



**Report to: Policy and Resources Committee, 28<sup>th</sup> July 2020**

**Report of: Corporate Director - Place**

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**Subject: WORCESTER ARCHES : PROPERTY MATTERS**

**1. Recommendations**

**That the Committee:**

- 1.1 Authorises the Council entering into a sub-lease from the University of Worcester of arches No's 27, 28, 29, 30, 33 Croft Road/The Butts in order to offer letting to creative industries in accordance with the terms of the funding conditions for the Arches Project;**
- 1.2 Authorises the acquisition by the Council of all the necessary leasehold interests and other property rights in 56 Foregate Street in order to be able to implement phase 3 of capital work on the Arches Project, subject to the acquisition costs being fully met from the Arches project budget;**
- 1.3 Delegates authority to the Corporate Director, Finance and Resources, the Corporate Director, Place and the Deputy Director, Governance to complete the legal agreements for the property matters set out at 1.1 and 1.2 above;**
- 1.4 Approves the principle of using Compulsory Purchase powers for the acquisition of the 56 Foregate Street property interests, in the event that this becomes necessary and subject to receiving a further detailed report requesting formal authorisation to the making of a Compulsory Purchase Order.**

**2. Background**

- 2.1 In October 2018 a partnership led by the City Council made a proposal under the first round of the Cultural Development Fund for a project designed to regenerate the railway arches from Foregate Street to the River Severn as a hub for creative industries linked to the development of Worcester's festival offer. In February 2019 the Department of Culture Media and Sport awarded a grant of £3m administered through the Arts Council towards the project with a further £1.6m to be secured through local contributions.**
- 2.2 In April 2019 the Committee authorised the Council to enter into a funding agreement with the Arts Council of England, for the City Council to be accountable body for this project. The Committee also authorised a financial contribution from the City Council, which, along with contributions from other partners, is included within the Arches project budget. The Committee gave delegated authority to officers to enter into legal agreements necessary to deliver the project, within the project budget.**

- 2.3 The Arches project is overseen by a Steering Group chaired by the Deputy Leader of the City Council, with representation from the County Council, Severn Arts and the University of Worcester. At an operational level the project is managed by a Project Board drawn from the project partners and meets regularly to review progress across all four project workstreams: infrastructure, festivals, skills and destination management.
- 2.4 Progress reports on the project are also provided to Place and Economic Development Sub-committee through its scorecard and through more specific progress reports. The Arts Council have recently agreed to extend the project programme up to 31<sup>st</sup> March 2023 (a 12 month extension) due to the impacts of Covid19 and are currently considering a request for additional funding given the impact of Covid19 on the costs of the project, particularly the festivals aspects of the overall programme. The physical regeneration aspects of the project, managed through the project's infrastructure workstream, have been divided into 3 phases:
- 2.5 Phase 1 – Refurbishment of 5 arches which are subject to an existing lease to the University of Worcester at the rear of the Hive, to offer lettable space to creative industries and a performance space, together with associated public realm to open up a pedestrian and cycle route.

Phase 2 – Refurbishment of 2 arches along Netherton Court to provide further accommodation with associated public realm to open up a pedestrian and cycle route.

Phase 3 - Demolition of 56 Foregate Street and public realm improvements to open up fully the proposed pedestrian and cycle route from the City Centre to the River Severn.

- 2.6 This report sets out proposals in respect of Phases 1 and 3 which require Committee approval as they involve the Council acquiring new property interests. These are:
- (i) A sub-lease from the University of Worcester to the City Council for the first 5 arches which, when refurbished, the City Council will let out to creative industries.
  - (ii) The acquisition of property interests at 56 Foregate Street to enable the demolition of that building to create the new walkway spanning the length of the project, from the railway station to the River Severn.

### **3. Preferred Option**

#### **Sub Lease of Arch Nos 27, 28, 29, 30, 33 Croft Road/The Butts, Worcester**

- 3.1 The University of Worcester has the benefit of a lease for 35 years from 2010 in respect of arches at Croft Road Worcester from Network Rail. Of these arches Nos 27,28,29,30 and 33 have been identified as suitable for conversion as part of the Cultural Development Fund project and planning consent was granted in March 2020 for their refurbishment to house creative businesses and a performance space. It is a condition of the funding agreement between the City Council as the accountable body and the Arts Council that these arches are used for the purpose of accommodating creative businesses until at least 2027. The Council and the

University have worked together to procure a contractor for the refurbishment of these arches, which, subject to consents, will be in a position to commence the works later this year.

