

Corn Exchange: Identification of Future Options

Cabinet

Date: 3rd March 2021

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Wards:	Old Town
Parishes Affected:	Central Swindon South

1. Purpose and Reasons

- 1.1 The reports sets out the backstop options that the Council could deploy to assist in securing the restoration of the Corn Exchange in the event that a suitable and relevant planning application has not been submitted by summer 2021.
- 1.2 The report has been prepared in response to the Council motion requiring officers to set out the findings and a way forward with clear actions to be implemented if a full planning application is not forthcoming by June.
- 1.3 The report links to Priority 4: Ensure clean and safe streets and improve our public spaces and local culture.

2. Recommendations

Cabinet is recommended to:

- 2.1 Note the options available to the Council to assist in securing the restoration of the Corn Exchange in the event that inadequate progress has been made to submit a suitable and relevant full planning application by summer 2021 – but there are no decisions required.

3. Detail

Context

- 3.1 The Corn Exchange, which is privately owned, is a Grade II Listed Building of Special Architectural and Historical Interest. The building commands a prominent position in the centre of Old Town Conservation Area, forming a recognisable part of the Old Town skyline.
- 3.2 The building is currently in a derelict state having been substantially destroyed by a series of fires over a decade ago.
- 3.3 For several years the Council has sought to work proactively with the owner of the Corn Exchange and his development partner to try to secure the restoration and reuse of the building.

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- 3.4 In November 2016 the Council entered into a Development Agreement with the owner of the Corn Exchange and a developer (Swindon Corn Exchange Limited) to secure the comprehensive regeneration of the building. As part of this Development Agreement, the Council undertook to include some of its landholding across car parks in the Square and The Planks in a proposal for redevelopment, in order to support a potential viable and deliverable redevelopment scheme. This Development Agreement sought to encourage a comprehensive redevelopment of the building and its environs with the expectation that it would have a catalytic impact on regeneration in Old Town.
- 3.5 The Council terminated the Development Agreement in March 2020 following the failure of the developer to meet the deadline set in the Agreement for submitting a planning application for a regeneration scheme. As a consequence the undertaking to include the Council car parks also fell away.

Current Situation

- 3.6 Officers are in contact with the owner of the Corn Exchange who is considering a refreshed scheme. No agreement is in place in relation to Council owned land being utilised to deliver a regeneration scheme. The owner's architect is currently working with the Local Planning Authority on the form of the refreshed scheme.

Planning Background

- 3.7 There have been numerous planning applications submitted for the Corn Exchange site over the last 10 years.
- 3.8 Of note are planning and listed building consent applications (S/10/0883 and S/LBC/10/0884), for redevelopment to include 84 flats, a hotel and restaurants, which were refused in 2011.
- 3.9 Also of note, a Listed Building Consent application was refused for the demolition of the listed buildings in 2012 (S/LBC/12/0246).
- 3.10 Subsequent to these refusals, a working group comprising officers of the Council, the New Swindon Company, Historic England and the owner collaborated on the preparation of the Old Town Hall and Corn Exchange Planning Brief. The Brief was adopted by Planning Committee in 2013.
- 3.11 The Brief sets out the planning requirements for the successful development of the site. Whilst, the Brief was prepared seven years ago, it continues to provide a constructive and relevant planning framework to inform the regeneration of the site.
- 3.12 The Brief supports the mixed use regeneration of the Corn Exchange and its environs. The development mix may encompass both residential and leisure / food and beverage elements.

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- 3.13 This mixed use approach to regenerating the site is supported by the policies of the adopted Swindon Borough Local Plan (2026) and the emerging Swindon Borough Local Plan (2036).
- 3.14 Whilst there is a planning framework in place to guide the development of the site, neither a structural assessment, condition report nor viability assessment have been prepared in recent years. These will be essential to understand if any scheme is appropriate and deliverable.

Alternative Options

- 3.15 Should a suitable and viable scheme not be progressed in a timely matter through the planning process, the Council has backstop statutory powers to assist in securing the future of the Corn Exchange.
- 3.16 The range of statutory powers set out in this report covering the condition of the building have been extracted from the Historic England publication 'Stopping the Rot'.

Compulsory acquisition of land for development and other planning purposes

- 3.17 The Town and Country Planning Act 1990 makes provision for local authorities to use compulsory purchase powers in certain circumstances. This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan, or where strong planning justifications for the use of the power exist it makes provision for a local authority to use compulsory purchase. Section 226 of the Act provides that such powers can be used to apply to the Secretary of State for authorisation:
- 3.17.1 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, to achieve the promotion or improvement of the economic, social or environmental well-being of their area; or
- 3.17.2 if acquisition is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- 3.18 However, these powers are usually seen as a last resort. There is a requirement that if an authority considers land is required for carrying out development, the Act is used only if negotiations to acquire land have been undertaken and have identified that agreement cannot be reached with an owner on reasonable terms.

Section 54 Urgent Works Notice

- 3.19 Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Listed Buildings Act 1990') enables local authorities (or alternatively, the Secretary of

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State can authorise Historic England) to execute any works which appear to them to be urgently necessary for the preservation of a listed building. To use this power the works must be urgently necessary not just desirable (i.e. to keep a building wind and weatherproof and safe from collapse, or action to prevent vandalism or theft. A condition survey is essential to determining whether a Section 54 notice is appropriate.

- 3.20 The effect of a successful Urgent Works Notice would be to halt deterioration of the building. A local authority can carry out works itself. The local authority may require the owner to pay the costs incurred in carrying out the works, but the owner has a right of appeal in respect of the costs to the Secretary of State.

Section 48 Repairs Notice

- 3.21 Section 48 of the Listed Buildings Act 1990 enables local authorities to serve a Repairs Notice on the owner of a listed building specifying those works it considers reasonably necessary for the proper preservation of the building.
- 3.22 The effect of a successful Repairs Works Notice would be to deliver repairs for the long-term preservation of the building. The local authority cannot itself carry out the works specified in a Repairs Notice. If, after a two-month period has elapsed from the service of the Repairs Notice, it appears that reasonable steps are not being taken to properly preserve the building, the council may select to begin compulsory purchase proceedings under section 47 of the same Act (see below).

Section 47 Compulsory Purchase Proceedings

- 3.23 A Repairs Notice provides a statutory route towards the compulsory purchase of a listed building under section 47 of the Listed Buildings Act 1990. Section 47 provides that an appropriate authority or the Secretary of State may compulsorily acquire, or the Secretary of State can authorise an appropriate authority (such as the Council) to compulsorily acquire, a listed building in need of repair if it appears that reasonable steps are not being taken for its proper preservation.
- 3.24 Section 47 is a reserve power, which is only to be used to ensure the long-term preservation of a listed building. Under section 47, there is a two-stage process: (i) service of a Repairs Notice; and (ii) service of a Notice of compulsory acquisition on the owner, after the expiry of two months it appears to the appropriate authority that reasonable steps are not being taken for properly preserving the building.
- 3.25 If, after a period of a minimum of two months, it appears that reasonable steps are not being taken the authority can begin compulsory purchase proceedings under Section 47.
- 3.26 If compulsory purchase proceedings are commenced, the Secretary of State will not confirm a Compulsory Purchase Order unless it has consulted with Historic England and

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is satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose.

Section 215 Notice

- 3.27 Section 215 of the Town and Country Planning Act 1990 gives local authorities the power to serve Notice on an owner “If it appears to the local planning authority that the amenity of part of their area, or of an adjoining area, is adversely affected by the condition of land in their area”.
- 3.28 The Notice will require steps for remedying the condition of the area. The scope of works that can be required in Section 215 Notices is wide and includes planting, clearance, tidying, enclosure, demolition, rebuilding, external repairs and repainting. However, a Section 215 Notice should not require works which would require either planning permission or listed building consent, therefore they are fairly limited as to what they can be used for particularly on a listed building in a conservation area.
- 3.29 The effect of a successful Section 215 Notice would be to secure improvements to the external visible appearance of the land, but not necessarily improve the structural integrity. Local authorities can carry out works themselves and charge the land owner for the costs. The owner has the right of appeal.

Section 76-79 of the Buildings Act 1984 Dangerous Buildings and Structures

- 3.30 Local authorities have powers under the Building Act 1984 to apply to the Magistrates Court to take action regarding buildings in a dangerous or ruinous state.
- 3.31 Before taking any steps to make a building safe under the Building Act 1984, a local planning authority is required by section 56 of the Listed Buildings Act 1990 (as set out above) to consider whether they should instead use an Urgent Works or Repairs Notice. Again, a condition/structural survey would likely be required to justify works under section 56 of the Act.
- 3.32 Section 79 of the Building Act 1984 can be used by a local authority where a building or structure is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood. The Notice would require the owner to execute such works of repair or restoration as may be necessary in the interests of amenity. Again, a local planning authority is required by section 56 of the Listed Buildings Act 1990 to consider whether they should instead use an Urgent Works or Repairs Notice.

Section 29 Works to prevent unauthorised entry or danger to public health

- 3.33 Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 (‘the 1982 Act’) enables local authorities to undertake works to an unoccupied structure or building to

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prevent unauthorised entry or prevent it becoming a danger to public health. Again, local authorities can look to recover the costs from the landowner.

Using Statutory Powers

- 3.34 Emergency Dangerous Structure powers apart, before initiating statutory action it is advisable for a local authority to make contact with owner to draw their attention to the risks to their property, to suggest appropriate measures and find out their own plans for maintenance and reuse.
- 3.35 Given the prominent location of the site in the Old Town Commercial Area and in the Old Town Conservation Area, the manner in which the site is currently presented, with extensive vegetation between the building and the perimeter hoardings and vegetation growing upon and within the building is of concern. If adequate progress is not being made towards submitting a valid application then, and the site continues to be inadequately maintained, a Section 215 (Untidy Site) Notice could be considered as a first step in statutory action.

4. Alternative Options

- 4.1 No decisions are required in this report.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Provision has been made in the feasibility budget to enable officers to assess the opportunity to work up a viable scheme for the Corn Exchange including the Council's car parks.

Legal and Human Rights Implications

- 5.2 This report is for information purposes only and requires no decisions at this stage. Each option (if required) available to the Council will have legal and financial implications and may require different decisions from different decision makers of the authority.

Climate Change Impact

- 5.3 The proposals would not bring a change in service delivery and Officers believe that there is no expected effect on the Council's carbon footprint.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.4 None identified

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Diversity Impact Assessment

- 5.5 No decisions are required by this report.

Risk Management

- 5.6 None identified.

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None.

8. Appendices

- 8.1 Not applicable

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

- 9.1 This is not a Key Decision and is included in the Cabinet Work Programme and Forward Plan for February 2021.