

ST MICHAELS WARD/THREE PARKS AREA  
STATUS – PUBLIC

(REG/20)

<p><b>Portfolio:</b> Regeneration</p>	<p><b>Executive Member/Executive Director:</b> Cllrs. Mike Storey CBE /John Kelly</p>
<p><b>Date of submission:</b> September 2007</p>	<p><b>Subject:</b> Festival Gardens</p>
<p><b>Report No.</b> EDR/142/07</p> <p><b>Background papers</b></p> <p>Report EDR/76/05 Report EDR/122/05 Report EDR/212/05 Report EDR/62/07</p> <p>Correspondence with LML and their consultants Planning application</p>	<p><b>Contact officer:</b> Colin Green</p> <p><b>EXT</b>                    233 3258</p>
<p><b>1. Purpose of this report</b></p> <p><b>1.1.</b> To report back following the consideration of this mater by the Regeneration &amp; Economic Development Select Committee and the Planning Committee.</p> <p><b>1.2.</b> To reconsider the issue of the proposed loss of an area of land adjacent to the development area as open space and to recommend the advertisement of the proposed loss of only 850m2 as open space.</p> <p><b>1.3.</b> To support the proposals for this site that will reclaim c 100 acres of derelict land as high quality open space, restore the Chinese and Japanese gardens and create a high quality residential development.</p> <p><b>2. Background</b></p> <p><b>2.1.</b> The Executive Board of 27<sup>th</sup> April 2007 considered the following recommendations:</p>	

That:

1. The Consultation strategy outlined in Appendix A be noted
2. The Gas Management Strategy and the financial implications that arise from it will be reported back to the Board for consideration in due course.
3. The Gardens and Open Space Management Framework set out in Appendix B be approved and the Director of Regeneration, in consultation with the Executive Members for Regeneration & Transport, Environment & Heritage and Resources, be given delegated powers to approve the detailed Management Plan in due course
4. The consideration of the potential for Green Flag status and the use of sustainable management principles for the gardens and open space be considered further once a managing agent has been appointed
5. The covenant restricting the use of Priory Wood shall read as follows: the Tenant (the Land Restoration Trust) shall not use the Premises otherwise than as gardens and open space for the use of the public and as ancillary thereto for such outdoor recreation activities for the public as shall be previously approved in writing by the Landlord (such approval not to be unreasonably withheld)
6. The Bank Guarantees to be provided by LML in respect of the garden works be reduced to a total of £2.87 million and the £2 million dowry be paid direct to the Land Restoration Trust (LRT) [*in order to ensure the viability of the proposals*]
7. The management company to be appointed to manage the residential development be subject to the approval of City Council Officers in consultation with the Executive Members for Regeneration & Transport, Environment & Heritage and Resources (such consent not to be unreasonably withheld)
8. That authority be granted to advertise the proposed loss of the strip of land adjacent to the promenade (as shown shaded on the plan at Appendix D) as open space and subject to there being no objections and to the land remaining undeveloped (other than supporting columns and the construction of overhanging structures) the area be incorporated into the proposed new lease of the area to be developed

9. That a licence be granted to LML in respect of the area of land adjacent to the promenade as shown cross hatched on the plan at Appendix D to allow the land to be used for access by construction traffic to the proposed development site and the gardens area during the construction period subject to agreement of the following :

- a method statement detailing the access arrangements, hours of use, signage and fencing
- indemnity against any claims actions or damages arising out of the use of this area
- an undertaking to reinstate the site on completion of the works

**2.2.** The Board resolved to approve the above recommendations with the exception of recommendation 8. They also referred the report to the Regeneration & Economic Development Select Committee for scrutiny.

### **3. Present position**

**3.1.** The Select Committee considered the report at its meeting on 14th June and resolved that –

- (a) the decision of the Executive Board be noted;
- (b) it be recommended to the Executive Board that a further detailed report be submitted in due course to address –
  - provision for residential involvement in the management company set up to manage the residential blocks;
  - the minimum possible tree loss as part of the development and any amendment together with maximum botanic diversity to promote wild life;
  - the business plan for the maintenance of the public parkland; and
  - the quality of design proposed.

**3.2.** The Planning Committee of 21<sup>st</sup> May resolved to grant planning permission for the scheme submitted by LML. The decision was referred to the Government Office as it is a departure from the approved Unitary Development Plan.

**3.3.** The Government Office has now advised that the Secretary of State has decided to hold a local public inquiry in respect of this decision.

**3.4.** The Inquiry is due to start on 30<sup>th</sup> October and will last up to 3 weeks.

**3.5.** The Council needs to consider the issues raised by the Select Committee and to reconsider the issue about loss of open space so that if the final decision is to grant planning permission the developer is in a position to implement it without any further delay. This will also give LML the comfort they need to invest more money in preparing for the Inquiry and further developing their scheme.

