raised by members of the public. On balance, as the loss of green space can be offset by the tree planting scheme set out in the report, it is considered that the originally proposed scheme should proceed as planned.
- 5.6 The financial viability assessments all point towards the consented scheme; Option B as providing best value to the Council with this option also:
- Allowing the site to become income generating in the shortest time period and offsetting the rent payments due to DPL which came into effect as from 22<sup>nd</sup> January 2020.
  - Deliver additional car parking in a popular shopper car park location, which will help protect the vitality and viability of the town centre.
- 5.7 A procurement process was initiated in April 2021 to ascertain what the updated costs would be for undertaking option B. The tender documentation stated a maximum budget of £150,000. The procurement process was completed in July 2021 and the lowest price tender received was [REDACTED]. This tender price is held until 1 October 2021.
- 5.8 A proposed timeline for the implementation plan, should option B be approved, is shown in the table below. This timeline is predicated on the works necessary to ensure that the existing planning permission is complied with, being completed by the end of November.

Table 5

<b>Implementation Plan</b>	
<b>Milestone</b>	<b>Deadline</b>
Award of Tender for contractor	September 30th 2021
Preparation works on site	October 2021
Works commence on site (estimated 7 week build)	November 2021
Re-launch of extended and improved site	March 2022

**6.0 Equalities Implications**

6.1 The London Road Car Park has Disabled Parking Accreditation in recognition of its accessibility: [www.dpaccreditation.org.uk/about-the-dpa/about-the-dpa](http://www.dpaccreditation.org.uk/about-the-dpa/about-the-dpa). Any approved option will also provide for additional disabled parking.

**7.0 Financial Implications (FIN21-22/4006)**

7.1 Of the original £115,000 capital budget, approved at 30 November 2017, for the extension to London Road car park, £7,593 has already been incurred on scoping and planning works carried out in 2018/19. Therefore, in 2020/21 there is a remaining Capital Budget available of £107,407. Should the scheme not go ahead based on the original approval this £7,593, would be abortive and need to be charged to the general fund revenue account.

7.2 Should the decision be to not implement the currently approved scheme and buy back the land without implementing a car park, the Council would need to add this to the Capital Programme and remove the existing scheme.

7.3 The purchase would need to be funded through the Change Management Reserve. As per paragraph 4.7, the external valuation of the site as a car park is estimated at [REDACTED]. Annual additional income receivable based on the currently approved scheme of a car park would be forfeited and there would be, currently unquantifiable, costs in relation to the upkeep and maintenance of the green space. [REDACTED]

[REDACTED] There would be no income generation with this option.

7.4 Should the decision be to implement the scheme as is, [REDACTED]  
[REDACTED] to be funded by  
[REDACTED] borrowing (MRP) [REDACTED]

This would be charged to the revenue account over the remaining 22 years of the lease.

7.5 Should the decision be to implement the reduced scheme, [REDACTED]  
[REDACTED] to be funded by  
[REDACTED] borrowing (MRP) [REDACTED]

This would be charged to the revenue account over the remaining 22 years of the lease.

7.6 Should the decision be to not implement the currently approved scheme and do nothing, the Council would be committed to the £30,000 annual lease payments over the remaining

22 years of the lease; a total of £660,000. In addition to this, there would be unquantifiable costs in relation to the upkeep and maintenance of the green space. At the end of the lease term, the Council would be required to implement the Car Park as per the lease agreement at an estimated cost of [REDACTED]. There would be no income generation under this option.

- 7.7 Should the decision be to enter into a new lease and keep the land as green space, the Council would be committed to the £25,000 annual lease payments over the new 30 year term of the lease. This would total £750,000 over the term of the new lease, meaning a total outlay of £780,000 when included with the £30,000 incurred in the current financial year. In addition to this, there would be unquantifiable costs in relation to the upkeep and maintenance of the green space for the term of the lease. There would be no income generation under this option.

## **8.0 Comments of the Section 151 Officer**

- 8.1 As set out in the report, the former Municipal Buildings and its associated green space was sold by the council to Dutch Properties Ltd (DPL) on 1 November 2016 for £450,000.

- 8.2 On 22 January 2019, the council entered into a contractually binding 25 year lease for the land highlighted in blue in the diagram shown in section 1.3 of this report. The terms of the lease include an annual rent payment of £30,000 per annum, to commence after an initial rent free period of 2 years. The first payment, therefore, became due and was paid to the land owner on 22 January 2021. The only reason for entering into the lease was to construct a car park that would extend the availability of car parking on the existing London Road car park and to generate revenue that would exceed the annual rental cost of £30,000. The requirement to build a car park on this site was therefore included as a legal requirement in the lease.

- 8.3 This report includes options in addition to the approved scheme to remove the trees on site and build the car park and the financial implications of each of these options are summarised in the table in section 4.2 with more detail given in the Financial Implications in section 7. As stated in the report, three of these options are not viable as these would involve additional significant costs to the taxpayers of the district. These options are (a) do nothing and (b) buy out of the lease/purchase the freehold, (c) enter into a new lease with revised terms of £25,000 per annum over 30 years without the obligation to develop a car park.

