

Report to: Cabinet



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Seaton Moridunum, Seaton

Report summary:

The report provides information on the vacant Moridunum site on Seaton seafront. It explains the unique significance of this site for Seaton seafront from a placemaking perspective and that it forms part of the original Seaton Seafront Enhancement Scheme planning permission that has now expired. The report explains that for a number of years, the council has been discussing the disposal of this site to the owners of Fosseway Court (residential complex to the rear), to enable access to the Fosseway Court site and thereby support delivery of that scheme. It explains the mechanism by which the council can dispose of the site to the owners (Fosseway Transition Ltd, - FTL), as a special purchaser, whereby FTL would deliver the new development on the Moridunum site to provide a new commercial offer with public realm space over as the original planning permission had envisaged for this part of the Seafront Enhancement Scheme.

In August 2020, the council proposed an offer which set out the required financial payment that would be acceptable to the council. This was eventually accepted by FTL in May 2021 (which would then be subject to formal council approval).

To this end, the council has been working closely with FTL since summer 2021 to progress the details of that disposal. In order to facilitate the process, the council established regular meetings with FTL in order to ensure that relevant issues were communicated in a timely manner and that tasks could be monitored and delivered on by either party.

The report details that work on Fosseway Court has now commenced and that works carried out by the developer have resulted in damage to council land at the Moridunum. This has raised concerns for the stability of the council's land and public safety and following some delay an engineer did visit the site and advise on temporary works required to ensure the stability of the site. However, officers were disappointed at how the developer has carried out the works without authorisation and the delayed response to their concerns regarding the site safety and stability. These recent events have compounded concerns about working with FTL as a special purchaser rather than the marketing of the site.

Irrespective of the disposal of the Moridunum site, the council can work collaboratively with FTL to ensure the delivery of Fosseway Court by enabling use of council land when and as appropriate. It is recommended that additional professional and technical resource is required to ensure that the implications of the construction methods on Fosseway Court, and their impact on council land (and use of council land) is understood.

This has created a challenging situation for the council causing pressure on resources as these recent issues have required urgent attention. The issues identified in this report are of concern and it is considered appropriate for the council to review and consider how best it needs to achieve its intended outcomes for the site of a new commercial development along with the public realm works.

Given the prominence of the site and its importance for Seaton seafront, the council may wish to consider whether an alternative approach is now required to progress delivery of a new development. The report provides options for the council to consider within the recommendations. Option 1 is to continue with negotiating a disposal of the site to FTL, and Option 2 is to take forward a marketing exercise for the site to enable the selection of a new developer partner. Neither would preclude continuing to work with FTL to facilitate the delivery of Fosseway Court.

Is the proposed decision in accordance with:

Budget Yes ☐ No ☒

Policy Framework Yes ☒ No ☐

Recommendation:

1. That cabinet recommends which option to pursue in order to deliver a redevelopment of the Moridunum site from:
 - a) Option1 - continue to negotiate a disposal of the site to Fosseway Transition Ltd where the redevelopment of the site will include a number of commercial units at street level with a new public realm walkway from east to west and outdoor eating space above, where the terms of the disposal agreement would be subject to a further cabinet report for approval in due course.
 - OR
 - b) Option 2 - Undertake a marketing exercise of the Moridunum site for disposal, where the redevelopment of the site will include the re-provision of public realm over the top of the site and to include a ransom strip or similar to ensure the council's long term ransom interest is protected.
2. That cabinet recommends that the council should work collaboratively with FTL in order to facilitate the delivery of the Fosseway Court residential development including necessary legal agreements and financial transactions.
3. That should Option 2 above be selected, that delegated authority is given to the Service Lead for Place, Assets & Commercialisation, in consultation with the Portfolio Holder for Economy and Assets to review how the redevelopment of the Moridunum site could best be progressed, with a further report to cabinet prior to commencing marketing of the site.
4. **That cabinet recommends to Council:**

That a budget of £15,000 be made available to provide additional technical resources to the Place, Assets & Commercialisation Service to ensure the ability to engage on technical matters regarding the work being undertaken at Fosseway Court.

Reason for recommendation:

To enable cabinet to decide how best to deliver the redevelopment of the Moridunum site bearing in mind the importance of the site for Seaton and in order to satisfy its obligations to achieve best consideration in accordance with the Local Government Act 1972.

To enable the council to work collaboratively with the developers of Fosseway Court in order to support the delivery of Fosseway Court ensuring that all appropriate and authorised use of council land is managed effectively, safely, and in a timely manner.

To ensure that the council can engage on technical matters affecting council land in relation to the redevelopment of Fosseway Court.

Portfolio(s) (check which apply):

- ☐ Climate Action and Emergency Response
- ☐ Coast, Country and Environment
- ☐ Council and Corporate Co-ordination
- ☐ Democracy, Transparency and Communications
- ☒ Economy and Assets
- ☒ Finance
- ☐ Strategic Planning
- ☐ Sustainable Homes and Communities
- ☐ Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: High Risk; There is a reputational risk for the council if the council were not able to secure delivery of a new commercial/public realm scheme that offers a high quality placemaking solution for this unique and prominent site on Seaton seafront.

Links to background information

Link to [Council Plan](#)

Priorities (check which apply)

- ☐ Better homes and communities for all
- ☐ A greener East Devon
- ☒ A resilient economy

Report in full

1. Background

- 1.1 The council owns the Seaton Moridunum site on the Esplanade in Seaton. The site comprises the former public convenience block and the ramps either side of this. The ramps are adopted as public footpath, but the top of the Moridunum is not adopted land. The site plan at appendix 1 illustrates the site and extent of ownership.
- 1.2 In 2017, Seaton Town Council secured a planning permission for improvements to Seaton seafront, known as the "Seaton Seafront Enhancement scheme". This planning permission incorporated the redevelopment of the Moridunum site whereby the existing WC structure would be replaced with a new food and beverage offer with some outdoor seating to the side, along with an improved public realm space above. The ramped walkways would remain up and over, but be reduced in width in parts to accommodate the outdoor seating. It also allowed for the building to extend into the road as the permission included road closure of this part of the Esplanade Road. This planning permission had a good level of public and local stakeholder support but has now expired.
- 1.3 The council is acutely aware of the unique opportunity that this site represents for Seaton given its location as a key seafront site. It is an extensive site that incorporates

the ramps and the WC block, extending in length to around 100 metres. In its current form, it is unattractive and not viable for reuse without investment that could offer both a new commercial (e.g. food/other offer) use along with a re-imagined public realm space that continues to offer views out to sea. It is therefore vitally important to the council that its redevelopment is appropriate to its setting in terms of scale and also wider placemaking objectives. As part of the Axe Valley Project Stage 1 work, our consultants have commented on the importance of the viewing platform of the Moridunum and that of the walk up the ramps to enjoy the view should be a priority as part of a high quality and elegant design solution for the site.

- 1.4 For key sites such as this, the council, in its capacity as landowner, is conscious about relinquishing control over their future development and takes a careful approach regarding legal agreements that dispose of such sites to ensure that it is enabling appropriate development. It takes this approach as landowner, notwithstanding the role it has as Local Planning Authority in approving planning consents.
- 1.5 As a general rule, under the Local Government Act 1972, the council has a duty to achieve best (financial) consideration in the disposal of its assets, but it is recognised that there may be circumstances where an asset can be disposed of at a discount where it will secure the promotion or improvement of the economic, social or environmental well-being of the area.
- 1.6 This provision enables the council to work with special purchasers (rather than marketing a site) where there is a potential benefit to both parties in doing so.
- 1.7 For this reason, and over a number of years now, the council has explored working in partnership with Fosseway Transition Ltd (FTL) who own the Fosseway Court development to the rear of the Moridunum block. The council has been keen to help support the delivery of Fosseway Court by FTL, which has regeneration benefits for Seaton seafront in its own right. The acquisition of the Moridunum site is of particular interest to FTL who require access into their Fosseway Court site, which they are currently redeveloping. It would also give FTL control over the activities carried out in front of their new development which may be relevant to the sale of the new apartments that will be built.
- 1.8 There is therefore the opportunity to dispose of the Moridunum site on a long leasehold basis to FTL as a special purchaser. In this instance, they would demolish the Moridunum site, facilitating access into their site, and then redevelop the Moridunum site to provide new commercial space on the ground floor and create new public realm space above, as envisaged by the original Town Council planning permission. Discussions on this basis have been taking place, although the current proposals by FTL are of a greater scale than the original planning permission.
- 1.9 In August 2020, the council provided details to FTL of the required financial offer that would be acceptable if they were to acquire the site. In May 2021, FTL agreed to this outline offer in principle. The offer would be subject to council approval once more detailed Heads of Terms had been agreed between the parties.
- 1.10 The outline offer included that:
 - The council would dispose of the site to FTL.In return, FTL would agree to:
 - Payment of a financial sum to the council which would cover both:
 - a) an element of ransom payment to reflect the need for FTL to acquire the Moridunum site in order to deliver the Fosseway Court redevelopment, and

- b) an element of value for the Moridunum site itself, that reflected its redevelopment for commercial use (1 no. food and beverage unit) and new public realm over the top of the Moridunum.
 - Demolish part of and then use the Moridunum site to gain access to its site from Seaton Esplanade at the front of the Moridunum toilet block where it intends to have a compound area for deliveries into the Fosseyway Court site;
 - Develop the new commercial unit (café facility) in the space of the former toilet block, for letting at a commercial rent to a food operator;
 - Re-provide public realm space over the top of the commercial development at its expense,
 - Enter into a performance bond that would cover the development cost of the Moridunum site thereby ensuring delivery of the scheme in circumstances where FTL were no longer able to do so.
- 1.11 The council has been working closely with FTL since summer 2021 to make progress on the detail of the offer with a view to bringing forward a recommendation on Heads of Terms for the disposal of the site to FTL, to cabinet in the spring of this year. In order to facilitate the process, from last autumn the council established regular meetings with FTL in order to ensure that relevant issues were communicated in a timely manner and that tasks could be monitored and delivered on by either party.
- 1.12 The draft proposal from FTL is more extensive than the previous consented scheme, incorporating a number of commercial units with outdoor eating space and public realm above, and a redesign of the ramps offering a walkway from east to west. The developer has declined the advice from officers that it should obtain pre-application advice from the Local Planning Authority. This causes some concern as the lack of feedback that would be gained through a pre-application discussion brings an increased risk of refusal thus leading to potential reputational damage for the council and further delay to progression of the site and delivery of an enhanced seafront for Seaton.
- 1.13 In conjunction with the proposed designs for the new Moridunum being prepared by FTL, the council prepared a draft Heads of Terms for a disposal of the site which were issued last November. There was a delay in FTL responding on these and they were received in March this year by which time the works that have caused damage to the Moridunum, as set out below, had already commenced. Officers have yet to review these Heads of Terms as resources have been directed to understanding the current situation regarding the safety and stability of the council's land and the legal position generally.

2. Works Undertaken on Council Land

- 2.1 FTL commenced work on their site in January this year. During a site visit in early February by officers, it was noted that the heras fencing to secure the site was placed on council land, some 3 metres from the actual site boundary. Officers were advised by FTL that the fence was in this position due to public safety reasons. Despite not being advised of this in advance, or being asked for the council's consent to this arrangement, working collaboratively with FTL, and wanting to ensure the safety of pedestrians using the public realm area, the council was amenable to this arrangement. Officers advised FTL that a licence agreement would be required for use of the council land for the fencing. Similarly, an external staircase from one flat was being realigned to exit onto council land and officers advised FTL that a further licence would be required for this.
- 2.2 In mid-February, officers became aware that land owned by the council, beyond the boundary of the FTL site had been damaged. This was land on the western ramp and

across the top of the site, and the damage indicated that the machinery on site was commencing the removal of the tarmac surface at these locations.

