

REPORT FROM: DIRECTOR OF PLACE

TO: EXECUTIVE – PARTIALLY EXEMPT REPORT

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PENDLE RISE SHOPPING CENTRE ACQUISITION

PURPOSE OF REPORT

To note the acquisition of the freehold land denoting Pendle Rise Shopping Centre (PRSC) for planning purposes pursuant to section 227 of the Town and Country Planning Act 1990.

RECOMMENDATIONS

- (1) To note the negotiated settlement, reached through the delegated authority of 25th August 2022, with the owner of PRSC, to acquire the freehold interest in the property.
- (2) To resolve that any land acquired by the Council by private treaty in order to facilitate the redevelopment of PRSC (including the proposed acquisition of the freehold interest in PRSC) shall be acquired by the Council for planning purposes pursuant to Section 227 of the Town and Country Planning Act 1990.
- (3) To delegate authority to the Director of Place to appoint Beddows Limited to operate PRSC following its purchase, in advance of a future demolition and redevelopment.
- (4) To note progress and the next steps for the CPO process in respect of PRSC.
- (5) To note the discharge of conditions relating to the adoption of the Nelson Masterplan.

REASONS FOR RECOMMENDATIONS

- (1) To allow for Pendle Borough Council to acquire the Freehold interest in PRSC to enable redevelopment of the site, in line with the prevailing planning permission.
- (2) To enable the Council to rely upon statutory powers in the Housing and Planning Act 2016 to override private rights in land which might otherwise prevent the redevelopment of PRSC from going ahead

(3)	To ensure that a suitably qualified organisation is in place to keep PRSC operating following purchase by the Council, in advance of its future demolition and redevelopment.
(4)	For information.
(5)	For information.

ISSUE

1. The Revitalised Nelson programme is funded by approximately £12.5million of Town Deal funding and includes the redevelopment of Pendle Rise Shopping Centre (PRSC), including the provision of town centre properties for the relocation of existing tenants on a temporary and permanent basis.
2. For the purposes of this report, PRSC comprises the land, buildings and associated facilities within the freehold ownership boundary shown in the plan attached at Appendix One.
3. Penbrook Limited ("Penbrook") will also be investing approximately £12.5million into the Revitalised Nelson project. Penbrook is a Joint Venture between Brookhouse Developments Limited and Pendle Borough Council (PBC) and is the delivery vehicle for Revitalised Nelson. In addition to Pendle Rise, the Revitalised Nelson programme includes the redevelopment of Trafalgar House. Options for Trafalgar House are currently being appraised and will be subject to a separate report at a future meeting.
4. Penbrook were granted planning permission for the proposed redevelopment of PRSC on 11th September 2023, subject to the discharge of various conditions, which are listed in the Decision Notice for application 23/0268/FUL. These conditions are being addressed. The redevelopment proposals involve demolition of the existing buildings and the construction of new retail units in two main blocks, facing each other, across a central car park. The Scheme will be known as "Pendle Rise" and details are contained in Appendix Two.,
5. The approved proposals for PRSC are in line with the Nelson Masterplan adopted on the 25th November 2021, produced by Cushman and Wakefield and adopted by the Policy and Resources Committee at the meeting of the 25th November 2021, subject to some conditions which have been discharged as shown in Appendix Three.
6. The purpose of this report is to note the negotiated settlement, reached through the delegated authority of 25th August 2022, with the owner of PRSC, to acquire the freehold interest in PRSC, and to resolve that the freehold interest in the land, and any other land acquired by the Council to facilitate the redevelopment of PRSC in line with the planning permission for application 23/0268/FUL and the Nelson Masterplan adopted on the 25th November 2021, shall be acquired for planning purposes, pursuant to section 227 of the Town and Country Planning Act 1990, which covers acquisition of land for planning purposes by agreement.
7. Currently PRSC is owned by a private Landlord, Mr Mohammed Asjad Arnold (Mr Asjad) who has interests in various companies where the actual property titles and his various interests are vested.
8. A Committee Report of 25th August 2022 provided a mandate for the purchase of PRSC through a negotiated settlement with Mr Asjad. Discussions duly proceeded through 2023. At the same time, in line with the mandate for working towards a Compulsory Purchase Order for PRSC, provided for by the Committee Report of 13th December 2021, a statutory

requisition for information was issued in accordance with Section 16 of the Local Government (Miscellaneous Provisions) Act 1976. This was sent to Mr Asjad, the companies under his control, and the tenants of PRSC.