**(a) The option to do nothing** has no merit as the council would continue to pay £30,000 per annum for the remaining 22 years (£690,000 in total, including the payment already made), continue to incur costs in maintaining the site and then have to build a car park anyway at the end of the lease term at an estimated cost of around [REDACTED] (based on current cost of construction inflated to the end of the lease term. Without any income contribution from a car park the whole cost of **£690,000 would be borne by the residents of the district**. As an approximation, in council tax terms, this equates to **3,791 average Band D properties**.

**(b) The option to purchase the land** also has no merit. The land owner has proposed a revised price for the land of **£600,000** and the council's independent valuation has suggested a value of [REDACTED] based on use of the land as a car park. There are two fundamental issues with pursuing this option:

- i. The whole of the demise; municipal buildings and the green space was sold by the council in November 2016 for £450,000. The purchaser then sold the municipal buildings to a related party for £375,000. These buildings are currently being developed as apartments which will generate a further development profit for the owner. This option presented here now is for the council to buy back the remaining green space for [REDACTED] **£600,000.** [REDACTED] **This additional cost will be borne by the residents of the district.** As an approximation, the cost of **£600,000**, in council tax terms equates to **3,297 average Band D properties.**
- ii. As stated above, the valuation of [REDACTED] is based on the use of the land as a car park and not as green space; yet the intent is to use it as green space – otherwise the council would be developing it as a car park under the terms of the current lease. Therefore, if the council are to consider purchasing the land then it should be doing so at a value commensurate to its use as green space.

**(c) The option to enter a new lease for 30 years at 25 years**, also has no merit as this option, like the option to purchase the freehold, will cost the residents of the district a total of **£750,000** over the term of the lease with no income to offset against this cost. As an approximation, the cost of **£750,000**, in council tax terms equates to **4,121 average Band D properties.**

8.6 In making their decision, members will need to take into consideration all of the information presented in this report including the monetary and non-monetary value for money arguments that have been presented. However, a key consideration has to be the financial impact of the decision on all of our 121,421 residents and therefore in my professional opinion, members should approve the officers' recommendation to proceed with the approved scheme to build out the car park and discharge the contractual obligation as per the existing lease with Datch Property Services Limited.

#### 9.0 **RECOMMENDATIONS** that:

- a) **Members approve progression of recommended option B;**
- b) **irrespective of the preferred option, Members approve an initial start on site to meet the requirements of the planning permission being maintained by November 2021 in the interests of retaining the current planning permission; and**
- c) **in the event that Members approve recommendation b), that the capital budget is [REDACTED] funded by [REDACTED] borrowing in order to complete the works, and provide for additional tree planting and landscaping as set out in option B.**

#### Background Papers

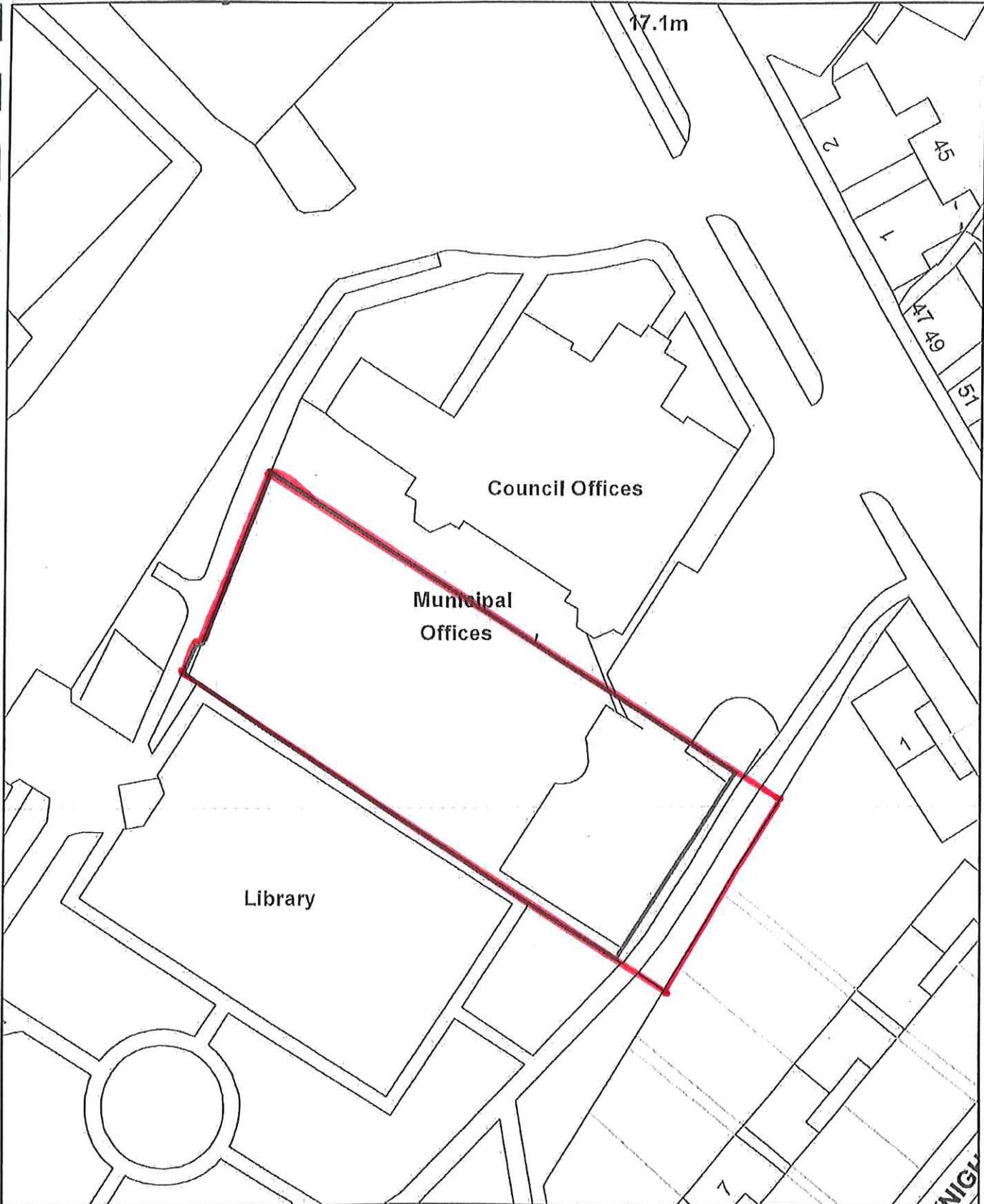
Nil.

