



Officer Decision Record – Key Decision

Key decisions taken by an officer are subject to the 5 day call in period from circulation to Members, and therefore the decision will be released for implementation following the call-in period and no call in being received

1. Cabinet date and copy resolution this key decision relates to

Cabinet on 22nd June 2022 approved the following:

1. Authorises the Executive Director Environment, Economy & Resources in consultation with the Leader of the Council to seek approval from the Department of Levelling Up, Housing & Communities (DLUHC), for a project adjustment request to realign the residue of the £17.3m of Future High Streets Fund for the purposes set out in this report.

2. Supports the principle of acquiring Freshney Place and refers the matter to Full Council for debate and ultimate decision, commending the following recommendations to Full Council:

a) That Cabinet be enabled without further formality to authorise the Executive Director Environment, Economy & Resources, in consultation with the Leader of the Council, to conclude negotiations with the Freshney Place receivers and their agents, and to acquire Freshney Place for market value as supported by independent advice.

b) That in the event of negotiations not concluding satisfactorily then Full Council supports the Cabinet decision to proceed via statutory compulsory purchase powers.

c) Full Council accepts the vagaries of negotiation for an asset of this nature and agrees to the principle of any further special meeting of Full Council being called under the terms of the Constitution.

3) Subject to the approval of Full Council to so acquire, authorises the Executive Director Environment, Economy & Resources, in consultation with the Leader of the Council, with support from appropriate specialist external advice, to undertake and conclude negotiations with the Freshney Place receivers and their agents, and acquire Freshney Place.

4) Subject to the approval of Full Council to so acquire, and if negotiations to acquire Freshney Place do not conclude successfully, authorises the Executive Director Environment, Economy & Resources in consultation with the Leader of the Council to take all preliminary actions regarding the exercise of the Council's statutory compulsory purchase powers.

5) Authorises the Executive Director Environment, Economy & Resources, in consultation with the Leader of the Council, to seek borrowing which would, in the Director's reasonable opinion, enable acquisition of Freshney Place and development of the proposed leisure scheme, subject to the retention of Future High Streets Fund monies.

6) Authorises the Executive Director Environment, Economy & Resources, in consultation with the Leader of the Council to commence a procurement exercise to appoint professional asset management, property management, and any other key professional appointments and to carry out all activity including award, implementation and mobilisation.

7) Delegates authority and responsibility to the Executive Director Environment, Economy & Resources in consultation with the Leader of the Council to deal with all matters arising from and ancillary to the above.

8) Authorises the Assistant Director Law, Governance and Assets (Monitoring Officer) to execute all documentation arising from the above.

9) Instructs the Executive Director Environment, Economy & Resources to update Cabinet by report in six months' time or within two months of the date of acquisition,

whichever shall be the earlier and thereafter engage with the Economy Scrutiny Panel.

Full Council approved the elements within Recommendation 2 on 14th July 2022.

Cabinet on 17th February 2021 approved the following:

1. Acknowledges the outline revisions to the original Future High Street Fund scheme and delegates to the Executive Director for Environment, Economy, and Resources in consultation with the Leader of the Council authority to complete the submission to the Future High Streets programme by the closing date of 26 February 2021
2. Authorises the Executive Director for Environment, Economy, and Resources in consultation with the Leader of the Council to accept the resultant grant funding on behalf of the Council.
3. Delegates to the Executive Director for Environment, Economy, and Resources in consultation with the Leader of the Council authority to develop the revised Future High Street Fund scheme and enter negotiations with third party landowners' delivery partners with a view to delivering the scheme and bringing the same to fruition.
4. Support approval for the Executive Director for Environment, Economy, and Resources in consultation with the Leader of the Council to exercise powers to compulsory purchase various parcels of land designated as the development site for the Future High Street Fund scheme where a negotiated position is impracticable, accepting that the final decision of completion of any such order rests with Cabinet and be subject to a further report.
5. Delegates to the Executive Director for Environment, Economy, and Resources in consultation with the Leader of the Council authority to deal with all matters arising from and ancillary to the above.
6. Authorises the Monitoring Officer to complete and execute all requisite legal documentation in relation to the matters outlined above.
7. Receives a report at a later date detailing the scheme delivery timeline together with further detail on design development.