#### **4. Issues raised by the Select Committee**

##### **4.1. Management Company**

**4.1.1.** LML have advised that a Management Company to manage the proposed new residential development would be set up early in the development timescale.

**4.1.2.** This would be a subsidiary of LML with the new Directors of the Management Company being current employees of LML. The management company would appoint a 'Managing Agent' (which is a third Party) to undertake the day to day maintenance of the communal elements of the development.

**4.1.3.** Following completion of the scheme LML would retain the Long Leasehold Title, and would hand over the Management Company to the residents (i.e. any LML Directors would resign and the residents would nominate their own representatives as Directors). At that stage the residents would have full control of which Management Agents they appoint. They could retain the original Agents or switch to someone else, if they are unhappy with their performance.

##### **4.2. Tree Loss**

**4.2.1.** There has been much publicity about the removal of trees from the site prior to the planning application being considered. The site was not protected by a Tree Preservation Order and LML were not in breach of any other regulations. LML have advised that the clearance was done to actively manage the woodland outside the bird nesting season, to reduce anti-social behaviour and to allow the designs to be further tested.

4.2.2. The following plan shows the proposals for dealing with the tree cover on the site.



- 4.2.3.** The Planning Committee was satisfied that the proposals for the planting of new native species of trees and shrubs and the arrangements for their long term management and maintenance outweighed the trees and vegetation that has been and will be lost.
- 4.2.4.** Because the site was planted all at one time with many non-native species being included and has been unmanaged since it is likely that it would be unsustainable in the long term and could not have been left in its original state.
- 4.2.5.** The trees were originally planted very close together to screen the site from the prevailing winds and to provide a setting for the International Gardens but not with any long term legacy in mind. As a result many have no branches at lower levels and are therefore susceptible to wind blow and disease. 10-15% of the trees are believed to be dead, diseased or dying.
- 4.2.6.** There have been suggestions that the refurbishment of the gardens and southern grasslands will result in a sterile manicured landscape with little biodiversity. This is certainly not the intention. Only the Chinese and Japanese gardens will be intensively managed – the remaining areas of woodland and grassland will retain their natural appearance but with the benefit of improved public access.
- 4.2.7.** In accordance with resolution 5 of the Executive Board of 27<sup>th</sup> April 2007 it is confirmed that the use of Priory Wood as public open space will be protected by a covenant.

### **4.3. Business Plan for the Park**

- 4.3.1.** The Select Committee were concerned about the viability of the plan for the future maintenance and upkeep of the park and the track record of the LRT.
- 4.3.2.** Questions were asked about the overage provisions in the Development Agreement with LML. Officers were asked to try and negotiate an improvement to these terms.
- 4.3.3.** The LRT will appoint a managing agent to manage the site on a day to day basis. A detailed business plan will be drawn up once the managing agent has been appointed tailored to the particular objectives and management resources of the appointed agent.
- 4.3.4.** The management plan for the park will be subject to the approval of the Council and part of the approval process will

include an assessment of the suitability of the selected agent.

- 4.3.5.** The £2 million dowry has been thoroughly reviewed as part of the evolution of the proposals and the LRT have signed an agreement to take a lease of the site on the basis of this amount. They see this as a flagship project to demonstrate their ability to lever in additional funding to enhance the dowry.
- 4.3.6.** In a recent development Mersey Waterfront have approved a grant application for £1.5 million for phase 2 of the works to the park. This will allow the delivery of the Grand Axis proposal in full and allows the full scheme to be delivered as one contract thus making construction easier and seamless. This decision will now go to the NWDA for approval.
- 4.3.7.** More background on the LRT is given in section 6 below.
- 4.3.8.** There has been some debate about the level of profit that the developer might make from this scheme. As was explained at the Select Committee this is a very risky project for the developers. Whilst there is confidence that it is technically feasible to develop on this former landfill site there is no guarantee that the market will have the same confidence. The developer will have to invest a considerable amount of money in the early stages of the project with no guarantee that the market will sustain the current level of values at the end of the projected life of the scheme.
- 4.3.9.** The economic appraisal provided by the developer suggests a developer's profit of 15.9%. This is after reducing the commitment to the refurbishment of the park as approved by the Board on 27th April. This appraisal was independently checked by consultants appointed by the City Council as part of the evaluation of the planning application. They concluded that the assumptions used by LML were broadly correct as far as they can be quantified at this stage in the development of the project.
- 4.3.10.** 15% is a normal developers profit and on a scheme as costly, complex and with as many unknowns as this 20% might be considered more reasonable. The overage provision agreed with LML and incorporated into the development agreement provides for the developer to generate a profit of up to 20% before overage at the rate of 40% of the net profit on the scheme is payable to the Council. This is the Council's safeguard against any "super profit" that the developer might make.

**4.3.11.** Whilst a 50:50 split is more normal for overage arrangements the 40:60 split in this case was agreed in view of the high risks being carried by LML. LML have confirmed that they are not able to improve on this offer but have offered, as a demonstration of goodwill, to make parking space available on the site for coach parking without charge

#### **4.4. Design Quality**

**4.4.1.** The Select Committee were concerned about the quality of the design proposed for the new development.

**4.4.2.** LML have pointed out that the scheme which has received planning consent was an outline application only and the Planning Committee will have the opportunity to address design issues when detailed applications are submitted in due course.

**4.4.3.** It should also be noted that the approved scheme includes a design code which sets out a series of rules and benchmarks for future design quality.

**4.4.4.** To some extent the design is constrained by the nature of the site. The need to provide venting of the ground level area makes it impractical to build conventional houses. The high cost of developing on a contaminated site and the need to generate enough value to restore the gardens dictates a high density scheme.

**4.4.5.** The finger blocks which cantilever over the riverside embankment show some design flair and take advantage of the fantastic views up the river towards the city centre. They also provide some security for people using the promenade in the same way that the blocks overlooking the refurbished park will provide security for that area.

#### **5. The open space issue**

**5.1.** The proposal to advertise the potential disposal of open space that was not agreed by the Board at its meeting on 27<sup>th</sup> April envisaged a large area of around 2 acres being incorporated into the lease of the development site around the former Festival Hall.

**5.2.** A considerable number of objections were received in any event to the proposal including 241 letters and 23 e-mails. Most of these were in a standard format and those received by the date of the Board were copied and circulated at the meeting. All have since



been acknowledged where a legible name and address was provided.

- 5.3.** The Board must, of course, consider all the objections received but this duty is balanced against the significance of the proposed finger blocks to the overall viability of LML's scheme. LML are adamant that without these blocks and the high value apartments that they will contain their scheme will not work and the restoration of the gardens and the southern grasslands will not go ahead. The decision of the Planning Committee to approve the scheme including the finger blocks should also be taken into account.
- 5.4.** Since the report in April discussions with LML have resulted in a change to the area of designated open space required by LML to be included in their lease.
- 5.5.** None of the blocks have a building footprint projecting outside of the existing lease area. Because of their cantilevered design 3 blocks will oversail the lease boundary with one block having a supporting structure grounded outside it (see attached plan – the footprint of the blocks is shown coloured red whilst the projecting area is shown coloured grey). The areas projecting outside the lease boundary are shown coloured yellow.
- 5.6.** Only the three small triangles of land and the 2 strips of land needed for footpath links to the promenade are now to be included in the proposed new lease of the development area. The triangles include a working area to allow the buildings to be constructed. This much reduced area amounts to 850m<sup>2</sup> (0.2 acres) of which only 380m<sup>2</sup> is for the cantilevered overhang with the rest being used to create footpath links to improve the permeability of the site.
- 5.7.** It should be noted that if the LML proposals go ahead 27 Hectares (67 acres) of the 38 Ha (95 acre) site (70.2%) will be restored and managed as public open space.
- 5.8.** The reduced area will still need to be advertised as a potential loss of open space in accordance with the requirement of s.123 of the Local Government Act 1972 and any objections received (including the objections already received) will need to be considered before the City Council can determine whether it wishes to proceed with this disposal.
- 5.9.** The promenade will be retained in Council ownership and this will ensure that people can continue to take advantage of it for recreation and amenity. The promenade will not be used for construction traffic other than access for paving, landscaping and fencing works that cannot be done via the main site. Such access will be controlled via a licence and public use of the promenade

will be a primary condition.

## **6. The Land Restoration Trust**

- 6.1.** LRT are a national public body and an offshoot of English Partnerships (EP). Although a relatively new body they draw on the expertise of EP, the Groundwork Trust, the Forestry Commission and the Environment Agency. These organisations have many years experience between them of remediating and managing similar contaminated sites. They have restored 14 sites through the National Coalfields Programme totalling approximately 565 hectares.
- 6.2.** Most of these have been restored from former colliery spoil tips as informal country parks, with a heavy emphasis on nature conservation, but do include some more formal recreation areas including playing fields and a play area at Askern near Doncaster. They include former landfill areas at Keys in Cannock and on all the sites the Trust is responsible for managing the ongoing residual environmental liabilities.
- 6.3.** The sites are managed on behalf of the LRT by a variety of managing partners, including the Forestry Commission, two Groundwork Trusts, two Wildlife Trusts, and two Local Authorities. The contract with the Forestry Commission for the South Yorkshire sites is worth approximately £500,000 over 5 years.
- 6.4.** LRT acquired 440 sites totalling 74 hectares in Warrington from English Partnerships. Most of this is general amenity land and includes areas of parkland at Grappenhall Heys, Kingswood, Whittle Hall and Sankey Valley, and four play areas. The Warrington sites are managed through four separate landscape contracts worth about £200,000 per annum.
- 6.5.** The Trust now holds significant endowments to ensure that these sites can be managed in perpetuity and has a long term investment strategy to ensure that the returns on these investments can be maximized.
- 6.6.** The Trust is looking to acquire a further 12 sites over the forthcoming year totalling a further 550 hectares including a coastal park at Whitehaven in Cumbria (to be managed by the National Trust) , a former tip at Basildon in Essex and more formal areas of landscaping in Northamptonshire.

