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**RELOCATION OF CATTLE MARKET FROM CLIFTON ROAD**

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**Responsible Cabinet Member –  
Councillor Chris McEwan – Economy and Regeneration Portfolio  
Councillor Stephen Harker – Efficiency and Resources Portfolio**

**Responsible Director –  
Ian Williams, Director of Economic Growth  
Paul Wildsmith, Director of Neighbourhood Services and Resources**

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**SUMMARY REPORT**

**Purpose of the Report**

1. This report seeks Cabinet approval for the relocation of the cattle market from the existing Clifton Road site to Humbleton Farm and the approval of the associated financial package required from the Council in order to facilitate this relocation.

**Summary**

2. This report presents the issues surrounding the relocation of the Cattle Market from the existing Clifton Road site to Humbleton Farm as proposed by Darlington Farmers Auction Mart (DFAM).
3. The Council has obligations pertaining to the provision and maintenance of a market and market place for livestock which need to be satisfied. These are currently met through the existing arrangement with DFAM who operate from the Council-owned site at Clifton Road. **Appendix 1** contains an overview of these obligations which are set out in the Darlington Extension and Improvement Act 1872 (referred to as the DEI Act). In considering whether to support the request from DFAM, the Council must give due regard to how it proposes to meet its obligations in respect of the Cattle Market.
4. The relocation of the facility has been an ambition of both DFAM and the Council for a number of years as operations have outgrown the existing site which, whilst being managed through planning and environmental health regulations, is causing conflict between the continued operations of the Cattle Market and the neighbouring residential use.

5. DFAM has now progressed its development and has submitted a business case to the Council for consideration and support, including a significantly different and reduced financial ask from the Council to support its new scheme.
6. DFAM has secured, in principle, the necessary private-sector funding required for the relocation. However, the nature of the agreement with the developer for the enabling development at Neasham Road means that there is a short term cash-flow issue. To enable DFAM to enter into the Building Contract, it requires a £2m bridging loan facility from the Council, which will be repaid following the land receipt being received from Neasham Road housing site.
7. In addition, an alternative mechanism to secure the tolls and levies is still being negotiated to ensure the Council can meet its obligations under the Darlington Extension and Improvement Act.

### **Recommendation**

8. It is recommended that :-
  - (a) Cabinet recommend that Council vote in favour of the relocation of the Cattle Market facility from Clifton Road to Humbleton Farm in accordance with the provisions of the Darlington Extension and Improvement Act 1872;
  - (b) Cabinet recommend Council approves and provides a bridging loan of £2m to DFAM in line with the principle terms set out in **Part III of this report**;
  - (c) Cabinet note that negotiations in respect of the payment of tolls and levies by DFAM to the Council are still on-going;
  - (d) Cabinet delegates authority to the Director for Economic Growth to negotiate and complete, in consultation with the respective Portfolio Holder, the necessary agreements in line with the proposals set out in this report and **Part III of this report**;
  - (e) Cabinet declares the Clifton Road site surplus to requirements and releases £20,000 of the future land receipt to enable the Council to ensure the site is safe and secure following the successful relocation of the cattle Market from Clifton Road.

### **Reasons**

9. The recommendations are supported by the following reasons :-
  - (a) In the interests of facilitating the relocation of the Cattle Market from Clifton Road;
  - (b) To improve the residential amenity for the properties around Clifton Road;
  - (c) To make available a brownfield site in a sustainable location for suitable development in line with the Local Plan;

- (d) To support the business growth opportunities for the agricultural sector which result from new facility being delivered;
- (e) In order to ensure the Council complies with its obligations under the Darlington Extension and Improvement Act; and
- (f) To provide the necessary funds to secure the site and reduce the Council's liabilities in respect of the vacated Clifton Road site.

**Ian Williams**  
**Director of Economic Growth**

**Paul Wildsmith**  
**Director of Neighbourhood Services and Resources**

### **Background Papers**

No background papers were used in the preparation of this report.

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S17 Crime and Disorder	Clifton Road cattle Market is located within a residential area which is incompatible with its operations. Relocating the Cattle Market to a more appropriate, rural setting will remove this incompatible use and have a positive impact on crime and disorder in this location.
Health and Well Being	Clifton Road cattle market is located within a residential area which is incompatible with its operations. Relocating the Cattle Market to a more appropriate, rural setting will remove this incompatible use and have a positive impact on health and well-being in this locality.
Carbon Impact	The new facility will be more energy efficient than the existing property however no carbon impact comparison has been undertaken.
Diversity	The new facility has been designed in accordance with up-to date building regulations and guidance, including Access for All.
Wards Affected	Clifton Road is in the Park East Ward. There will be significant environmental and social-well being improvements in this ward as a result of the relocation.  The new facility will be located in the Heighington and Coniscliffe Ward. The associated impacts were considered through the planning application process and measures have been put in place to mitigate these impacts.
Groups Affected	No specific group affected.
Budget and Policy Framework	The financial proposals set out in the report are not reflected in the MTFP.

