

# Report

Report to:	<b>Executive Committee</b>
Date of Meeting:	<b>13 February 2019</b>
Report by:	<b>Executive Director (Community and Enterprise Resources)</b> <b>Executive Director (Housing and Technical Resources)</b>

Subject:	<b>Variations to the Ground Lease at Regent Centre, Hamilton along with Sale of 1-5 Duke Street, Hamilton – J D Wetherspoon plc</b>
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## 1. Purpose of Report

### 1.1. The purpose of the report is to:-

- ◆ update members on the previous approval by the Housing and Technical Resources Committee in December 2017 to vary the terms of the ground lease for the Regent Shopping Centre, Hamilton such that the former Bairds Unit is removed from the ground lease
- ◆ request approval to sell the property known as the former Bairds Unit to JD Wetherspoon plc

## 2. Recommendation(s)

### 2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the premises comprising the former Bairds unit at 1 - 5 Duke Street (at the corner of Quarry Street and Duke Street), Hamilton which are leased to Maration Limited as part of the existing ground lease for the Regent Shopping Centre are taken out of the ground lease to facilitate the redevelopment of that property by JD Wetherspoon plc
- (2) that a contract for sale of the property at 1 – 5 Duke Street, Hamilton be entered into with JD Wetherspoon plc, or their nominee, on the principal terms and conditions set out in section 4 of this report; and
- (3) that the Executive Director (Housing and Technical Resources) and the Executive Director (Community and Enterprise Resources), in consultation with the Head of Administration and Legal Services, be authorised to enter into the necessary legal agreements on terms which are in the best interests of the Council.

### **3. Background**

- 3.1. The Regent Centre in Hamilton is held under a long ground lease from the Council to Maration Ltd which expires in January 2099. Maration Ltd control the day to day management of the shopping centre and, under the terms of the ground lease, pay the Council a ground rent equivalent to 18.25% of the net rental income. The Council own the land on which the centre sits however Maration Ltd and their subtenants hold all rights of occupation of the buildings.
- 3.2. One of the main challenges facing the Regent Centre arises from the closure of the former Bairds Unit at the corner of Quarry Street and Duke Street in 2014. Moreover, the location and prominence of this building means that this units continued vacancy has a negative impact on Hamilton Town Centre as a whole, not just the Regent Centre. Appendix 1 shows the location of the Regent Centre and highlights the Baird's unit.
- 3.3. Maration Ltd have marketed the former Baird's Unit and the only interest has been from JD Wetherspoons plc (Wetherspoons), who wish to create a restaurant/ public house/ coffee bar based on a format that they have successfully developed in similar properties and town centres throughout England and are beginning to roll out in Scotland.
- 3.4. The proposed variation of the ground lease was the subject of a report to the Council's Executive Committee of 11 March 2015, at which approval was given to conclude the appropriate legal agreements to allow the transaction to proceed. The transaction however, was not concluded, due to changes in market conditions and Wetherspoons business priorities. Subsequent efforts by Maration Ltd and their agents failed to identify an alternative occupier for the property.
- 3.5. A revised proposal was submitted to the Housing and Technical Resources Committee on 13 December 2017 which sought approval for revised terms reflecting the changes in the market conditions. The report retained the proposal to enter into a new ground lease with Wetherspoons and all parties have spent the intervening period seeking to conclude matters on that basis.
- 3.6. J D Wetherspoons standard business model is to have outright ownership of their properties. The negotiation of the detailed lease terms for the former Baird's Unit have left a number of matters unresolved resulting in J D Wetherspoons advising that the only basis they can conclude this transaction is to move from a lease of the ground to an outright sale.
- 3.7. J D Wetherspoons acknowledge that a sale represents a shift by them from the previously agreed position however they have reaffirmed their commitment to Hamilton and their desire to proceed with the development as described. J D Wetherspoons have secured planning consent for the proposals and lodged a variation in November 2018 to remove the previously envisaged hotel accommodation on the upper floors, following a number of other successful hotel consents in Hamilton. The revised application has been approved.