**Executive Member (Mike Storey CBE)/Executive Director (John Kelly) recommendation**

That:

1. The contents of the report be noted
2. That, recognising the concerns raised at the Executive Board of 27<sup>th</sup> April and having regard to the debate at the Planning Committee of 21<sup>st</sup> May and the Regeneration & Economic Development Select Committee of 14<sup>th</sup> June, authority be granted to a revised proposal to advertise the proposed loss of only the land shown coloured yellow on the attached plan as open space and to report back the objections that are received.

**Key Decision?**

Yes

**Forward Plan:** Yes

**Implementation effective from**

5 October 2007

**Timescale for action**

It is hoped that an Inquiry will be arranged before the end of this calendar year. It will then take another 4-6 months for the Inspector to write their report and for the Secretary of State to issue their decision.

If consent is granted and the gardens management plan and the gas management strategy are agreed the leases of the gardens, the development area and Priory Wood can be granted and work can start on site.

Because of the planning inquiry It is unlikely that the first phase of apartments will be on sale and the gardens will be restored and reopened before Spring 2009. The subsequent phases of apartments and town houses are expected to take up to 15 years to complete.

**Reason(s) for Recommendation**

The proposals submitted by LML are considered to represent the best opportunity to regenerate this site within a reasonable timescale and at no cost to the City Council apart from an ongoing contribution to the gas management system.

LML consider that their scheme will not be viable without the inclusion of the additional areas of land needed to build the so called finger blocks and therefore the Board are asked to reconsider their previous decision and to allow the advertising of the proposed loss of a much smaller area of land as open space.

**Alternative options to be considered**

The Council could reiterate its previous decision not to allow the proposed advertising of the potential loss of open space

This is likely to mean that the scheme will not go ahead as the economic viability report suggests that it will produce only a marginal return for the developer in the form approved by the Planning Committee and any change to that scheme is likely to make the project unviable.

If LML do not proceed to sign up to the new leases and develop the site the Council would be back in the same position it was with PlaneStation in trying to enforce the conditions of the original 1988 lease.

**Consultation**

Details of the consultation process were set out in an appendix to the report to the Board on 27<sup>th</sup> April.

There was a detailed debate about every aspect of the scheme at the Planning Committee and the Select Committee.

**Consultation with Ward Members and outcome**

Ward Councillors have been consulted on this matter throughout the approval process.

**Financial implications:**

The agreement with LML does not generate a receipt for the Council and indeed under the Agreement the Council is required to contribute £70,000 p.a. towards the cost of the gas management system during the

construction phase and to take the system back once the works are finished.

It is important to stress that planning consent will only be supported for the development of this site if it can be shown that the quantum of development is the minimum required to pay for the restoration of the remainder of the site. That precludes the developer from generating a surplus to pay to the Council as landlord although there is provision in the development agreement for the Council to share in any excess profit once it is completed.

**Best Value:**

On the basis that the proposed agreement with LML in its amended form will result in the refurbishment and reopening of the gardens at no cost to the Council other than for the ongoing liability for gas management it is considered that it represents best value at the present time. Should this position be changed once the gas management strategy has been agreed this will be reported back to the Board for consideration.

**Equality implications:**

There are no implications directly arising from this recommendation.

**Corporate strategy:**

The recommended actions should contribute to the corporate aims to create stronger, safer communities and most importantly to be a green and sustainable City by tackling vacant and derelict land.

**Budget and Policy Framework**

Complies

**Neighbourhood Management Implications**

Neighbourhood Management have commented as follows:

- 1 The scheme offers an opportunity to help address a number of local environmental/safety issues (as highlighted at the last Garston Neighbourhood Committee). Plainly, Neighbourhood Management will positively view a quality development at this site in support of long term sustainability in this area of the city;
- 2 Conversely, the site is currently outside the scope of day to day neighbourhood management but will become a 'neighbourhood' in

its own right. As such it will impact upon resource levels in the future and this will need to be considered in future reviews of neighbourhood management and other services.

**Community safety implications:**

A key objective of the proposed new management regime for the gardens will be to improve safety and security and to tackle the current problems of anti-social behaviour.

**Report attached**

No