	<p>The budgetary implication for the Council has been mitigated as much as possible through the proposed structure; however they have not been eradicated.</p> <p>This decision does not represent a change to the policy framework.</p>
Key Decision	This decision is likely to have significant positive effects on the communities living and working in an area around Bank Top Station.
Urgent Decision	No
One Darlington: Perfectly Placed	The recommendations in this report will contribute towards achieving the Growing the Economy and Every Pound Wisely Spent conditions of One Darlington: Perfectly Placed.
Efficiency	The relocation of the Cattle Market should result in a reduction in officer time addressing issues at the Clifton Road site as the new facility will be delivered in accordance with current environmental regulations in a setting which is more appropriate for such a use.

## MAIN REPORT

### Information and Analysis

10. DFAM has been progressing its relocation ambitions for a number of years. To date, the company has purchased a site (Humbleton Farm), secured planning consent and scaled back its proposals for the first stage of development in line with its funding position. The enabling development at Neasham Road has obtained a 'minded to grant' approval subject to a S106 Agreement being completed.
11. At the start of the year, DFAM appointed a new company to lead on the project management, following the slow progress and withdrawal of the previous housing developer in respect of the Neasham Road housing site. Over the past 6 months, the company has been working to procure a building contractor for the new facility and to raise the necessary private-sector finance for the project.
12. Significant progress has been made as follows:
  - (a) A contractor has been procured and value engineering undertaken;
  - (b) Further discussions with house builders have taken place in respect of Neasham Road and terms have been agreed;
  - (c) DFAM has refinanced, including moving to an alternative bank and has identified a contribution towards the scheme from its reserves.

## Overview of proposals

13. The following proposals offer a potential way forward. They have been agreed in principle:

(a) **£2m bridging loan:**

- (i) In order to let the building contract and be committed to paying the fixed price, DFAM need to have secured all the funding up-front. Whilst they now have the means to fund the contract, there is a cash flow issue resulting from the conditionality of the Neasham Road Sale Agreement.
- (ii) DFAM has therefore requested a £2m bridging loan from the Council, secured against the Neasham Road site and repayable once the land receipt for Neasham Road is received.
- (iii) The Council has undertaken due diligence in respect of this request, including reviewing the business plan, accounts and forecast and is comfortable with progressing a loan on the basis of the information provided.

(b) **Neasham Road S106:** Reduction of the Planning obligations to £250,000 plus escrow account (or equivalent) and clause requiring material commencement at Humbleton Farm in advance of commencement at Neasham Road. The terms of the S106 Agreement will need to be separately considered and require the approval of Planning Applications Committee.

(c) **Clifton Road Lease:**

- (i) DFAM to surrender Clifton Road Lease contemporaneously with opening of new Cattle Market at Humbleton Farm as set out in **Part III of this report**.
- (ii) Following surrender, securing the site will be the responsibility of the Council. It is requested that Cabinet release £20,000 of the proposed land receipt generated from the future sale of Clifton Road to secure the site following the relocation of DFAM to reduce the Council's liability and the risk the site poses to the public.

(d) **Meeting the Council's Cattle Market Obligations:** The Council has proposed a Franchise Agreement between the Council and DFAM which will grant the necessary market rights to DFAM in line with the company operating in a manner which satisfies the Council's duties under the DEI Act and securing payment of tolls and levies going forward. The terms of the agreement are set out in **Part III of this report**.

## Alternatives

14. In coming to the above conclusion, the following alternative options have been considered:-

- (a) **Purchase Neasham Road site from DFAM for £2million** – risk of project not advancing same as the existing proposal, however there are the following considerations:
- (i) *Council will be responsible for marketing and disposing of the site, including the funding of the interest payments until the Council has successfully disposed of the site (c£100,000 per annum).*
  - (ii) *Council would be responsible for site management and maintenance in the interim.*
  - (iii) *The ground conditions at Neasham Road have been raised as a potential issue for house builders through the Strategic Housing Land Availability Assessment (SHLAA) and this risk would sit with the Council as land owner, if this option were pursued. The ground conditions could potentially depreciating the value below the proposed loan amount. Conversely, if DBC secure a willing developer land receipt may increase which may deliver an additional capital receipt for the Council (even if overage is required).*
  - (iv) *DFAM is in negotiation with a house builder as set out in **Part III of this report** and the Council stepping in now may frustrate the current position and/or delay residential development at Neasham Road and the land receipt being received.*
- (b) **DFAM continue to operate from Clifton Road until the full receipt is received from the House Developer** – Medium risk of project not being delivered:
- (i) *Clifton Road will remain operational for around another 3 years if not longer.*
  - (ii) *No guarantee that the same construction price will be attainable in 2 years and/or DFAM funding position with the bank may change, meaning that despite receiving the monies from Neasham Road, there remains a funding gap within the project preventing the relocation from commencing.*
- (c) **The Council purchase the freehold for the Auction Market Site at Humbleton Farm and grant a long leasehold in return for an ongoing revenue stream** – risk of project proceeding is similar to the recommended way forward however may take longer to negotiate the detail.
- (d) **The Council pursue an alternative site and an operator in respect of its obligations under the DEI Act and terminate the Clifton Road Lease once new facility is operational** – This is likely to take a longer time to realise the closure of Clifton Road due to the need to formulate and undertake a procurement exercise:-

- (i) *In the absence of a marketing exercise the Council cannot guarantee that it would be successful in securing an operator and/or a revenue stream comparable to that received from DFAM at Clifton Road. Should this be the case, the Council may be unable to fall back on the DFAM and Humbleton Farm option.*
- (ii) *Conversely, there may be a strong market and the Council may secure a more healthy revenue stream going forward.*

## **State Aid**

- 15. The Council will need to undertake a State Aid Assessment to identify and mitigate any State Aid issues arising.
- 16. The Council will charge a commercial rate of interest on the loan, so as to not confer State Aid to DFAM. The rate will be informed by the rate DFAM secure from its bank. The Council will also need to ensure that the rate offered to DFAM covers its own borrowing costs.
- 17. The main area where State Aid may arise is in respect of market rights. The Market Rights are difficult to value. In the scenario that the Council manages to secure a position where the tolls and levies payable are on a similar basis as that under the Clifton Road Lease, this is unlikely to be an issue.
- 18. The final position agreed must not confer State Aid to DFAM.

## **Procurement and Legal**

- 19. A Franchise Agreement is proposed to address the Council's compliance with its obligations under the DEI Act. The terms of the Agreement as set out in **Part III of this report** are compliant with EU Procurement Regulation and the Council's Contract Procedure Rules. The Franchise Agreement will constitute a concession for procurement purposes.
- 20. A concession as an agreement is a grant of rights, land or property by a local authority, individual or other legal entity.
- 21. Service concessions are not regulated by the European Procurement Directives and so are not regulated by the Public Contracts Regulations 2015 for England and Wales, save as to the requirement that DFAM accepts a duty not to discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:-
  - (a) of nationality, against a person who is a national of and established in a relevant State; or
  - (b) that the goods to be supplied under the contract originate in another relevant State.

22. The Council is subject to best value duties and the maintenance of the tolls and levies at existing rates ensures that the Council is maintaining the financial position previously negotiated and financial benefit historically enjoyed in return for the rights is maintained.

### **Financial Implications**

23. To reduce the interest payable, it is envisaged that DFAM would drawdown the loan in stages with the proposed loan amount being paid out by the end of March 2016 if construction commences in November 2015. As the first repayment scheduled in at the end of April 2016 (subject to the planning process progressing as anticipated), this is therefore a short-term bridging loan facility where the maximum exposure is for a relatively short period.
24. The Council has secured sufficient interest and guarantees to underwrite the loan facility and associated borrowing costs should DFAM default.
25. In addition, the successful relocation of DFAM from Clifton Road would leave the Council with a disposable asset. The residential value of this site is considered to be in the region of £1million.

### **Corporate Landlord Advice**

26. The Council is the freehold owner of Clifton Road, with DFAM currently operating under a Lease. An Agreement for Surrender has been agreed as set out in **Part III of this report**.
27. The Council would need to make this site safe and secure to limit its liability in advance of the onward disposal of the site. As such it is considered appropriate to release up to £20,000 of the future land receipt to make the site safe and secure going forward.
28. Clifton Road will be surplus to the Council's requirements following the surrender of the Clifton Road Lease. As such this report seeks Cabinet resolution to declare it as such.
29. In the event of default it is considered that there is sufficient value in the Neasham Road site in current and improving market conditions to recover the costs associated with the loan facility. This is subject to ground conditions being satisfactory for residential development. The Council should not take on the liability of the Neasham Road site should the existing housing developers withdraw on the basis of the ground conditions being considered unsuitable as the Council may be unable to secure the onward disposal of Neasham Road.

### **Consultation**

30. No consultation has taken place outside the statutory planning consultations.