#### **4. Current Proposal**

- 4.1. The prospect that J D Wetherspoons are proposing to move into the former Baird's unit has been largely welcomed by local people who consider it will become an asset for Hamilton town centre. Redevelopment of the vacant unit was considered the highest priority in the public consultation over the future of Hamilton Town Centre with 83% of respondents considering finding an alternative use for the property the key priority of the town centre.
- 4.2. The property occupies one of the key gateway sites in Hamilton Town Centre and the continued vacancy has an influence beyond the unit and immediately neighbouring properties. With the property redeveloped and trading it will have a positive impact on the image of the town centre, will provide spin off opportunities for other businesses though the footfall it generates and will provide employment opportunities. The proposal should therefore be viewed in the wider context of the range of economic development benefits it can bring, and is consistent with the Hamilton Town Centre Plan. In order to deliver the economic development aspects this part of the plan requires this property transaction to be concluded.
- 4.3. The revised proposal is therefore, that steps be taken in conjunction and by agreement with Maration Ltd and J D Wetherspoons to remove the property at 1 – 5 Duke Street from the existing ground lease and to enter into an outright sale of the land to J D Wetherspoons as opposed to the lease arrangement previously approved. While this results in a different approach to the legal contracts the principal commercial terms of the transaction remain substantially the same save that the end result would provide Wetherspoons with outright ownership.
- 4.4. J D Wetherspoons have also set out an indicative programme based on a similar set of circumstances for one of their recently completed developments in Ramsgate. This would see the development completed in the second quarter of 2020, assuming consents and approvals can be secured in reasonable timescales.
- 4.5. The revised proposal can be summarised as follows:
  - ◆ the former Baird's Unit (1 – 5 Duke Street) being removed from the existing ground lease with Maration Ltd by such steps as are agreed with Maration Ltd and J D Wetherspoons
  - ◆ the sale of the Baird's unit to J D Wetherspoons through back to back legal agreements.
  - ◆ remaining consistent with the previous proposal J D Wetherspoons will pay a total price of £750,000 for the property, of which the Council will ultimately receive 18.25% in line with the terms of the calculation of rent within the existing ground lease, which amounts to a one off receipt to the Council of £136,875
  - ◆ the Council will be taking a pre-emption right from J D Wetherspoons allowing the Council a right to buy back the property should Wetherspoons

decide to sell the property. This right would cease to apply once Wetherspoons have completed their redevelopment works

4.6. Taking into consideration the financial, economic and reputational risks associated with the vacant former Baird's Unit, together with the lack of market interest for the property since 2014, it is considered that the proposal represents Best Value to the Council given the current and predicted property market conditions. It is also considered that the investment that Wetherspoons will make in the redevelopment will have wider economic benefits for Hamilton Town Centre.

4.7. The principal terms and conditions for the sale to Wetherspoons are:-

- ◆ the transaction will be conditional on a suitable planning and licensing consent and on a building warrant being granted
- ◆ the date of entry will be linked to the granting of the planning permission, building warrant and a premises licence being granted or such other date as is mutually agreed
- ◆ the Council, Maration Ltd and J D Wetherspoons will enter into contractual arrangements to achieve the end result that Maration Ltd.'s Ground lease interest in the property at 1 – 5 Duke Street is brought to an end
- ◆ the Council will receive a price of £136,875 for the disposal of its freehold interest
- ◆ the agreement will include a pre-emption option for the Council which will take effect in the event Wetherspoons do not proceed with the development and seek to sell the property
- ◆ the premium reflects the sale of all aspects of the property including the existing telecom masts and rights to service the property from the Regent Centre service yard

4.8. Along with these principal terms, approval is requested to implement such variations to the existing ground lease as is necessary to facilitate the transaction and to enter into such ancillary legal agreements as are required to grant J D Wetherspoons a right of access over the rear service road and yard and ensure that the Council can pass on liability to J D Wetherspoons for an equitable share of the associated service charge costs.

4.9. For the avoidance of doubt, this report does not seek approval or imply approval in relation to the planning and licence consents which will be required. J D Wetherspoons accept they require to obtain all statutory consents in the normal way.

## **5. Employee Implications**

5.1. There are no employee implications in relation to this proposal.

## **6. Financial Implications**

6.1. The Council will receive a price of £136,875 (one hundred and thirty six thousand eight hundred and seventy five pounds).

- 6.2. It is estimated that prior to the closure of Baird's, the lease contributed around £10,000 p.a. to the Council's overall income from the shopping centre. This element of income from the Regent Centre Ground Lease is not received while the property is vacant and not achieving a rental income. The re-occupation of this property will contribute to the overall trading position within the town centre and reduce the costs associated with the vacant building.

## **7. Other Implications**

- 7.1. If the proposal does not proceed as described, the risk to the Council would be that the property would remain vacant for a prolonged period and continue to have a detrimental effect on the town centre as a whole.
- 7.2. Given the importance placed on the redevelopment proposals through the public consultation, failing to secure the redevelopment of this property would not be considered in the Hamilton Town Centre Strategy approved by the Committee and Enterprise Committee in October 2018. It would also fail to deliver on the significant number of jobs created through the proposal and the associated footfall benefits to other retailers and businesses in the town centre.
- 7.3. This would lead to additional pressure on existing resources to support the town centre and would adversely affect the ongoing rental income to the Council from the Regent Centre due to the ongoing costs associated with the vacant property.
- 7.4. There are no issues in terms of sustainability contained within this report.