2. Subject and details of the matter (to include reasons for the decision)

The acquisition of Freshney Place Shopping Centre will safeguard a critical part of Grimsby town centre's economic and community infrastructure, to halt decline through the commencement of regeneration of the centre and help safeguard up to 1700 full time equivalent jobs within Freshney Place and Top Town Market. In addition, it will enable the successful implementation of the Freshney Place leisure scheme, including submission of grant application and acceptance of the funding.

Since the Cabinet and Full Council approvals, agreement has been reached between the Council and Freshney Place Shopping Centre receivers regarding the Council's acquisition of the centre at a level which has been verified by external agents acting on behalf of the Council as being consistent with current market values.

Consequently, the Council is seeking to exchange contracts on Freshney Place Shopping Centre and thereafter complete the acquisition. This will entail payment of a 10% deposit upon exchange of contracts with the remainder payable upon completion.

Ancillary to the decision regarding the acquisition of Freshney Place, it is proposed that the Council agrees to extend its current agreement with Freeths Solicitors, who have been working with the Council on both the acquisition and leisure scheme, to provide continuity regarding completion of the acquisition of Freshney Place and delivery of the Freshney Place leisure scheme. Freeths were originally appointed via the EM Lawshare Framework, which provided assurance regarding value for money.

It is also proposed that the Council takes novation of the receiver's existing Property Management contract for Freshney Place Shopping Centre, which is currently provided by BMO Rep Property Management Limited, for a period of 3-months. This will ensure continuity of property management functions within the centre and enable the Council to procure a new provider and ensure relevant transfer arrangements are in place between BMO and the new provider (including TUPE arrangements).

Freshney Place Shopping Centre is currently insured by the current owner and the Council will need to ensure appropriate insurance cover is in place upon completion. To ensure appropriate insurance cover is in place upon purchase, it is proposed that

the Council enters into a 12-month agreement with the centre's current insurance provider (on the same terms as currently), which will provide the same insurance cover as is currently in place. This will ensure continuity of insurance cover at the centre and enable the Council to procure a new provider whilst ensuring appropriate cover is in place for the transfer.

Since Cabinet approval in February 2021, the Council and its appointed agents have continued to negotiate the acquisition of land and properties required to deliver the leisure scheme redevelopment and has secured agreement on several of these. Consequently, the Council is required to make payment in respect of two properties where Heads of Terms have been agreed, at 17 and 19 Old Market Place, at a level which has been verified by external agents acting on behalf of the Council as being consistent with current market values. The vendors fees pertaining to 17 Old Market Place need to be made immediately with the remainder payable upon completion. The agreed terms regarding these properties have been verified as both providing value for money and being critical to delivery of the leisure scheme by external agents acting on behalf of the Council. These acquisitions form part of the wider property acquisition process in place regarding development of the leisure scheme, as approved by Cabinet on 17th February 2021.

3. Decision being taken

In accordance with the Cabinet decisions dated 22nd July 2022 and 17th February 2021 and the Full Council decision dated 14th July 2022:

1. That the Executive Director for Environment, Economy, and Resources, in consultation with the Leader of the Council agrees to exchange contracts on the acquisition of Freshney Place Shopping Centre at the negotiated price to enable acquisition of the centre.
2. That the Executive Director for Environment, Economy, and Resources, in consultation with the Leader of the Council agrees to extend the current arrangements with Freeths Solicitors regarding support for both the acquisition of Freshney Place Shopping Centre and delivery of the Freshney Leisure Scheme, until such time that the leisure scheme is completed.

3. That the Executive Director for Environment, Economy, and Resources, in consultation with the Leader of the Council agrees that the Council receives novation of the current contract between the receivers for Freshney Place Shopping Centre and BMO Rep Property Management Limited, to ensure continuity of the current Property Management arrangements, for a period of 3-months, allowing the Council to procure a new provider.