- 3.2 The original project scope envisaged that these arches would be retained by the University of Worcester for the benefit of the project and that the University would seek the necessary consents from their landlord including: consent to the physical works, change of use and the ability to sub let. These negotiations are currently underway with Arch Co which is acting on behalf of Network Rail.
- 3.3 Through the development of the project it has become clear that there a number of advantages to the City Council taking on a sub-lease from the University in order to manage the refurbishment and subsequent creative spaces lettings more directly. Establishing this property interest will help provide the Council as accountable body for the Arts Council funding with more control over this part of the project and should help satisfy the asset security requirements of the Arts Council. It also ensures that any work commissioned in the development of the site will be procured by the Council which will be able to re-claim VAT as per its normal accounting procedures. It is therefore proposed that the City Council take a sub-lease from the University of Worcester in respect of arches 27, 28, 29, 30, 33 for a minimum period of 7 years at a peppercorn rent. The costs of the leases and any void periods will be funded from the project budget.
- 3.4 The Project Board, working with external consultancy, is developing a lettings strategy for these arches to ensure the financial model is sustainable over the project period. The Steering Group and the Project Board will work together to plan a legacy for the project beyond the end of the project period. It is unlikely that the creative spaces, once let, will become vacant or returned to other uses at the end of the project, since one of the key objectives of this project is that it creates a new destination and permanent character in terms of use in this area of the City. Towards the end of the project term (likely to be 7 years) the Council and the University of Worcester will need to agree the future management and occupation of the arches, informed by the recommendations of the Steering Group.

### **Acquisition of 56 Foregate Street**

- 3.5 The implementation of Phase 3 of the infrastructure works will require the acquisition of the leasehold interests in 56 Foregate Street (shown edged in red on the attached plan) in order to demolish the building on the site and achieve the project objective of creating a pedestrian connection with Foregate Street.
- 3.6 There are a number of interests in this property and each will need acquiring or agreements reached with the owners to facilitate the Council's proposals.
- 3.7 The four principal interests involved are the Freeholder (Network Rail), the Head Lessee (The Arch Co), the Head SubLessee (Darvist Ltd) and its tenant in actual occupation of no 56.
- 3.8 Separate negotiations are in progress with the owners of the various leasehold interests and offers have been made to each of these 3 parties.
- 3.9 Terms have been agreed for compensation payable for the acquisition of the tenant's interest on the basis of the full extinguishment of its hot food takeaway business.

Terms have yet to be agreed with the owners of the two other leasehold interests in the property. The successful resolution of these negotiations appears to be dependent on an agreement between them, which the Council is trying to facilitate, on the terms of their future landlord-tenant relationship in respect of adjoining property that lies outside the land to be acquired.

- 3.10 If negotiations are not successful then it is possible that Compulsory Purchase powers will need to be used to be able to deliver this phase of the project.
- 3.11 The Cultural Development Fund budget currently includes provision of £60,000 for the acquisition of property interests at 56 Foregate Street and a further £350,000 for the demolition of the building. Acquisition of all property interests is likely to exceed the budgeted sum and this will need to be addressed by use of the project contingency or through additional financial resources being made available. In order to pursue Compulsory Purchase the City Council will need to demonstrate it has funding in place to undertake the acquisition.
- 3.12 The Ministry of Housing, Communities and Local Government's latest Guidance on Compulsory Purchase process (July 2019) advises that acquiring authorities will need to

*"demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.*

*Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*

- *plan a compulsory purchase timetable as a contingency measure; and*
- *initiate formal procedures*

*This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."*

- 3.13 It is believed that it is in the Council's best interests so as to be able to deliver the final phase of the project that the compulsory purchase process should be initiated. A report seeking authorisation for the making of a Compulsory Purchase Order and its full implications will be brought to a future meeting of this Committee, if this course of action is required.
- 3.14 In the meantime, in line with the MHCLG Guidance, it is recommended that the Council proceeds with the negotiation of terms for acquisition by agreement and that where terms are agreed, the Council proceeds to complete the acquisition in advance of any Order. This demonstrates the Council's intention to deliver the project and supports the justification for the Confirmation of the Order in due course. Particularly in the case of the tenant in occupation, it is also the equitable course of action, to

alleviate the hardship the tenant has faced since the business was effectively blighted by the announcement of the Council's plans.

