

Item No.	Classification: Open	Date: 8 March 2013	Decision Taker: Cabinet Member for Regeneration and Corporate Strategy
Report title:		Harmsworth Quays Assignment	
Ward(s) or groups affected:		Surrey Quays	
From:		Chief Executive	

RECOMMENDATION

That the cabinet member for regeneration and corporate strategy

1. Instructs officers to formally consent to the application by Associated Newspapers Limited ("ANL") made on 21 December 2012 ("the Second Application") to assign its various leases in Harmsworth Quays ("HQ") to British Land Property Management Limited, with Union Property Holdings (London) Limited standing as guarantor (together "British Land").
2. Notes there was a previous application by ANL to assign its various leases to British Land made in August 2012 ("the First Application"). The First Application was made on the same terms, but was not accompanied by sufficient supporting documentation and information in relation to the scheme proposed by British Land. The First Application was refused on the basis set out below, and proceedings were issued by ANL (the details of which are also set out below).
3. Instruct officers, if possible, to deal with the swift disposal of the court proceedings surrounding the First Application.
4. Notes officers' recommendation that the Second Application be consented to is as a direct result of additional information provided by British Land in support of the Second Application which was previously withheld / unavailable in relation to the First Application detailing the scale and nature of the development scheme they intend to pursue at HQ.
5. Welcomes the recent announcements by King's College University ("King's") to seek to establish a new major campus at Canada Water.
6. Instructs officers to work with King's in undertaking their viability and feasibility studies.
7. Instructs officers not to negotiate the sale of the freehold or extension of the lease until King's have gone through an estate review and tested ideas through the AAP.

BACKGROUND INFORMATION

8. This report concerns a request dated 21 December 2012 from Associated

Newspapers Ltd (ANL) to assign its various leases in Harmsworth Quays (HQ) to British Land, defined above as the Second Application.

9. ANL operates a print works out of HQ and the extent of the site is shown on the plan at Appendix 1. Two of the plots, 1 and 4, are owned freehold by ANL, the other plots are the council's freehold and are occupied by ANL by way of a number of leases. Most of the site is covered by one lease numbered as plot 5.
10. The terms and conditions of the leases are not identical but, for the purposes of this report, the material provisions are consistent. For convenience, unless otherwise stated, this report will refer to the "Lease" when referring to the leases and to the First Application and the Second Application separately as defined above.
11. HQ is a strategically important site for the regeneration of Canada Water. The council has publicly stated its preference to accept a surrender of the ANL lease so as to maximise the community benefit and employment opportunities from the site's redevelopment. However, there is no obligation in the Lease to agree a surrender.
12. ANL has chosen to exercise its right to sell its interest to a third party by way of an assignment of the Lease. The council is legally bound to consider requests to assign in accordance both with its statutory obligations and with the Lease terms and to act reasonably in deciding whether or not to consent to such requests.
13. The report includes information on other related matters, such as the Lease user clause and the possibility of the council selling its freehold interest. The review of the Canada Water Area Action Plan is also relevant and is discussed below. However, the decision to be taken here is as freeholder of the majority of the HQ site on the specific issue of the Second Application.
14. On 28 March 2012, the council adopted the Canada Water Area Action Plan. The CWAAP includes a vision for the area that it should be developed as a more traditional town centre with a mix of uses. During public consultation, there was consistent and strong support for the creation of employment generating uses. There was also concern at the scale of residential development and the ability of local infrastructure to cope with a large number of new homes and the traffic this would generate.
15. For most of the plan preparation period, ANL led the council to believe they intended to remain in occupation of HQ. It was not until August 2011, during the Examination in Public, that ANL informed the council of its decision to relocate its operation to Essex.
16. Having first taken the view of the Planning Inspector, it was agreed that the change of status of such an important site justified a review of the CWAAP. That process began in the summer of 2012 for a study area that includes HQ, the Mulberry Industrial Estate, site E (trading as What Store) and the Surrey Quays Leisure Park.
17. The review will run until the middle of 2014 with the first key date being April 2013 when cabinet will be asked to confirm the preferred option for the development of the area. It is anticipated this will be consistent with the vision in the adopted CWAAP and will encourage a mix of uses.