4. That the Executive Director for Environment, Economy, and Resources, in consultation with the Leader of the Council agrees that the Council enters into a 12-month insurance agreement with the current insurers of Freshney Place Shopping Centre to ensure the centre is insured upon purchase and provides continuity of insurance cover.

5. That the Executive Director for Environment, Economy, and Resources, in consultation with the Leader of the Council agrees payment of all fees regarding the property and land acquisitions required for the leisure scheme redevelopment at Freshney Place, specifically those pertaining to 17 and 19 Old Market Place, as part of its wider property acquisition process required to deliver the Freshney Leisure Scheme.

6. That the Assistant Director Law, Governance and Assets (Monitoring Officer) execute all documentation arising.

4. Is it an Urgent Decision? If yes, specify the reasons for urgency. Urgent decisions will require sign off by the relevant scrutiny chair(s) as not subject to call in.

Yes. The external parties involved in the purchase of Freshney Place Shopping Centre have indicated that completion of the purchase must take place imminently and therefore the acquisitions of Freshney Place Shopping Centre and 17 Old Market Place, will need to take place in line with third party timelines, without any delay.

In addition, it is critical that the Council has continuity of service both in respect of external legal advice it is receiving regarding both the acquisition and leisure scheme development, plus Property Management services at Freshney Place, otherwise there would be significant risks to the Council.

5. Anticipated outcome(s)/benefits

These actions will ensure that the Council acquires Freshney Place Shopping Centre, safeguarding its future, including the economic and community impacts that it generates, whilst also enabling development of the leisure scheme, which would generate significant economic opportunities for the centre and Grimsby town centre and support the Council's wider transformational aspirations for the area.

The funding will support the objectives and opportunities identified in the Grimsby Masterplan, Local Plan and Economic Strategy.

6. Details of any alternative options considered and rejected by the officer when making the decision (this should be similar to original cabinet decision)

N/A

7. Background documents considered (web links to be included and copies of documents provided for publishing)

17th February 2021 – Cabinet - Future High Street Funding Cabinet Report

<https://democracy.nelincs.gov.uk/wp-content/uploads/2021/02/3.-Future-High-Streets-Fund.pdf>

22nd June 2022 – Cabinet – Freshney Place Acquisition & Investment

<https://democracy.nelincs.gov.uk/wp-content/uploads/2022/06/4.-Freshney-Place-Acquisition.pdf>

14th July 2022 – Full Council – Freshney Place Acquisition & Investment

<https://democracy.nelincs.gov.uk/wp-content/uploads/2022/07/Freshney-Place-Acquisition.pdf>

8. Does the taking of the decision include consideration of Exempt information? If yes, specify the relevant paragraph of Schedule 12A and the reasons

No

9. Details of any conflict of interest declared by any Cabinet Member who was consulted by the officer which relates to the decision (in respect of any declared conflict of interest, please provide a note of dispensation granted by the Council's Chief Executive)

N/A

10. Monitoring Officer Comments (Monitoring Officer or nominee)

The acquisition of Freshney Place and other assets is consistent with the will of Cabinet and is supported by Full Council. Whilst various exceptions to standard procurement processes are countenanced this is due to the extreme urgency of timelines, to comply with the receiver's requirements, market position of various providers, continuity of cover and service provision. These exceptions are anticipated to be in place as an interim measure so as to permit a full procurement process in the future. Relevant officers support that approach.

As such, overall urgency of the decision is supported by the Monitoring Officer.

11. Section 151 Officer Comments (Deputy S151 Officer or nominee)

If the funding body approves the repurposing of Future High Street grant for the purchase of the shopping centre this would allow the Council to meet the majority of the cost without additional borrowing liabilities.

If the Council is required to borrow to fund the purchase it can fund the respective borrowing costs from the forecast revenue surpluses to be generated from the operation of the site.