For further information, please contact Neil Cuttell on Ext. 5842

Matthew Lamb - Director - Planning & Growth

# Asset Management

THE PLAN



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Land adj  
20 Baldertongate  
Newark on Trent  
Nottinghamshire  
For Identification Purposes Only

Date:<Double click to insert>
Grid Ref: SK<Double click to insert>
Scale:1:500

*[ON HEADED NOTEPAPER OF SELLER]*

xx November 2021

Dear Newark & Sherwood District Council

**FROM:** Datch Properties Limited

**TO:** Newark & Sherwood District Council

- (A) Datch Properties Limited intends to sell Newark & Sherwood District Council Land on the south side of 20 Balderton Gate, Newark (NG24 1UW) on the following heads of terms. These heads of terms are not intended to create any legally binding obligations. They are subject to contract, and approval of a meeting of Newark & Sherwood District Council's Full Council on 24 November 2021.
- (B) The documentation for the proposed sale may contain additional terms on matters that are covered in this document.

**Agreed terms**

**1. Seller**

**DATCH PROPERTIES LIMITED**

Country of incorporation/registration: England

Company number: 08680791

Registered office address: Unit 1, Cabourn House, Station Street, Bingham, Nottingham NG13 8AQ

**2. Buyer**

**NEWARK & SHERWOOD DISTRICT COUNCIL**

Address: Castle House, Great North Road, Newark, Nottinghamshire NG24 1BY

**3. Property**

Land on the south side of 20 Balderton Gate, Newark (NG24 1UW) being part of the land registered with the Land Registry under Title Number NT527347. A plan is attached showing the property edged in red.

#### **4. Purchase price**

- 4.1 The purchase price will be £450,000 exclusive of any amount arising in respect of VAT. The Seller will produce to the Buyer satisfactory evidence of its option to tax and a VAT invoice.
- 4.2 A deposit of £45,000 will be payable on exchange of contracts. The balance will be payable in full on completion.

#### **5. Title**

The property will be sold subject to the lease made between the parties on 22<sup>nd</sup> January 2019 which will automatically determine on completion of the transfer.

#### **6. Sale of part**

- 6.1 The transfer will reserve the following rights over the property:
  - 6.1.1 the right to use and maintain any service media in over or under the Property which serve the Seller's Retained Land and which are in now in existence
- 6.2 The transfer will grant the following rights over the seller's adjoining land for the benefit of the property:
  - 6.2.1 The right to use and maintain any service media in over or under the adjoining land which serve the Property and which are in now in existence
- 6.3 The Transfer will contain a statement that the parties intend that the Council's leasehold interest shall merge in the freehold on completion and that the Seller will use its best endeavours to assist in any necessary application to the Land Registry to give effect to the termination of the Lease detailed in paragraph 5 above.
- 6.4 The Seller confirms that none of the pending Land Registry applications against NT527347 will affect this transfer.

#### **7. Exchange and completion**

- 7.1 In accordance with the timescale in the pre-emption clause in the Lease between the parties detailed in paragraph 5 above, the parties will endeavour to exchange contracts within twenty working days of the Buyer's conveyancer having received from the Seller's conveyancer the contract documentation and confirmation regarding the pending Land Registry applications as per paragraph 6.4 above.
- 7.2 The parties will endeavour to agree a completion date no late than ten working days after exchange of contracts.

**8. Costs**

Each party is responsible for its own legal costs in connection with the transaction.

Signed by .....

For and on behalf of DATCH PROPERTIES LIMITED

Signed by .....

For and on behalf of NEWARK & SHERWOOD DISTRICT COUNCIL

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted