

## **REPORT TO EXECUTIVE**

Date of Meeting: 29<sup>th</sup> November 2022

## **REPORT TO COUNCIL**

Date of Meeting: 13<sup>th</sup> December 2022

Report of: Director Finance

Title: Mary Arches Street Car Park Re-development

### **Is this a Key Decision?**

No

### **Is this an Executive or Council Function?**

Council and Executive

#### **1. What is the report about?**

1.1 Mary Arches Street Car Park (“MASCP” or “the site”) is a 481 space city centre car park that is approaching obsolescence. Central Government have provided Exeter City Council (“ECC” or “the Council”) with funding towards the car park’s demolition. This report seeks authority to option the site to Exeter City Living (“ECL”), close the car park, secure vacant possession, demolish and redevelop for a residential led mixed use scheme of circa a hundred new homes.

#### **2. Recommendations:**

That Executive recommends to Council to agree a demolition budget equal to the Land Release Funding received by the Department for Levelling up Housing & Communities and One Public Estate.

#### **That Executive RESOLVES to:**

2.1 Authorise the Director - Finance to dispose of all or part of the land at Mary Arches Street Car Park, as shown on the site boundary plan in Appendix 1, to ECL on terms to be negotiated by the City Surveyor at a sum that represents no less than the best value valuation, if the option granted in respect of the land is exercised;

2.2 Authorise the City Surveyor to acquire by way of Compulsory Purchase Order (“CPO”) any third party proprietary interests within the site;

2.3 Authorise the Director Finance to close Mary Arches Street Car Park on the grounds of economic obsolescence at the appropriate time in the development process;

2.4 Agree the demolition of MASCP utilising Brownfield Land Release Fund (“BLRF”) monies received from the Department for Levelling Up, Housing and Communities (“DLUHC”) and One Public Estate (“OPE”); and

2.5 Agree the redevelopment of the site for a residential led mixed use scheme comprising new homes and ancillary ground floor commercial uses with the granting of over sailing licences if required.

2.6 Delegate authority to the Director Finance in consultation with the Portfolio Holder to agree the final boundary of the land to be disposed of (noting that the area is not to be greater than the land indicated at Appendix 1);

2.7 Agree that the Director Finance be authorised to take all necessary steps to secure the making, submission, confirmation and implementation of a Compulsory Purchase Order to acquire any third party proprietary interests within the site (see Appendix 1);

2.8 Agree that the Director Finance be authorised to issue all relevant notices and certificates in connection with the making, confirmation and implementation of any Compulsory Purchase Order;

2.9 Agree that the Director Finance be authorised to acquire third party proprietary interests by private treaty negotiation;

2.10 Agree that the Director Finance be authorised to dispose of any third party propriety interest acquired pursuant to the Compulsory Purchase Order to Exeter City Living in accordance with terms to be agreed;

2.11 Agree that the Director Finance be authorised to make General Vesting Declarations (GVDs) under the Compulsory Purchase (Vesting Declarations) Act 1981 and/or serve notices to treat and notices of entry (if required) following confirmation of a Compulsory Purchase Order by the Secretary of State;

2.12 Agree that the Director Finance by authorised to issue and serve any warrants to obtain possession of property acquired by the Council following the execution of a General Vesting Declarations or service of a notice of entry if it was considered appropriate to do so;

2.13 Delegate authority to the Director Finance, in consultation with the Leader of the Council, to agree the final procurement contracts; and

2.14 Delegate authority to the City Surveyor to work with Exeter City Living to facilitate the regeneration of this strategic city centre site.

### **3. Reasons for the recommendation:**

3.1 In March '22 the Council approved the ECL Business Plan which included the potential redevelopment of MASCP.

3.2 In October '22 the Council agreed the Corporate Plan 2022-2026 and the proposals will contribute towards the plan by:

3.2.1 Contributing to the aspirations of the Exeter Vision 2040 by repurposing an economically obsolete car park into a well-connected and sustainable new mixed used regeneration scheme that makes Exeter a more liveable City,

3.2.2 Building new homes on a brownfield site in the city centre will directly contribute towards the strategic aspirations for housing and an active city centre; and

3.2.3 Regenerating obsolete assets contributes towards a well-run council by demonstrating good management of assets and contributing towards a balanced budget.

#### **4. What are the resource implications including non financial resources**

4.1 ECL is a profit-for-purpose limited company so all of their profits are sown back into improving the local community. ECL is wholly owned by ECC. Part of its objective is to make a commercial return for ECC. The cost of delivering the scheme is covered by development sale receipts.

4.2 The purchase price shall represent the market value of the site, as assessed by suitably experienced independent chartered surveyors, jointly appointed by ECC and ECL at the transfer date with the benefit of a satisfactory planning permission.

4.2 The sale of MASCP for residential led mixed use development will generate a capital return for the Council.

4.2 The development of the site will also generate income for the Council from the Community Infrastructure Levy ("CIL") and Section 106 receipts which can be invested in Council priorities.

4.3 There will be officer time involved in managing the CPO, demolition and disposal of the site of the site and in the subsequent planning process which will be met within existing resources.

#### **5. Section 151 Officer comments:**

5.1 The report enables the Council to deliver the work required to dispose of the Mary Arches site, which was a key component of last year's ECL Business Plan. It also allows the work to be done in time for the Council to benefit from external BLRF funding. If a Compulsory Purchase Order is required. There will be a need for additional funding in order for the legal process to run its course. At this stage, it is not know what that budget will be, so if required, a request will be made of Council at the appropriate time. It is anticipated that it will be funded using the excess Guildhall Shopping Centre income, which is set aside for regeneration activity.

#### **6. What are the legal aspects?**

6.1 The proposed development is within the scope envisaged during the establishment of ECL.

6.2 Local authorities are generally under a duty to comply with Section 123 (2) of the Local Government Act 1972, with regard to land held in the General Fund, as it the case here, which requires that except with the consent of the Secretary of State a Council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained. The independent valuation, undertaken when the option goes unconditional (the Transfer Date), will confirm that best value has been achieved.

6.3 The Council has the power through various enactments to make Compulsory Purchase Orders and to apply to the Secretary of State for confirmation of any order.

#### Town and Country Planning Act 1990 Powers

6.4 Section 226 (1) (a) of the Town and Country Planning Act 1990, (as amended by the Planning and Compulsory Purchase Act 2004), provides that a local authority shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area if they are satisfied that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. However the power must not be exercised unless the authority thinks that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area.

6.5 The compulsory acquisition of third party proprietary interests and/or rights in relation to MASCP will enable the delivery of circa 100 homes and will provide certainty with regard to land assembly and the implementation of the redeveloped.

6.6 Under the existing Exeter Local Plan the site falls within the Housing Core Area (H2) where *“priority will be given to meeting housing needs on previously-developed land...at the highest density that can be achieved without detriment to local amenity, the character and quality of the local environment”*. In the emerging *The Exeter Plan (September ‘22)* MASCP falls within the North Gate area which *“has the potential to provide a great place to live and work, with development that could include: A mix of house sizes and types, including affordable housing, that is low car/ car free and supported by more sustainable transport measures including car clubs, e-bikes and improved pedestrian and cycle links to the surrounding area”*.

6.7 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides for the acquisition of new rights over land where such rights are not in existence when the order specifying them is made. In order to facilitate the redevelopment of the site it may be necessary to acquire new rights over land for purposes such as crane over sailing.

6.8 Government guidance on the use of compulsory purchase powers is set out in “Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” 2015 (“DCLG CPO Guidance”). That guidance states that compulsory purchase orders should only be made where there is a compelling case in the public interest.

6.9 The proposed regeneration scheme is in the public interest and will improve the wellbeing of residents in a number of way:

- Social – Due to limited natural surveillance the MASCP has attracted anti-social behaviour, including rough sleeping and vandalism. Unlocking this site will allow for a new high quality residential development that will provide a use that is befitting the surrounding character and will provide new amenity space for people to enjoy.
- Environmental – Delivery of general access improvements and public realm enhancements. The delivery of high quality new housing will remove the unattractive

and obsolete existing car park and replace it with purpose built new homes that will contribute towards the environment, creating a more pleasant street scene.

- Economic – The existing car park is economically obsolete and is too expensive to maintain and too energy inefficient to run. The redevelopment of MASCP will increase Exeter's housing supply by circa a hundred homes, create construction jobs and apprenticeships and generate S106 & CIL contributions to improve infrastructure within the local area. In addition, the site is a key gateway to and from the North of the City and a high quality scheme will contribute towards the positive forward looking image of Exeter ensuring it is an attractive place where people choose to live, work, study and visit.

6.10 Officers are of the view that there is a compelling case in the public interest to secure the redevelopment of the site. To that end, officers are recommending that ECC utilise the powers under section 226(1)(a) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976, because it is not certain that ECC will be able to acquire all third party proprietary interests and/or rights by agreement.

#### Human Rights

6.11 The Human Rights Act 1998 requires (amongst others) that every public authority acts in a manner which is compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The following parts of the Convention are relevant to the Council's exercise of its compulsory purchase powers:

Article 1 of the First Protocol – the right to peaceful enjoyment of possessions;

Article 8 – respect for private and family life and home.

6.12 Any decision to make a Compulsory Purchase Order must strike a fair balance between the public interest in the redevelopment of the land and interference with private rights. Bearing in mind the fact that the exercise of compulsory purchase powers is a statutory process, the provisions for compensation to be paid to those affected and the compelling case in the public interest for the redevelopment, it is considered that the interference with private property rights is necessary, proportionate and strikes a fair balance towards meeting ECC's objectives.

6.13 Those affected by a Compulsory Purchase Order will be informed and advised of their right to make representations to the relevant Secretary of State, to be heard at public inquiry and of a fair entitlement to compensation (where applicable). Thus ensuring consistency with Article 6: right to a fair hearing.

### **7. Monitoring Officer's comments:**

A CPO allows a public authority to acquire land without the consent of the land owner. Once a CPO is confirmed, the landowner has no choice about selling. They are paid for the land acquired and the general principle is that owners' ad occupiers should be financially no worse off (and no better off after the CPO than before).

The in house Legal team has no capacity to deal with CPOs and therefore this work is likely to be outsourced. Obviously there is a cost implication to this and a further report will be bought back to council to deal with this should there be a need to do so.

## **8. Report details:**

### **8.1 Closure of the Car Park**

8.1.1 A RIBA stage 2 refurbishment report was published 2018 for Mary Arches Car Park, published by Faithful + Gould, to provide an enhanced user experience, improve accessibility and to provide environmental improvements. The report concluded that a number of upgrades are required including structural, surfacing, accessibility and decoration works. The cost of the works since the initial estimate have increased significantly due to increases in raw materials, staffing, borrowing costs and further deterioration of the car park.

8.1.2 The current capital programme has an allowance of £3.6m to cover the costs mentioned above of which £500k has been ear marked for essential works required up to demolition.

8.1.3 Based on current construction industry build costs forecasts (source: BCIS) the non-essential £3.1m is likely to increase to c. £3.8m over the delivery works period due to higher than anticipated inflation rates.

8.1.4 Within the multi-storey car park, there are no lifts currently in operation as they are past their serviceable life, they haven't been working for over 5 years. The cost to bring the lift back into service alone would be a minimum of £240,000 (based on a pre Covid tender). The footbridge from the car park across to North Street was closed over 2 years ago due to corrosion. The cost to reopen the footbridge is also a significant expenditure. These two significant maintenance jobs have been put on hold due to plans for the redevelopment of the Mary Arches Car Park.

8.1.5 Mary Arches Car Park is located within the Premium Zone in the city. Within the multi-storey, there are 8 disabled bays (normal fees apply), as well as 8 parent & child bays. There are 2 Electric Vehicle charging point bays and an area allocated for motorcycles.

8.1.6 The car park was closed April and May 2020, due to limited footfall within the city centre as a result of national Covid restrictions.

	<b>Ground level</b>	<b>Multi-storey</b>
Open	Mon – Sun, 7am – midnight. Free after 7pm on Thurs	Mon – Sun, 8am – midnight. Free after to on Thurs
Number of bays	51 bays	430 bays
Payment method	Coins & Credit Cards	Coins & Credit Cards
Height restriction	None	6' 6" / 1.98m
2 hrs	£4.50	£4.50
3 hrs	£5.60	£5.60
4 hrs	£6.70	£6.70
5 hrs	£7.80	£7.80
6 hrs	£8.90	£8.90
7 hrs	£10.00	£10.00
All day	£18.00	£18.00

Table 1: Mary Arches Street Car Parking Pricing Structure

8.1.7 Due to the pricing structure of the car park, Mary Arches is primarily used for shorter stays, indicating it's a car park for leisure use, such as shopping or for something to eat.

8.1.8 Across the city, there is spare capacity to take up customers when Mary Arches Car Park closes down. Appendix 2 shows spare car park capacity in the premium car parks in the city centre, indicating spare capacity in the city centre. There will be a process of behaviour change for our customers. As soon as a date is secured for the closure of the car park, a communication plan will be implemented to inform customers of the closure, highlighting nearby alternative car parks, as well as alternative means of travelling into the city centre for work or leisure.

	<b>2016 / 17</b>	<b>2017 / 18</b>	<b>2018 / 19</b>	<b>2019 / 20</b>	<b>2021 / 22</b>	<b>2022 / 23</b>
<b>Cash</b>	£748,691.29	£685,522.05	£643,755.59	£496,549.96	£62,210.42	£191,869.96
<b>Card</b>	£202,564.25	£364,137.09	£514,184.83	£596,560.91	£133,658.25	£582,575.94
<b>Solar</b>	£402	£1,000	£16,794	£19,335	£20,025	£20,177
<b>Total</b>	<b>£951,657.54</b>	<b>£1,050,659.14</b>	<b>£1,157,940.42</b>	<b>£1,112,445.87</b>	<b>£215,893.67</b>	<b>£797,562.89</b>

Table 2: Mary Arches Street Income Generation

8.1.9 The table below highlights income generated over the previous 6 financial years from Mary Arches Car Park. Since national restrictions associated with the pandemic started in March 2020 (working from home message), the number of commuters parking in city council car parks has reduced, including Mary Arches Car Park, having a direct impact on income generated.

8.1.10 Since restrictions were lifted, income has slowly recovered, but has still some way to go to reach pre-pandemic levels. From the solar located on the top floor, we also achieve a small income stream from selling energy back to the grid.

8.1.11 The cost to run and maintain Mary Arches Car Park is c. £230k pa which covers energy, business rates, security, Insurance, Maintenance of equipment, replacing tokens and staff. Once the Car Park is closed, there will be some savings to the car park budget, but not all.

8.1.12 Mary Arches Car Park is patrolled as part of a round that includes the adjoining Guildhall Car Park, by disposing of this site, it would not have a significant impact on

staffing (having to reduce staffing levels). The Civil Enforcement team would focus their resources on patrolling other city centre car parks. There would be a small impact on our agreement with the City Council's Cleansing Team, as the cleansing of Mary Arches Car Park would no longer be required.

8.1.13 As soon as a timeframe is secured, discussions will commence with Strata Service Solutions Ltd and our parking machine providers, as the parking machines and our internet connections are connected to other car parks across the city centre.

8.1.12 Mary Arches Multi-Storey Car Park has 2 Electric Vehicle charging pods, prior to disposal of the car park, a new home will be found these charging pods, or if not suitable, are used as spares for existing Electric Vehicle charging pods elsewhere in the city centre.

8.1.14 The solar array on the top deck of Mary Arches Multi-Storey Car Park, will need a new suitable home and to be connected back to the grid. The FIT tariff will be lost but they still have the potential to generate sustainable energy and an income. This will take time to negotiate with the grid in disconnecting and reconnecting, as well as dismantling and installing elsewhere.

## **8.2 Securing Vacant Possession**

8.2.1 The tenants on the ground floor of Mary Arches Street Car Park (21-24 North Street) benefit from secure tenancies meaning they have security of tenure (a statutory right providing the tenant with an automatic right to renew their lease when this contractual term comes to an end).

8.2.2 Vacant possession can be secured either via commercial negotiation or through utilising the local authorities compulsory purchase powers. It is beneficial to both parties to avoid the professional fees and tribunal costs associated with a CPO (as cost savings can legitimately be offered to the tenants) but should negotiations fail, the Council needs the ability to secure a General Vesting Declaration so that the regeneration of the site can commence.

8.2.3 The proposed regeneration scheme is in the public interest and will improve the wellbeing of residents in a number of way:

- Social – Due to limited natural surveillance the MASCP has attracted anti-social behaviour, including rough sleeping and vandalism. Unlocking this site will allow for a new high quality residential development that will provide a use that is befitting the surrounding character and will provide new amenity space for people to enjoy.
- Environmental – Delivery of general access improvements and public realm enhancements. The delivery of high quality new housing will remove the unattractive and obsolete existing car park and replace it with purpose built new homes that will contribute towards the environment, creating a more pleasant street scene.
- Economic – The existing car park is economically obsolete and is too expensive to maintain and too energy inefficient to run. The redevelopment of MASCP will



increase Exeter's housing supply by circa a hundred homes, create construction jobs and apprenticeships and generate S106 & CIL contributions to improve infrastructure within the local area. In addition, the site is a key gateway to and from the North of the City and a high quality scheme will contribute towards the positive forward looking image of Exeter ensuring it is an attractive place where people choose to live, work and visit.

8.2.4 The car park benefits from solar panels on its upper levels but these are not leased or constrained by operational agreements and it is hoped that they can be redeployed either on the new scheme or relocated to ECC's solar farm in Marsh Barton.

### **8.3 Demolition**

8.3.1 In September 2021 ECC (supported by ECL) secured £1.31m towards demolition and asbestos removal at MASCP via the Brownfield Land Release Fund (a cross-government initiative between the Department for Levelling Up, Housing and Communities (DLUHC) and One Public Estate (OPE) which is delivered in partnership by the Local Government Association and the Cabinet Office).

8.3.2 ECC has the opportunity to use this funding to secure the demolition of MASCP and release the site for the creation of sustainable new homes in the City Centre.

### **8.4 Redevelopment via ECL**

8.4.1 MASCP has the potential for circa a hundred new homes with active ancillary retail and leisure uses at street level.

8.4.2 The views from the site North East towards St Michael and All Angels Church with the rolling hills behind are some of the most dramatic in the City and with the site's proximity to local amenities, public transport connections, the Cathedral, leisure facilities and open spaces this site has the potential to become somewhere that new and existing residents aspire to live.

8.4.3 ECL was created in 2018 as a profit-for-purpose limited company focused on the delivery of new homes for Exeter.

8.4.4 Optioning the site to ECL means that the vehicle has the security to invest in preliminary investigations and promoting the scheme through the planning process.

8.4.5 By utilising ECL for the delivery of the scheme ECC retain oversight of the scheme (members and ECC directors form part of the governance structure of the vehicle) whilst also participating in any development surplus and generating best consideration for their land holdings.