9. Mr. Asjad failed to respond to the Section 16 notices and was successfully prosecuted as a result, albeit he still failed to provide the requisite title information. Notwithstanding this, steady progress continued to be made in laying the ground for a negotiated settlement, with Axis Property Consultancy LLP (“Axis”) appointed to lead on negotiations in early 2024.
10. In line with Compulsory Purchase Order (CPO) Government Guidance, Pendle Borough Council funded an independent RICS Surveyor from Roger Hannah & Associates, to represent Mr Asjad in negotiations.
11. Axis (on behalf of Pendle Borough Council) began negotiations with Roger Hannah & Associates (on behalf of Mr. Asjad). Mr Asjad subsequently dis-instructed Roger Hannah & Associates and took up negotiations directly with Axis.
12. At the same time, following discussions with DLUHC, Pendle Borough Council appointed solicitors, Eversheds, to represent and advise the council through the parallel legal process of preparing for a CPO.
13. Following a meeting between Mr. Asjad, Axis and the Chief Executive and Leader of the Council, at which the firm intention of Pendle Borough Council to pursue a CPO was reiterated, a negotiated settlement was reached.
14. Details of the financial consideration are outlined in the Financial Implications section of this report which is included as an exempt Appendix Four
15. Upon completion of the purchase of PRSC, Pendle Borough Council will become owners of the centre. A procurement exercise for a suitably experienced and qualified shopping centre operator has therefore been undertaken by Penbrook Limited with input from Pendle Borough Council officers. Delegated authority is therefore requested for the Director of Place to appoint Beddows Limited, who have been selected as the preferred bidder to operate the centre on behalf of Pendle Borough Council once the purchase is complete.
16. Although Pendle Borough Council will be owners of PRSC, a CPO is still likely to be necessary to ensure that all other remaining interests in PRSC can be acquired and vacant possession of the property can be obtained. Officers consider that this process will be more straightforward with Pendle Borough Council being owner of PRSC, rather than entering into a contested process with the current owner. Once Pendle Borough Council owns PRSC, the remaining interests may include telecom installations on top of PRSC, existing tenants, historic land interests including those appertaining to mines and minerals in the sub-soil, and any Highways land that need to be included in the development footprint - and hence stopped up or used during construction and various other interests.
17. Progress is being made in respect of preparing for a CPO, including an updated land referencing exercise, and a separate report will be brought to a future Executive Committee meeting to request express authorisation for the CPO. This report will therefore include the final requisite supporting information including:
 - a. Draft CPO, Schedule of Interests and Plan(s)
 - b. Statement of Reasons
 - c. Relocation Strategy
 - d. Equalities Impact Assessment

e. Green Book Business Case

18. Not all interests in land can be acquired by CPO, such as restrictive covenants, easements, rights to light and other private rights. However, the Council may rely on the powers in section 203 of the Housing and Planning Act 2016 to override private rights that might otherwise impede the implementation of the PRSC redevelopment. To rely on those powers, one of the conditions that must be satisfied is that the land affected by the private rights must be held by the Council for planning purposes.
19. This report therefore seeks authority to acquire the freehold of PRSC for planning purposes and recommends that the Council resolve that any other land which the Council acquires by agreement for the PRSC redevelopment shall also be acquired for planning purposes under section 227 of the Town and Country Planning Act 1990.
20. Once all outstanding interests in PRSC have been acquired and tenants relocated, PRSC will be demolished and, in line with the Town Deal bid and subsidy control advice received by the Council the cleared site will be transferred to Penbrook Limited for redevelopment in line with the prevailing planning permission.
21. Demolition is targeted to have been completed by March 2026 to allow for the expenditure of Town Deal Funding within the defined funding envelope period which is March 2026. An outline timeline may look as follows, subject to confirmation:

Period	Action
May 2024	Acquire freehold to PRSC
June – July 2024	Complete Land Referencing and assess accurate information on tenancies and interests in PRSC
June – July 2024	Complete remaining documentation in preparation for CPO
July 2024 – July 2025	Make and and pursue confirmation of the CPO, potential for an inquiry if objections are received
July 2025-October 2025	Exercise CPO powers to acquire remaining land interests
October 2025	Decommission PRSC
November 2025	Commence demolition
March 2026	Complete demolition

22. Negotiations with remaining tenants with respect to agreeing and completing relocations, or other mechanisms for gaining vacant possession, will commence in June 2024 and continue in parallel with the other actions listed in the table in 32.

IMPLICATIONS

Policy:

23. The Planning Permission for PRSC and the adoption of the Cushman & Wakefield Masterplan are integral to the development of the Local Plan.
24. These proposals support and discharge the policies and intentions of Pendle Borough Council that are expressed and committed to in its bid for New Town Deal Funding, and are very much in line with Priority 3 of the council's Corporate Plan, promoting 'Good Growth', particularly key actions around delivering the Nelson Town Deal. The redevelopment will also support future actions under the Nelson Long Term Towns Plan.

