



To: **Cllr. Neil McGovern, Executive Councillor – Customer Services & Resources**
Report by: **Philip Taylor – Senior Estates Surveyor (Interim)**
Relevant scrutiny committee: **STRATEGY & RESOURCES SCRUTINY COMMITTEE** 17/01/2011

LION YARD DEVELOPMENT PROPOSALS

Key Decision – YES

1. Executive Summary

1.1 The Executive Councillor at the Strategy and Resources Scrutiny Committee on 1st September 2008 approved works proposed by Barclays Nominees (George Yard) Limited (the head lessee) at the Lion Yard Shopping Centre. These works included:

- The closure of the existing link between Fisher Square and Lion Yard Square to create a new retail unit.
- Alterations to the public toilets, with access from Fisher Square.

1.2 The head lessee has now requested consent from the Council, in its capacity as Superior Landlord, to the following:-

- Relocate the public toilets to the Church Walk mall at first floor level of the Lion Yard Shopping Centre, to be operated by the head lessee at their cost.
- Closure of the current Fisher Square public toilets and their incorporation into lettable retail floor space within the Centre.

2. Recommendations

2.1 The Executive Councillor is recommended to: -

- a) Approve the Council granting its consent, as landlord, to Barclays Nominees (George Yard) Limited to relocate and operate the toilets as per the plans and specification detailed in paragraph 3.8 and Appendices 1 & 2.

3. Background

3.1 The Council is the freehold owner and therefore Superior Landlord of Lion Yard Shopping Centre, subject to a head lease to Barclays Nominees (George Yard) Limited. The Council receives a geared ground rent for the Centre based on 25% of the net rent received by the head lessee. Any development of the Centre requires the Council's approval as landlord.

3.2 Proposed improvements to the Shopping Centre were considered and approved by the Council acting as Superior Landlord, in July 2006, September 2007 and September 2008. The head lessee's strategy was to better integrate Lion Yard with Grand Arcade by improving the link between the shopping centres by better alignment of the existing Malls and to maximise the retail floor space.

- 3.3A planning application was submitted by Barclays Nominees (George Yard) in 2007 to redevelop the centre and was granted approval on appeal, after the City Council's planning Committee refused it. The consent covers the 'masterplan' scheme, including the conversion of the existing public toilets, re-location and re-provision of the toilets to the first floor as well as reconfiguration of the HMV store, closure of Fisher Square and re-development of Heidelberg Gardens. The proposed location of the toilets at first floor level has since been revised. Phase 1 is complete and Phases 1+ & 2 remain outstanding. Superior Landlord's consent has been granted to the re-development with the exception of the public toilet closure and re-provision at first floor level.
- 3.4 The Council currently operates The Lion Yard public toilets. Although the Council owns the freehold of the Shopping Centre, the public toilet area is included in the lease to Barclays Nominees (George Yard) Limited and then leased back to the Council. Under the proposals the Council would be asked to surrender its underlease of the public toilets.
- 3.5 The Council acting as Superior Landlord approved (through the Strategy & Resources Scrutiny Committee on 1st September 2008) the closure of the existing entrance to Fisher Square from Lion Yard Square to create a new retail unit. It also approved alterations to the toilets to enable their entrance to be accessed from Fisher Square.
- 3.6 The head lessee has now asked that the Council approve the relocation of the toilets rather than altering them and that the head lessee manages and operates the toilets in the future. This would allow for the public toilets to be developed as lettable retail floor space with associated increased revenues and remove the Council's ongoing operating costs.
- 3.7 The Council entered into a Deed with Barclays Nominees (George Yard) Limited in June 2008, which stated "On completion and opening of replacement public conveniences within Lion Yard (in a location and to a specification approved by the Superior Landlord acting reasonably) the Superior Landlord shall surrender the underlease of the public conveniences in Lion Yard dated 8 June 1982 for nil consideration". Therefore the head lessee is asking the Council, as Superior Landlord, for approval to the proposed location and specification of the new toilets. The Council has a duty to act reasonably (as a commercial landlord not in its civic capacity) regarding granting or withholding consent.
- 3.8 The proposal is to relocate the public toilets to Church Walk at first floor level. Access to the first floor would be by the existing staircase adjacent to the proposed toilet location or the escalators by "New Look". Disabled access would be via the existing lifts within Grand Arcade. A plan showing the proposed location and various accesses is detailed in Appendix 1. This may change slightly when more detailed design work is undertaken.

Following negotiation with Barclays Nominees (George Yard) and consultation with Councillor Pitt (Executive Councillor for Environmental & Waste Services) and Bob Kerry (Project Development Officer Streets and Open Spaces Service) the provision has been significantly increased on what was originally proposed and the table below shows the current provision against that now proposed. A plan illustrating the layout is shown in Appendix 2.

Opening hours will reflect the current opening hours of the Lion Yard public toilets. The head lessee has agreed to install suitable signage and way markings, which will require prior consultation and approval from the Council.

The opening of 'public conveniences' within Grand Arcade has significantly increased the provision in close proximity to the Lion Yard Shopping Centre. In addition John Lewis provides extensive facilities and the refurbished Library now has public toilets as well as the disabled and baby changing facilities recently opened by Shopmobility.