### **8.5 Programme**

8.5.1 The timescales envisaged are:

Item	Timeline
Council Authority to close and dispose	Dec' 22
Initial engagement with Councillors	Dec' 22
Initial engagement with local neighbours	Dec' 22
Public Consultation	Jan' 22 to May 23
Planning Submission	Aug' 23
Demolition	Nov' 23
Land Transfer	Jan' 24

Table 3: Anticipated Programme

## 9. How does the decision contribute to the Council's Corporate Plan?

9.1 In October '22 the Council agreed the Corporate Plan 2022-2026 and the proposals will contribute towards the plan by:

- 9.1.1 **Contributing to the aspirations of the Exeter Vision 2040** - by repurposing an economically obsolete car park into a well-connected and sustainable new mixed used regeneration schemes contributes towards Exeter being a more liveable City,
- 9.1.2 **Delivering out strategic priorities** - building new homes on a brownfield site in the city centre will directly contribute towards the strategic aspirations for housing and an active city centre; and
- 9.1.3 **Leading a well-run council** - regenerating obsolete assets contributes towards a well-run council by demonstrating good management of assets and contributing towards a balanced budget.

## 10. What risks are there and how can they be reduced?

10.1 Risk of not achieving best consideration: disposals to ECL are signed off as market value at the transfer date by jointly appointed independent chartered surveyors once a viable planning consent has been secured.

10.2 Risk of building speculative residential led development in a changing market place: ECL is managed by a team of industry specialists and governed by senior leadership at ECC. At contract close a detailed assessment of the schemes development viability, including the availability of funding at commercial terms, will be undertaken before significant expenditure is committed to delivery of the homes.

10.3 Demolition and Asbestos: appropriately experience and qualified contractors will be appointed to handle asbestos removal and the professional demolition of the existing buildings.

10.4 Vacant possession can't be secured: by authorising the Director to take the required steps needed to secure a CPO Council is directly contributing towards mitigating the risk of the scheme stalling because vacant possession hasn't been secured.

10.5 Planning permission can't be secured: by utilising the industry specialist employed via Exeter City Living Ltd, who are based within the Civic Centre and focus specifically on regeneration schemes within Exeter, the risk of securing viable planning consent that is acceptable to the Local Planning Authority should be minimised.

## **11. Equality Act 2010 (The Act)**

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

## **12. Carbon Footprint (Environmental) Implications:**

12.1 In July 2019 the Council declared a Climate Emergency. Car parking within the City Centre encourages people to bring their cars into the built up urban centre rather than utilising pay and rides or more sustainable forms of transport (like walking, cycling, public transport etc.). Creating sustainable new homes in the City Centre within walking distance of transport nodes, local amenities and leisure facilities on an energy inefficient economically obsolete car park will help the delivering our carbon reduction target (carbon neutral by 2030).

12.2 With the solar canopy array and LED lighting Mary Arches is currently the most energy efficient car park in the portfolio. The Photovoltaic Panels on the roof of the car park offset 35 tonnes of CO2 and produce 12,500 kWh a year so it will important to relocate and reconnect the panels to maintain the carbon offsetting and salvage the LED lighting if possible.

## **13. Are there any other options?**

13.1 The alternative options to the recommendation above are:

- (a) **Do Nothing** – continue to use Mary Arches Street Car Park as a car park and spend an additional c. £3.8m to extend its usable life.
- (b) **Open Market Disposal** – ECC created ECL as a development vehicle with a strong social and environmental responsibility that can generate profit to be re-invested into Council Services. By utilising ECL the Council retains oversight and

direct governance of the proposal whilst generating land receipts and hopefully development surplus which can be used to support front line services. An open market disposal removes the risk and reward of speculative residential development whilst also removing direct governance in relation to quality and programme.

- (c) **Disposal to ECL but without utilising CPO powers** – although GVD's are a draconian tool there is a material risk to investment in and delivery of this important regeneration scheme if vacant possession cannot be secured.

**Director Finance, Dave Hodgson**

Author: Dave Hodgson

## **Local Government (Access to Information) Act 1972 (as amended)**

Background papers used in compiling this report:-

EQIA – Mary Arches Street Car Park Redevelopment Report – November '22

Contact for enquires:  
Democratic Services (Committees)  
Room 4.36  
01392 265275