
RELOCATION OF CATTLE MARKET FROM CLIFTON ROAD

**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**

SUMMARY REPORT

Purpose of the Report

1. This report seeks Council 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. There are two duties placed upon the Council in respect of the Cattle Market:
 - (a) A duty to maintain a market and market place for cattle;
 - (b) A duty to secure the votes of 2/3 members present at a special meeting of the Council if the location of the market place is to change (and this can only be re-location to another site within the Borough).
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. At their meeting on 8th September 2015, Cabinet considered and approved in principle the financial support and the relocation of the Cattle Market from Clifton Road. This report to Council seeks to secure the necessary resolutions to enable the relocation to proceed.

Recommendation

8. It is recommended that :-
 - (a) 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) Council note the ongoing discussions taking place between DFAM and the Council (as set out in the report) and delegate conclusion of the outstanding matters, including the date of the relocation. to the Director of Economic Growth in consultation with the Portfolio Holder;
 - (c) Council approves and provides a bridging loan of £2million to DFAM in line with the principles set out in paragraph 13(a)

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.

Background Papers

Relocation of Cattle Market from Clifton Road (Cabinet Paper 8th September 2015)

Jill Thwaite : Extension 6312

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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. The budgetary implication for the Council has been mitigated as much as possible through the proposed structure; however they have not been eradicated. This decision does not represent a change to the policy framework. |

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| 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.
 - (iv) Security for the loan will be in the form of the First Legal Charge against Neasham Road residential site and subsequently a Parent Company Guarantee from the Housebuilder once the development commences.
- (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;
 - (ii) Following surrender, securing the site will be the responsibility of the Council. Cabinet has released £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:**
- (i) 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.
 - (ii) The Council currently receives an income stream from the Clifton Road site made up of a rent and consideration in return for the market rights which are also granted through the Clifton Road Lease. This equates at a net income in the region of £45,000 per annum for the Council. The parties are continuing to negotiate the extent of consideration which should be received from DFAM as a result of the relocation to the new facility (which is outside the Council's ownership) and their operations from it. Any change from the current position will constitute a change to the existing budgetary framework. Cabinet, at its meeting on 8th September 2015, delegated authority to the Director for Economic

Growth, in consultation with the portfolio Holder, to negotiate and agree this matter.

State Aid

14. The Council will need to undertake a State Aid Assessment to identify and mitigate any State Aid issues arising once the final detail is agreed.
15. 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.
16. 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. Any significant change to the value or means of calculating the consideration will need to be considered in the context of State Aid legislation and exemptions etc.
17. The final position agreed must not confer unlawful State Aid to DFAM.

Procurement and Legal

18. A Franchise Agreement is proposed to address the Council's compliance with its obligations under the DEI Act. The principle terms are compliant with EU Procurement Regulation and the Council's Contract Procedure Rules. The Franchise Agreement will constitute a concession for procurement purposes.
19. A concession as an agreement is a grant of rights, land or property by a local authority, individual or other legal entity.
20. 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.

Financial Implications

21. 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.

22. The Council has secured sufficient interest and guarantees to underwrite the loan facility and associated borrowing costs should DFAM default. This includes a first legal charge at Neasham Road which will be replaced by a Parent Company Guarantee from the House Builder from the point development commences.
23. 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

24. The Council is the freehold owner of Clifton Road, with DFAM currently operating under a Lease. An Agreement for Surrender has been agreed in principle, which will see the Lease coming to an end following the successful relocation of DFAM to the Humbleton Farm facility.
25. 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 at its meeting on 8th September 2015, Cabinet released up to £20,000 of the future land receipt to make the site safe and secure going forward.
26. Clifton Road will be surplus to the Council's requirements following the surrender of the Clifton Road Lease. As such Cabinet resolved to declare it as such at its meeting on 8th September 2015.
27. 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.

Darlington Extension and Improvement Act 1872 Obligations

28. The DEI Act sets out that the obligations on the Council in respect of the Cattle Market, including the requirement to secure the votes of 2/3 members present at a special meeting of the Council if the location of the market place is to change (and this can only be re-location to another site within the Borough).
29. There is no statutory provision for the Council to close the cattle mart or cattle mart site. In order to do so a new Act will be required unless some other de-regulation procedure (ministerial order) could be obtained. The Council has previously taken steps to have these obligations removed. During the 1990's the Council took a petition to the House of Commons but the petition was rejected. Whilst it is noted that, at the time DFAM did not support the Council's petition, there is no certainty that the Council would be successful again, even if it were to have the support of DFAM.

30. Failure to provide a cattle mart could be actionable at the suit of farmers and others who wished to buy or sell livestock. The failure to have a market could constitute a breach of statutory duty under section 81 of the 1872 Act, as that section implies that a market site will be maintained unless alternatives are provided.
31. The Clifton Road site is, constrained given the increasing trade levels of DFAM whose operations have now outgrown the use of the site. In addition, due to the increasing conflict and compatibility between the operations of the auction mart and the local community the site's use is limited through environmental health and planning restrictions. DFAM are therefore seeking to relocate its business to an alternative site at Humbleton Farm and are seeking the Council's support and investment in this relocation.
32. It is considered that the proposition presented by DFAM represents the most appropriate way forward in respect of meeting these obligations and as such this report seeks the necessary support from members in respect of the relocation of the cattle market from Clifton Road to Humbleton Farm.

Consultation

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