18. The reviewed Area Action Plan (AAP) will be evidence-based and consistent with the new National Planning Policy Framework. It will also have to reflect the government's emerging developer-friendly approach to planning matters.
19. For large regeneration areas that are expected to go through a long period of transformational change, like Canada Water, this approach gives rise to a number of challenges. In simple terms, the social, economic, environmental and market condition at the beginning of the plan preparation process will be quite different from those that persist later. The regeneration that the market is able and willing to deliver at the start of the process may not be what local people will support or what is appropriate for the long term. For Canada Water, there is considered to be a particular pressure to promote employment generating uses and to make sure there is not over provision of residential development.
20. In January 2012, ANL sought and was granted council support in the marketing of its interests in HQ. The council confirmed that in principle it was willing to sell its freehold to facilitate an appropriate redevelopment scheme; one that included a significant element of employment generating uses. The council also confirmed that at that time it was not in a position to accept a surrender of the ANL leases.
21. This position changed as the council's strategy in relation to the site developed. Due to its strategic importance for the long term success of Canada Water town centre, it was seen as prudent for the council to take control of the site by acquiring ANL's property interests. The council subsequently made an offer for ANL's interest however this was not accepted. The council subsequently learnt that terms had been completed several months prior to the council's offer although this was not disclosed in either January 2012 or when the council made its offer.
22. We understand that ANL began marketing the site in summer 2011. It subsequently became known that, in January 2012, ANL had been in detailed discussions with British Land to assign to British Land its interests in HQ. Then, in April 2012, the two parties had entered into an agreement for the assignment of the Lease – this agreement was signed on 27 April 2012.
23. During early 2012, King's also emerged as a potential investor in Canada Water, initially looking to build student accommodation on the Mulberry Industrial Estate site. King's quickly identified the unique opportunity Canada Water afforded it to create a new major campus for the University, which has been explored as part of the review of the AAP. King's has also undertaken a number of public consultation events where its proposal has generally been well-received.

KEY ISSUES FOR CONSIDERATION

Policy implications

24. The granting of consent to the assignment will allow for early consideration on the future use and probable redevelopment of this strategic site.
25. The revised AAP will consider the most appropriate uses for the site whilst seeking to accommodate substantial employment within any redevelopment proposals.

26. In the long term any redevelopment of the site will generate a substantial capital receipt in addition to provision of new, homes, employment and academic opportunities.

Resource implications

27. There are no substantive resource implications to granting the assignment save as to legal costs incurred in the proceedings concerning the First Application and the legal costs associated with agreeing and documenting the Second Application. The council will seek its legal costs from ANL in relation to the proceedings.

LEGAL AND COMMERCIAL BASIS FOR RECOMMENDATION TO CONSENT

The First Application and reasons for refusal

28. The First Application was the subject of correspondence during September and October 2012 between solicitors for the council and ANL. The council sought a meeting to discuss the First Application, which was not acceded to by ANL.
29. The information requested by the council from ANL included the following to allow it (the council) to consider the First Application:
 - (a) Details of any proposed development schemes for the Site that were being considered by British Land;
 - (b) Feasibility studies (or similar) produced by or on behalf of British Land in relation to the Site;
 - (c) Any proposals that British Land may have for the Site to be left vacant for any period of time (and, if so, how long and for what purpose) and any plans in that regard; and
 - (d) Details of any uses that British Land proposed for the Site.
30. ANL responded to say only that British Land did not yet have any "*definite plans for the site*". It stated that "*producing even preliminary plans at this stage would be pointless and positively misleading*" and that "*any scheme worked-up in the future...is unlikely to bear much resemblance to any preliminary plans produced now*".
31. Consequently, as the council had no information or documentation relating to such proposed schemes (or even as to the *type* of scheme that British Land might be contemplating), it was not able to assess how long it might take British Land to work up, agree and build any given scheme (and therefore how long the site might be vacant), and had no comfort as to British Land's intentions in relation to the site.
32. The council, having taken extensive legal advice from its external lawyers (Field Fisher Waterhouse), refused consent to the First Application. The council's reasons for refusal were set out in detail in a letter from Field Fisher Waterhouse to ANL's lawyers (Reed Smith) dated 23 November 2012 (and subsequently expanded upon in the proceedings which were later issued by ANL).
33. The failure by ANL and British Land to engage fully with the council and to provide substantive information meant the council had significant and reasonable concerns as to the true nature of British Land's intentions for the site.