Financial:

25. See Appendix Four – Exempt Item

Legal:

26. The legal aspects of the negotiated settlement are being handled by the Pendle Borough Council legal department with completion due by the end of May 2024.
27. The proposals remove a long-standing liability and legal dispute over unpaid service charges by Pendle Borough Council to the owner of PRSC in relation to the service charges of the Market Hall in PRSC.
28. Pendle Borough Council are in touch with HMRC to ensure that any implications arising from paying the agreed sum to the current PRSC owner are known and managed in line with their instructions.
29. Pendle Borough Council will continue working towards a Compulsory Purchase Order and are being supported in this process by Eversheds Sutherland.
30. Pendle Borough Council previously received subsidy control advice from DWF Solicitors and the process following acquisition will be in line with this advice: Once PRSC is acquired by Pendle Borough Council, the existing tenants will be relocated followed by decommissioning and demolition of the existing building to leave a cleared development ready site. This is all done using Town Deal Funding. The cleared site is then transferred to the PenBrook JV for redevelopment. The transfer of PRSC to Pendle Borough Council ownership prior to demolition and the transfer of the cleared site at market value to Penbrook Limited is therefore in line with Subsidy Control Advice received and the process detailed to DLUHC in the Town Deal bid.
31. Section 227(1) of the Town and Country Planning Act 1990 provides that the Council may acquire by agreement any land which they require for any purpose for which a local authority may be authorised to acquire land compulsorily under section 226. Section 226 empowers a local authority, on being authorised to do so by the Secretary of State, to acquire compulsorily land in its area,
 - If the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land (section 226(1)(a)); or
 - which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which that land is situated (Section 226(1)(b)).
32. The power conferred by section 226(1)(a) is the most appropriate for the planning purposes to be realised at PRSC. Section 226(1A) of the TCPA provides that a local authority must not exercise its power of compulsory acquisition under section 226(1)(a), unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:
 - the promotion or improvement of the economic well-being of the area;
 - the promotion or improvement of the social well-being of the area; and
 - the promotion or improvement of the environmental well-being of the area.

33. The public benefits which will be delivered by the PRSC will contribute towards the economic, social and environmental well-being of the area, in accordance with the objectives of the Nelson Masterplan.
34. The acquisition of land acquired by the Council for planning purposes pursuant to section 227 of the Town and Country Planning Act 1990 enables the Council to engage the powers in section 203 of the Housing and Planning Act 2016 should it be necessary to do so. Where a site has been acquired or appropriated by a local authority for planning purposes, section 203 enables a local authority to override easements and other private rights. It allows the local authority to erect, construct or carry out or maintain any building or work on land, or to use land, even if that work or use of land, involves an interference with a private right or a breach of a contractual restriction. In other words, section 203 powers can override an easement, restrictive covenant or a right benefiting a neighbouring property. The beneficiary of the private right is then entitled to compensation for the interference with their right.

Risk Management:

35. The Risk Management of Revitalised Nelson is being managed within the overall Town Deal Governance structure, which involve project and programme level risk registers, a monthly review of current risks at project level and a quarterly review at programme level.
36. The risk profile of the purchase of PRSC and CPO has further benefited from external expert input in the form of Eversheds Sutherland and specialist officers from DLUHC.

Health and Safety:

37. See Community Safety section.

Sustainability:

38. The existing buildings making up PRSC and the former office block Phoenix Chambers, are beyond economic repair and so will need to be demolished. However, as far as possible, the building materials will be crushed on site and reused as hardcore.
39. The new Pendle Rise will be built to new energy performance and building control standards, ensuring a magnitude of improvement in the sustainability credentials of the site versus the current buildings.

Community Safety:

40. PRSC is in a very poor state of disrepair. The safety of those using the Centre will be improved by effecting key repairs to unsafe areas and items of PRSC upon Pendle Borough Council becoming owners of the centre.
41. The appointment of Beddows Limited will ensure that PRSC is run in line with necessary Health and Safety requirements going forward.
42. Any Community Safety considerations that may arise during the construction phase will be managed through the construction phasing plan in due course in line with prevailing Construction Design Management (CDM) regulations.

Equality and Diversity:

43. There has been extensive public consultation across the Revitalised Nelson Programme, the planning process for PRSC and through the Town Deal Programme as a whole. This has ensured as far as possible that all views and needs have been considered to inform the final proposals.
44. This approach is further embedded by the production of an Equality Impact Assessment, in order to comply with the Public Sector Equality Duty.
45. There are implications within the proposals for Human Rights as outlined in Paragraphs 46 and 47.
46. Consideration must be given to the interference with private rights protected by the Human Rights Act 1998. In this case a decision to acquire land for planning purposes enables the use of statutory powers to override easements and other rights represents an interference with rights protected under Article 1 of the Protocol to the European Convention on Human Rights. (the right to peaceful enjoyment of possessions) and Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). Any decision to interfere with such rights must strike a fair balance between the public interest associated with the development proposals referred to above and the interference with private rights.
47. Given the clear and substantial public benefits associated with the PRSC redevelopment proposals and the availability of compensation to those whose rights are overridden, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.

APPENDICES

Appendix One – PRSC Plan

Appendix Two – PRSC Proposals

Appendix Three - Discharge of Master Plan adoption conditions

Appendix Four - Financial Implications – EXEMPT ITEM

LIST OF BACKGROUND PAPERS