- 2.3 Further damage and excavation took place over the following days in February, and a visit a few days later indicated that the council's land was being extensively excavated. Photos of the damage are included at Appendix 1.
- 2.4 At a meeting that took place at this time, (22 February) officers expressed their concern about the removal of council land. The council had not consented to work taking place on its land and was disappointed that FTL had not informed the council, as landowner, of this damage that they had caused to its land. FTL acknowledged that this should have been communicated in advance, but advised that the removal of the council land was necessary and formed part of the Party Wall Award.
- 2.5 At the same meeting, officers requested that FTL arrange for an engineer to visit the site as a matter of urgency, to ensure that the council land was safe and stable. Officers also made contact with the Council's appointed Party Wall Surveyor (PWS) and requested that he make contact with FTL's appointed PWS, to visit the site together and inspect and advise on the need for these works.
- 2.6 It was not until the 21 March that an engineer instructed by FTL visited the site, and as at 25 April, the council has not received a copy of their report but on 23 March was provided with a brief summary of the engineer's observations, by the PWS's. In this summary, the engineer states that they are not able to confirm the stability of the excavations and that temporary works are required to prevent the clay substrata drying out and becoming more friable and less stable. It was only on 24 March that the PWS's visited the site.
- 2.6 During this delay of a month, the council considered it prudent to instruct its own engineer to inspect the site. The advice from the council's engineer similarly expresses the need for temporary works to ensure the stability of the site.
- 2.7 The council's PWS has had a second visit to the site with FTL's PWS and discussed the requirements to rectify the situation. FTL's engineer has proposed temporary works, which from an initial review appear to be acceptable to the council's engineer and PWS.
- 2.8 The works that have been carried out to excavate and demolish the council's land has been done outside of the provisions and powers of the Party Wall Act. The council remains unclear as to why its land has been excavated in this way. There is in any event a requirement under the Party Wall Award to undertake repairs and reinstatement works where damage occurs to the adjoining owner's (council's) land. This requirement is acknowledged by FTL who have stated that this will take place as required.
- 2.9 Further consideration will need to be given to the appropriate legal agreements and financial compensation that will retrospectively deal with the use of the council land. Some progress had been made regarding licence agreements for access with an initial response received from FTL, although this response was delayed too.
- 2.11 The Council can work collaboratively with FTL to support the redevelopment of Fosseyway Court which remains an important project in its own right for Seaton seafront. In doing so, it is likely that the council will require some additional technical resource to ensure an understanding of the construction methods being implemented for Fosseyway Court and their impact on council land, and where appropriate, an oversight of any work actually taking place on and/or affecting council land. A budget of £15,000 would be appropriate to support this which could be recovered in respect of any premium or licence fee for the use of council land by FTL.

3 The Moridunum Site

- 3.1 The Moridunum site is a complex site presenting a number of challenges for its redevelopment and the nature of construction work is such that it is inevitably challenging to rectify a problem once it has occurred.
- 3.2 The position that the council has found itself in over the last 2 months has been challenging, and has caused pressure on council resources as the challenges that have arisen have required urgent attention. These challenges have occurred despite the council having had regular meetings with FTL and expending resources to work closely with FTL since last September. As set out at 1.3 above, the council is acutely aware of the significance of this site. It is crucial that any disposal of this site is delivered in a way which ensures the timely delivery of an appropriately designed development which reflects its unique placemaking opportunity.
- 3.3 Given the prominence of the site and its importance for Seaton seafront, the council may wish to consider whether an alternative approach is now required to progress delivery of a new development. It needs to be remembered that not only is this a disposal of a site at a prominent seafront location, but the proposed transaction would require the developer to undertake significant public realm enhancements before returning that element to the council/DCC Highways for future management and maintenance. The council needs to be confident that not only is the commercial development the best that can be achieved but also that the public realm works are completed satisfactorily. The issues identified in this report suggest that the council should consider how best it needs to achieve these outcomes.
- 3.4 The report provides options for the council to consider within the recommendations. Option 1 is to continue with negotiating a disposal of the site to FTL, and Option 2 is to take forward a marketing exercise for the site to enable the selection of a new developer partner.
- 3.5 A marketing approach will take longer before a developer is in place and consequently longer before the scheme is delivered. The benefit of a marketing approach is that it gives the council the ability to have greater influence over the future proposals for the site – both in terms of the commercial element and the public realm element. Consideration would be given to the preparation of a development and design brief to provide specific guidance on what is required and the method of delivery of any proposals. If this option were selected, arrangements for the disposal of the site would include a ransom strip or similar at the rear of the site to protect the council long term interest in respect of the development of the Fosseyway Court site.

Financial implications:

There is a request for supplementary estimate of £15,000 to ensure the Council can engage necessary technical resource as required to ensure safety issues are covered and that public assets are protected. Other financial implications relate to ensuring the Council obtain best value and meet wider objectives of delivering an enhanced seafront, further reports with likely financial implications for the Council will be presented to Cabinet and Council to progress these matters.

Legal implications:

Legal services are concerned regarding the unauthorised use and demolition of the council's land and the approach that has been taken by the developer. It is suggested that the existing situation is resolved to ensure that the remediation works and the provision of a solution to stabilise the Moridunum and its ramps are agreed and documented in an appropriate legal agreement prior to continuing with any agreement in respect of the transfer of the Moridunum. It is open to the council to consider how it wishes to proceed with regards to any future disposal of the Moridunum.