The Second Application and reasons for giving consent

34. The Second Application was made by a letter from ANL's solicitors dated 21 December 2012.
35. Under cover of the Second Application, ANL provided the council with a five page letter from British Land dated 20 December 2012, setting out its vision for the site and the manner in which it was hoped to work together with the council together with over 100 pages of supporting documentation supporting the Second Application. The supporting documentation (whilst insufficient to assuage the council's concerns at that stage) comprised partly of information the council had previously requested of ANL/British Land in relation to the First Application (but which had not been provided in relation to the First Application).
36. Following receipt of the letter, further queries were raised by the council in the light of what had been provided by British Land.
37. All parties met on 16 January 2013 to discuss the letter of 20 December 2012, and to discuss the queries and concerns the council had in relation to British Land's plans for the site. At the meeting, both ANL and British Land agreed that British Land would provide yet further information about the proposed development to the council in support of the Second Application.
38. Further information was provided by British Land in the form of a letter dated 24 January 2013. The letter stated its purpose was to "*supplement the information provided on 21 December 2012 in support of [the Second Application]...*" The letter did the following:
 - Attached a strategy document providing information and responses to the council's queries in relation to possible development and uses of the site;
 - Set out the fact that a possible development would include residential, offices, retail and leisure, community uses and light industry;
 - Explained British Land's position in relation to the possibility of a university campus at the site; and
 - Set out British Land's plans for engagement with the council and a proposed route to achieving a scheme which reflected the council's vision for the site, including the possible benefits to the council and the community as a whole.
39. On 31 January 2013, the director of regeneration, head of property and the principal valuer met with British Land representatives to discuss the scope of the further information provided under cover of the letter dated 24 January 2013.
40. Following that meeting, in a further letter dated 1 February 2013, British Land recorded the outline of what was discussed at the meeting, and included an undertaking by British Land to "*provide further detail to the paper issued on 24th Jan to aid your decision and to address potential concerns of the members and community of LBS.*"
41. On 8 February 2013, the council received that further detail, comprising a further long letter, together with a re-worked and expanded report on British Land's plans for the site, to include those matters which had been discussed at the meeting on 31 January 2013.

42. In the light of the above, the council's position is that, since the Second Application was made, substantial further information has been provided in relation to British Land's plans for the site. Additionally, ANL permitted (under the Second Application) an open and transparent dialogue between the council and British Land (requested by the council in the context of the First Application, but not permitted at that stage by ANL) which has been of key importance in going some way to assuage the council's concerns.
43. The paucity of information the council was provided in relation to the First Application gave rise to concerns on its part as to British Land's intentions. Since the Second Application was made, the council is now of the view that British Land has made an effort to engage with the council and to understand the council's particular responsibilities to its stakeholders. In doing so, it has taken significant steps to address the council's concerns. It has also provided extensive additional information in respect of its intentions in respect of the site.
44. In addition, the council recognises that it has an existing (and productive) relationship with British Land in relation to the neighbouring Surrey Quays shopping centre, and various other projects.
45. These are all factors that the officers have taken into account when coming to its recommendation that the council should consent to the Second Application.
46. Officers recommend consent be given, in reliance on the material provided to it by ANL and by British Land. In addition to this, the fact that consent is given does not relinquish the council's decision-making power in relation to any proposed development at the site.

Implications of consent

47. The council's consent, if given, would merely be consent to the assignment of the Lease. It is not consent to any development that British Land may propose for the site. At that stage, not only would British Land be obliged to apply for planning permission, it would also be required to apply to the council under the terms of the Lease for consent to carry out such works. This would be a fresh application under the Lease. If it does so, the council is obliged to consider such an application and, if it is reasonable in doing so, it can refuse such consent. Any such application is not prejudiced by consent to this application.
48. In addition, if it gives consent, the council retains an absolute discretion to refuse any of the following applications that might be made by British Land in the future:
 - (a) To extend the Lease term;
 - (b) To change the permitted use of the site;
 - (c) To surrender the Lease and purchase the council's freehold interest

Implications of refusing

49. The council is under a duty to consider an application for consent to assign and to act reasonably in that regard. That means that, if the council unreasonably refuses consent, ANL could start new proceedings against the council for a court declaration that it is acting unreasonably and damages for any losses that it suffers as a result of a refusal. So there are risks to the council if it were to refuse consent to the Second Application.