- 3.15 In respect of the hot food take away business, this will mean the Council will become the tenant of the building until the other interests have been acquired. The tenant will be giving the Council vacant possession (i.e. closing the business). Should this aspect of the project not proceed for any reason, the Council will be in a position to sell on its tenancy or sublet.

### **Alternative Options Considered**

- 3.16 In respect of 56 Foregate Street the following alternative options have been considered:

- (1) To use alternative opportunities to create a route from Foregate Street to the Riverside. This is not recommended as the alternative routes such as the Butts or Castle Street do not provide a direct enough route to fulfil the project's objectives. The use of Cheshire Cheese alley which could provide a more direct route is not considered to be a suitable alternative given its narrowness, quality and lack of prominence.
- (2) To delay all acquisitions until such time as all interests can be acquired. This option could be considered but is not recommended as it would lead to significant further delay whilst negotiations are progressed, with the risk that the opportunity will be lost. In order to progress demolition, access to No 56 is required for technical studies. This can be most readily achieved through a legal interest in the property, as envisaged under the preferred option.

- 3.17 In respect of the lease of Arch Nos 27, 28, 29, 30, 33 Croft Road/The Butts, Worcester the following alternative options have been considered:

- (1) Not to proceed with a sub lease. This would lead to non recoverable VAT being charged to the project by the University adding 20% to construction costs as the prevailing VAT rate. For this reason this option is not recommended.

## **4 Implications**

### **4.1 Financial and Budgetary Implications**

The financial implications of acquiring the leasehold interest in 56 Foregate Street are set out in the report and are included in the project budget. These are subject to potential changes as negotiations take place but there are contingencies in the overall project budget of approximately £304,000, of which £299,000 remain at the date of this report. It should be noted that there are a number of potential calls on these contingencies across all four project workstreams, not just infrastructure.

The effect of the Council acquiring a sub-lease of 27, 28, 29, 30 and 33 Croft Road/the Butts is to transfer the lease costs from the University to the Council. However these costs are included in the project as an in-kind contribution to the project and are therefore offset by project income. The Council will also generate income from the arches once these are let but that income will also return to the project budget to offset other costs during the relevant period to 2027.

#### 4.2 Legal and Governance Implications

The Committee in April 2019 gave officers delegated powers to enter into legal agreements to deliver this project. However it is considered that the acquisition of property rights is a matter for referral back to Committee.

The Council has a duty to secure best value and will not be able to agree to property terms which are unreasonably high and not supported by market valuation advice.

The legal implications of the use of Compulsory Purchase powers will be reported to a subsequent Committee meeting if it proves necessary to proceed down this route.

The acquisition of any leasehold interests or other property rights will be subject to full due diligence including title enquiries and searches.

#### 4.3 Risk Implications

There is a risk that certain property matters are able to be progressed through negotiations but others prove more difficult. The use of Compulsory Purchase powers would mitigate this risk. In addition, the infrastructure/property aspects of this project have been divided into three phases and funding from the Arts Council will be drawn down against phase 3 only if and when it is deliverable, thus mitigating the Council's risk of clawback on Arts Council funding.

#### 4.4 Corporate/Policy Implications

The overall policy implications of the Arches project were reported to Committee in April 2019. The Arches project addresses several of the Council's City Plan priorities and is compatible with the Council's Masterplan. There are no new implications arising from this report.

#### 4.5 Equality Implications

None identified.

#### 4.6 Human Resources Implications

None identified.