FACILITY	CURRENT	PROPOSED
DISABLED	2 separately accessed DDA compliant toilets	2 separately accessed DDA compliant toilets
FEMALE	14 cubicles	11 cubicles
MALE	6 cubicles and 7 urinals	4 cubicles and 6 urinals
BABY-CHANGE	Communal baby change and also provision in the 2 DDA compliant toilets	Provision within the 2 DDA compliant toilets

3.9A customer count has recently been undertaken, establishing that 75% of users accessed the public toilets via the Lion Yard/Fisher Square entrance and 75% of users when exiting the toilets entered into the Lion Yard Shopping Centre via the same thoroughfare. The proposed closure of this access between Lion Yard Shopping Centre and Fisher Square, which received Committee approval in September 2008, is going to have a significant impact on the use of the public toilets as the nearest access will be via the Grand Arcade entrance adjacent to Carluccio's. The 'new' toilets will in effect be closer to Lion Yard Square, albeit at first floor level.

3.10 The re-provision at first floor level, although fully DDA compliant, is considered to be inferior in location and less convenient than the present arrangement. Extensive discussions were held with Barclays Nominees (George Yard) Limited regarding an alternative ground floor location, but no alternative sites were considered to be suitable and the financial viability of the overall scheme would be jeopardised if not located on the first floor. Any new retail development will look to locate 'public toilets' at first floor or above in order to maximise retail floor space on the ground floor. On balance and in an effort to compromise, the proposed location was deemed to be the most suitable location available.

4. Implications

Financial

4.1 The proposed reconfiguration of the HMV and Curry's Digital stores, to include the public toilets and construction of an additional retail unit, will potentially increase the £705,000 per annum rental currently generated by these two units, by an estimated £725,000 per annum to circa £1.43m per annum of which the Council receives a percentage rent (see below). These figures have been provided by Barclays Nominees (George Yard) Limited. Rental levels may be less when terms for the new lettings are agreed and will reflect market conditions at that time.

4.2 Under the terms of the head lease the Council receives a 25% share of the rent and will therefore potentially see an increase in rental income in the order of between £100,000-£125,000 per annum, in addition to the £55,000 per annum already budgeted for with the approval of the earlier works, which remain outstanding.

- 4.3 A capital contribution from the Council of circa £1.94m will be required under the terms of the lease of which £1.63m has already received Committee approval. An under-spend on Phase 1 of £245,000 is anticipated which indicates a shortfall of £65,500. A reduction in rental income will be experienced during the construction period.
- 4.4 With the management and day-to-day running costs of the toilets being transferred to Barclays Nominees (George Yard) Limited a saving of approximately £34,000 would be achieved in the first year, rising to approximately £65,000 per annum thereafter. Possible staffing issues including TUPE have been raised with Bob Kerry and Councillor Pitt.
- 4.5 If, acting reasonably and in its capacity as Superior Landlord, the Council is minded not to grant consent then it will not benefit from increased rental income via the geared ground rent it receives and will continue to operate the public toilets at its own expense.
- 4.6 A further report will be presented at a subsequent committee meeting once revenue streams and capital expenditure have been fully established.

Legal

- 4.7 The head lease between the Council and Barclays Nominees (George Yard) Limited requires that they obtain the Council's consent before carrying out major works but such consent may not be unreasonably withheld. The Council lease back the toilets from the head lessee and could oppose the proposals under the terms of its lease, which runs concurrently with the head lease expiring in 2101. However, the Deed Of Variation entered into in 2008 establishes the Council's agreement in principle to the re-provision of the public toilets within Lion Yard Shopping Centre and the surrender of the lease for nil consideration, upon them opening.
- 4.8 If consent to the closure and re-provision of the public toilets is not granted by the Council acting as Superior Landlord then there is a significant risk that Barclays Nominees (George Yard) will instigate legal proceedings to challenge the decision. This is likely to incur substantial legal costs and officer time, with uncertainty over whether the Council would be successful in defending its decision.

Equal Opportunities

- 4.9 The proposed changes are not considered to have any significant equal opportunity issues. All proposals will conform to current DDA regulations.

Procurement

- 4.10 There are no procurement issues as the works are dealt with by the head lessee under the terms of the head lease and so would be procured by them. As a relatively minor interest, it is considered that the Council does not have to insist on Barclays Nominees (George Yard) Limited applying the full European procurement rules. The Council will however, insist that there is a transparent procurement process.

Environmental and Community Safety

4.7 There are not considered to be any significant environmental or community safety issues related to this report.

5.0 Background papers

Development asset strategy for Lion Yard Cambridge – Arlington Property Investors – April 2006

Lion Yard Refurbishment Report CB Richard Ellis – June 2006

Lion Yard Development Proposals Agenda, Minutes and Decisions - City Centre Development Scrutiny Committee – 19th July 2006 and 26th September 2007 & 1st September 2008.

6.0 Appendices

6.1 Appendix 1 – Location Plan of Proposed Toilets.

6.2 Appendix 2 – Layout Plan of Proposed Toilets.

7.0 Inspection of papers

If you have a query on the report please contact:

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