50. The council should also consider its relationship with British Land which is the occupier of neighbouring land.

Reasons for recommendation

51. In coming to its recommendation, the officers have considered:
- Statutory and contractual obligations to ANL;
 - Further information and documentation that has been provided by British Land in the context of the Second Application;
 - Continuing powers and controls in respect of the site;
 - Risks of refusing consent; and
 - On-going relationship with British Land in the Surrey Quays area
52. Consequently officers, recommend consenting to the Second Application.

Community impact statement

53. The consent to the assignment will have little or no immediate impact on the surrounding community.
54. The decision by ANL to relocate was taken over a year ago and the resultant loss of employment to the immediate vicinity has taken effect.
55. The community will be affected by any redevelopment of such a large site and it is the council's intention that detailed consultation with the local community through forums open reports (including this report) and the revisions to the Area Action Plan will be undertaken prior to any proposals being considered.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

56. External legal advice has been taken from leading landlord and tenant solicitors and also from Queen's Counsel. In addition, internal legal officers have been fully consulted and involved concerning this process and with the meetings with counsel.
57. The legal position has been set out in detail in this report and legal services concur with the opinion and the advice which has been provided.

Strategic Director of Finance and Corporate Services (CE/13/003)

58. The strategic director of finance and corporate services notes the recommendation that the Second Application be consented to as a direct result of additional information provided by British Land in support of the Second Application which was previously withheld / unavailable in relation to the First Application detailing the scale and nature of the development scheme they intend to pursue at HQ.
59. It is noted that there are no direct costs as a result of this transfer but that further reports will be needed before any schemes progress. Legal costs are expected to be covered by the assignor. Officer time to enact this decision can be contained within existing resources.

Director of Planning

60. The Canada Water area action plan (AAP) provides a vision, objectives and policies to guide development in the Canada Water action area over the period 2011-2016. The AAP was adopted in March 2012, following several rounds of consultation and an examination-in-public held by an independent planning inspector in summer 2011. In 2011 ANL announced it would be vacating the Harmsworth Quays printworks. The adopted AAP is predicated on the printworks remaining in situ. In the light of the fact that the site will become available for development, the council is revising the AAP to provide a land allocation, including appropriate uses and quantum of development, for the Harmsworth Quays site. The preparation process is currently at pre-publication stage: informal consultation on the future of the site has taken place but the revised plan has not yet been published.
61. At the examination-in-public, the council stated that any revision would take place within the framework provided by the adopted vision in the AAP. The AAP vision emphasises that the council will work with the local community, landowners and developers to transform Canada Water from an out-of-town style retail destination into a mixed use town centre. Developments in the core of the action area will be expected to contribute to this aspiration. The land uses proposed by BL, including provision of employment space, retail and potentially a university campus provide a basis for further exploration of appropriate land uses through the process of revising the AAP and through preparation of a planning application.
62. The quantum of space proposed by BL would result in a density significantly above the upper threshold of 700 habitable rooms per hectare set out in the Core Strategy. The Core Strategy does allow for densities over the upper threshold provided that an exemplary standard of design is achieved. The policy compliance of this aspect of the proposal would need to be explored further through the AAP and any planning application.
63. With regard to housing provision, in accordance with the approach outlined in the December 2011 planning committee report "Clarification of Southwark's affordable housing planning policies", affordable rented homes would only be allowed where it can be demonstrated that it is not viable to provide social rented accommodation.

BACKGROUND PAPERS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Harmsworth Quay London SE16 site map
Appendix 2	British Land Harmsworth Quays note

AUDIT TRAIL

Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	James Oates, Principal Valuer Jeremy Pilgrim, Head of Property	
Version	Final	
Dated	7 March 2013	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Director of Planning	Yes	Yes
Cabinet Member	Yes	No
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