## **8. Employee Impact Assessment and Consultation Arrangements**

- 8.1. This report does not introduce a new policy, function or strategy and, therefore, no impact assessment is required.
- 8.2. Consultation has been carried out between Housing and Technical Resources and Community and Enterprise Resources and further consultation will be required through the statutory planning process.

**Michael McGlynn**

**Executive Director (Community and Enterprise Resources)**

**Danny Lowe**

**Executive Director (Housing and Technical Resources)**

15 December 2018

## **Link(s) to Council Objectives/Values**

- ◆ Accountable, effective, efficient and transparent

**Previous References**

- ◆ Executive Committee Report, 11 March 2015
- ◆ Housing and Technical Resources Committee, 13 December 2017

**List of Background Papers**

- ◆ None

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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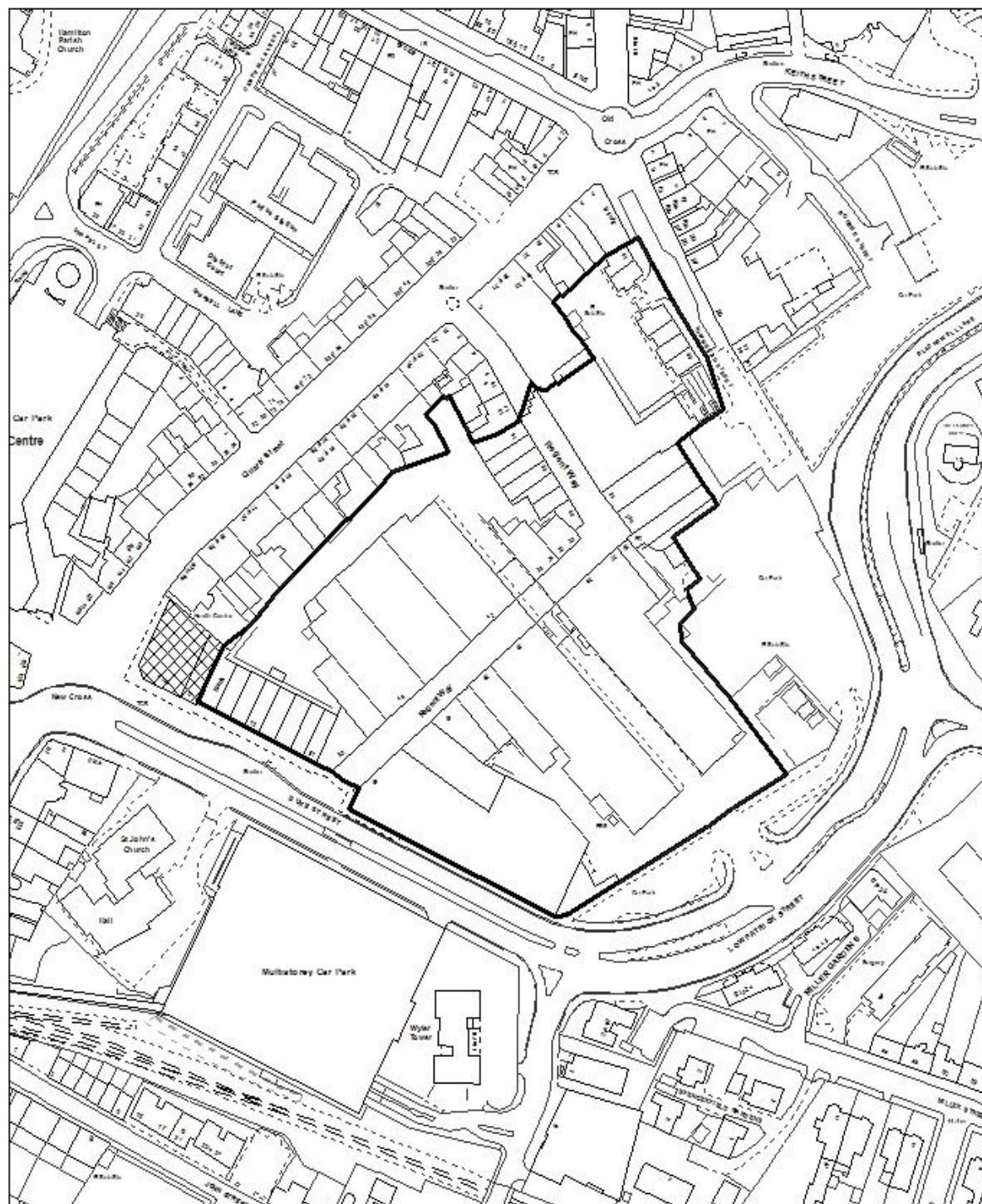
## LOCATION PLAN - For Committee Purposes Only

Appendix 1

Regent Centre  
Hamilton



### EXECUTIVE COMMITTEE



Ordnance Survey



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Ordnance Survey 100020730.

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