In the context of wider economic and fiscal uncertainty, there is a risk that FHSF is withdrawn or reclaimed by Government. However experience is that the likelihood of this is very low and does not present a major risk to wider redevelopment ambitions in relation to the centre.

12. Human Resource Comments (Head of People and Culture or nominee)

Specific advice will be provided in respect of TUPE arrangements and will comply with the Council's policies and procedures and relevant legislation.

13. Risk Assessment (in accordance with the Report Writing Guide)

The key risks associated with this scheme are:

- additional costs relating to the condition and ongoing maintenance of the building arising.
- future income generated by Freshney Place may not be sufficient.
- reputational risk to the Council, should the acquisition not be successful; and
- reputational risk to the Council, should it acquire Freshney Place, but not be successfully managed

Specialist structural, mechanical & electrical, concrete and building surveyors have undertaken extensive surveys of the centre, which have provided sufficient intelligence regarding any potential additional costs that might arise, which have subsequently been included in the Council's business plan for the centre.

A critical risk assessed projection of future income that Freshney Place may generate has been made by specialist agencies acting on behalf of the Council. However, future market, economic and occupational changes may still affect future income generation from the centre. To mitigate this, specialist asset management support has been procured for Freshney Place, which will support promotion of the centre and seek to retain/attract tenants to it.

In addition to the projections and asset management elements highlighted above, the development of a successful leisure scheme would help dilute the current over-reliance on retail space within Freshney Place and provide a more diverse offer, which would enable it to tap into the leisure and food & beverage market and open it up to different tenants, therefore providing greater opportunity to attract and retain tenants.

Finally, two further risks have been identified regarding land title. The Council will need to relocate some tenants within Freshney Place regarding the leisure scheme development. Only the holder of the actual land title can action this, but there is currently a large backlog of land title registrations at the Land Registry, which would mean that the Council cannot serve notices to relocate tenants until it is formally registered at the Land Registry. This issue was exacerbated regarding one unit,

where a long lease was surrendered, but there were issues in the transfer documentation (not associated with the Council), which would have delayed registration at the Land Registry further.

To mitigate this, the sellers (and the long lease holder) solicitors have provided an undertaking to assist with requisitions at the Land Registry and the seller has agreed to the retention of a proportion of the sale price, until such time as the Land Registry issue is resolved. In addition, the seller is contractually bound to assist with any proceedings related to the potential relocation of tenants within Freshney Place. However, the Council should undertake any such proceedings as soon as is practical, which will be recorded in the relevant board meetings to ensure this is actioned accordingly.

The Council's solicitors have consequently advised that the risks to the Council regarding these matters is low.

14. Has the Cabinet Tracker been updated with details of this decision?

15. Decision Maker(s):

Name: Rob Walsh

Title: Chief Executive

Signed: REDACTED

Dated: 29th July 2022

**16. Consultation carried out with
Leader of the Council :**

Name: Cllr Philip Jackson

Title: Leader

Signed: REDACTED

Dated: 29th July 2022

17. If the decision is urgent then consultation should be carried out with the relevant Scrutiny Chair/Mayor/Deputy Mayor

Name: Cllr S Beasant

Title: Mayor

Signed: Via Email

Dated: 3rd Aug 2022

Key Decisions are defined in the Constitution as:

A decision (whether taken collectively or individually by members) which is likely:

- (i) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards.

A decision will be considered financially significant if:

- (i) in the case of revenue expenditure, it results in the incurring of expenditure or making savings of £350,000 or greater;
- (ii) in the case of capital expenditure, the capital expenditure/savings are in excess of £350,000 or 20% of the total project cost, whichever is the greater

In determining whether a decision is significant in terms of its effect on an area comprising two or more wards, consideration shall be given to:

- (i) the number of residents/service users that will be affected in the wards concerned;
- (ii) the likely views of those affected (i.e. is the decision likely to result in substantial public interest)
- (iii) whether the decision may incur a significant social, economic or environmental risk.