#### 4.7 Health and Safety Implications

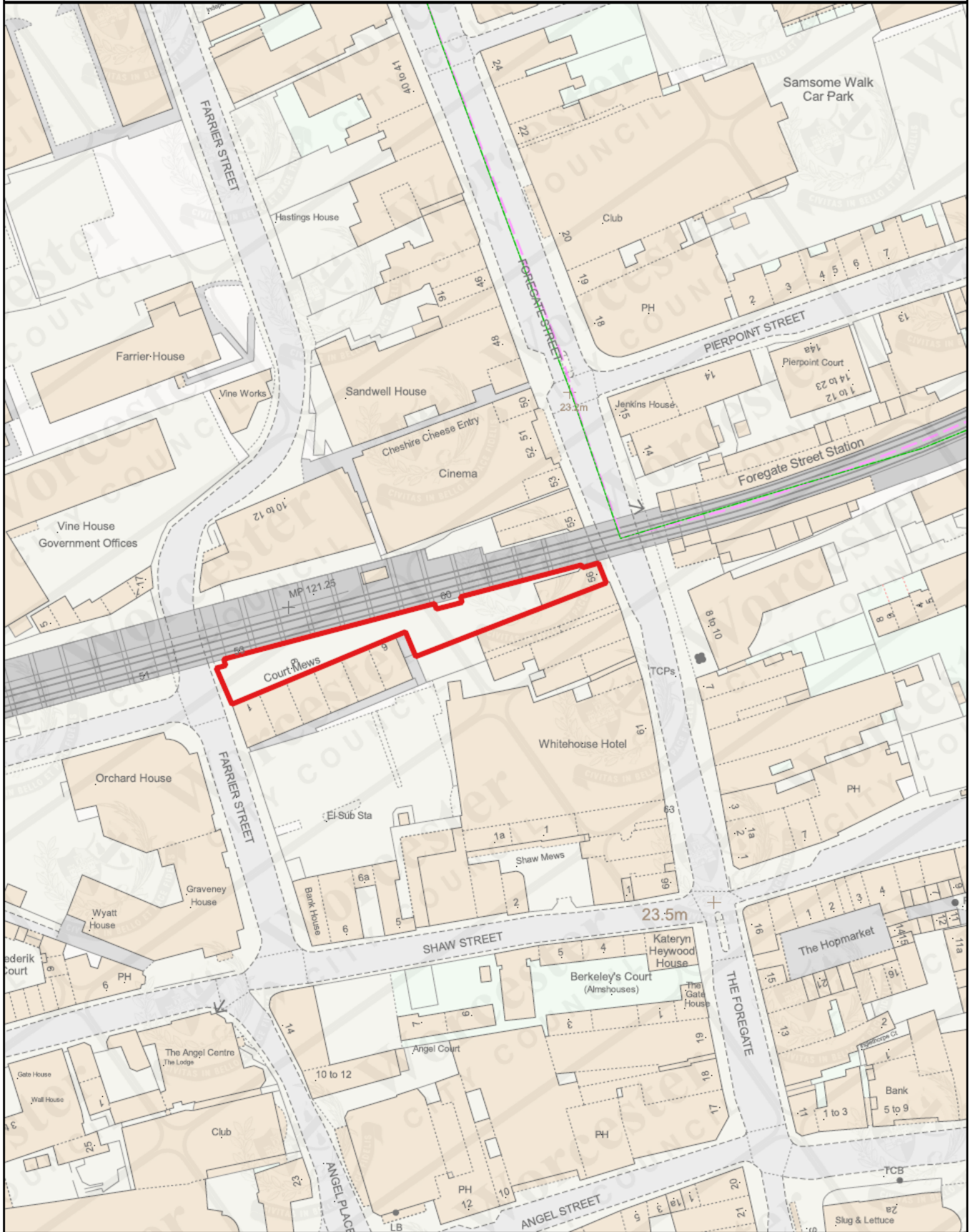
None identified.

#### 4.8 Social, Environmental and Economic Implications

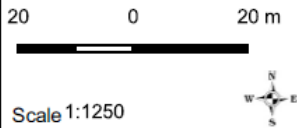
The overall social, environmental and economic implications of the Arches project were reported to Committee in April 2019. There are no new implications arising from this report.

**Ward(s):** Cathedral  
**Contact Officer:** Kevin Moore Tel : 07763573619  
[Kevin.Moore@worcester.gov.uk](mailto:Kevin.Moore@worcester.gov.uk)  
**Telephone:**  
**Background Papers:** None

# 56 Foregate Street Worcester



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 Produced by: Tracey Griffiths