

Report Title:	York Road Phase I, Maidenhead
Contains Confidential or Exempt Information	No – Part 1 Main Cabinet Report Yes - Part II – Appendices B and D (not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).
Cabinet Member:	Cllr Bermange Cabinet Member for Planning, Legal and Asset Management Cllr Jones Cabinet Member for Finance
Meeting and Date:	Cabinet Meeting – 25 October 2023
Responsible Officer(s):	Andrew Durrant, Executive Director of Place
Wards affected:	St Mary's

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REPORT SUMMARY

1. The report provides information for Cabinet to note in relation to the potential ‘windfall’ from the reversion sale of Countryside’s commercial occupational leases and the contractual obligation to provide a 4,000 sq.ft of commercial floorspace, now not being provided, under the Site Proposal of the Development Agreement with Countryside. However, there is no legal or contractual mechanism within the Development Agreement to capture the resulting capital value.
2. Countryside has the benefit of the headlease for Phase I comprising Trinity and Coopers Court (see Site Plan - **Appendix A**) and are marketing and selling the residential and commercial plots by way of granting leases or sale of the whole portfolio, Countryside was tasked with enabling RBWM to realise the capital value of the alternative reversionary interest in the headlease for the commercial floorspace (i.e. now as a notional 4,000 sq.ft of commercial floorspace) given the obligation to provide the physical space and as a result of the commercial floorspace not being taken up by the Council.
3. Cabinet is to note that the land sale for York Road Phase 1 has been fully realised. At this stage, Countryside has been able to let the majority of the commercial floorspaces save for two remaining vacant commercial floorspaces being Units 1.2 and 2.3a. The commercial floorspaces have been let as follows (see Floor Plans - **Appendix A**):
 - Unit 1.1 – Knead Pizza (opened in December 2022)
 - Unit 1.3 – Hoppy Place (opened in June 2022)
 - Unit 2.1 – Masters (opened in November 2022)
 - Units 2.2 to 2.3 – Anytime Fitness (opened in May 2022)

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and:

- i) **Approves RBWM entering into a formal contract with Countryside outside of the Development Agreement to capture the capital value from the reversion sale of the notional 4,000 sq. ft commercial floorspace.**
- ii) **Delegate authority to the Executive Director of Place in consultation with the Cabinet Member for Planning, Legal and Asset**

Management and Managing Director of the Property Company to complete the contract with Countryside.

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option 1	Comments
<p>Note terms and approve the entering into a formal contract with Countryside for the Council's receipt of the reversion sale of Countryside's occupational leases and the contractual obligation to provide a 4,000 sq.ft of commercial floorspace.</p> <p>This is the recommended option</p>	<p>Approving the formal contract will enable and provide a welcomed capital receipt to RBWM which it may otherwise not have realised. The receipt will enable the delivery of part of the Council's strategic objectives. It forms part of the Property Company's Business Plan, as well as a strategic delivery objective for RBWM.</p>
<p>Option 2</p> <p>Do nothing.</p> <p>This is not recommended</p>	<p>RBWM will not have the benefit of the capital receipt from the reversionary sale by Countryside.</p>

2.1 The structure of the proposed contract is based on Countryside carrying out the marketing and sale of the commercial units within an agreed target date of 24 months from the date of the contract with three main routes for RBWM to realise the capital receipt.

A form of sequential disposal strategy with Countryside is proposed, as they are taking the sales and marketing risk. These include **Route A** – via a Commercial Portfolio Disposal, **Route B** – via a Series of Commercial Leases Disposal or **Route C** – via Settlement Payment or Target Date Extension

If by the target date, Countryside has not been able to dispose of the commercial units as a portfolio or individually in accordance with either Route A or B above, RBWM could require Countryside to make a settlement payment in accordance with **Appendix B** or agree with Countryside to extend the target date to 30 months from the date of the contract (i.e. an extension of 6 months from the original target date of 24 months) to realise the sale. Alternatively, the Council could propose to extend the original target date to a date of its choosing. The rationale for the extension of the target date is to afford flexibility to enable completion of the sale of the commercial units if the sales process has already commenced by Countryside.

3. KEY IMPLICATIONS

3.1 The main implication is that of capital receipt by RBWM from the sale of Countryside's reversion interest, as relates to the notional 4,000 sq.ft of commercial floorspace now not being provided to Maidenhead Heritage Centre.

3.2 There will be some time lag, in this case 24 months after the date of the contract or a defined period in agreement with RBWM, before the capital receipt for the reversion is realised. This is simply because of the marketing period required to promote and sell the commercial units as a portfolio asset or the grant of individual leases.

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Route A – Reversionary Lease Disposal – Disposal portfolio of all commercial units by way of a Reversionary Lease prior to 24 months from the contract date.	Nov 2025 (Subject to RBWM not extending the target date)	Oct 2025	Dec 2025 (Subject to RBWM not extending the target date)	n/a	Oct 2025
Route B – Reversionary Leases Disposal – Disposal of series of Reversionary Leases prior to 24 months	Aug 2025 (Subject to RBWM not extending the target date)	July 2025	Sept 2025 (Subject to RBWM not extending the target date)	n/a	July 2025
Route C – Settlement Payment or Target Date Extension - No disposals via Route A or B, RBWM to receive a settlement payment or agree with Countryside to extend the target date to 30 months from the contract date.	Nov 2025 (Subject to RBWM not extending the target date)	Oct 2025	Dec 2025 (Subject to RBWM not extending the target date)	n/a	Oct 2025

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 This report provides information for Cabinet to note in relation to the potential capital receipt from the sale of Countryside's reversion interest and the contractual obligation to provide RBWM with a 4,000 sq.ft of commercial floorspace which was not taken up in return for a minimum capital receipt in accordance with the Site Proposal under the Development Agreement with Countryside.
- 4.2 The minimum capital value has been assessed (see **Appendix B**) based on the capitalisation of the average rents achieved for the letting of the commercial units 2.1 to 2.3 within the area which otherwise would have been the space to be occupied by RBWM or a third-party occupier. The total commercial floorspace footage for units 2.1 to 2.3 is 9,259 sq.ft of which 4,000 sq.ft (i.e. 43.2% of the total) relates to the contractual obligation Countryside has towards RBWM and the basis of this cabinet report.
- 4.3 The net capital receipt to RBWM will have considered the deductions in terms of lettings fees and costs based on actual expenditure incurred by Countryside and evidenced by invoices and payments made. These include the following, Lettings Agents fees, Letting Solicitor's fees, Marketing, Professional and Planning (non-material amendment) fees, Capital Contributions towards Mezzanine Staircase and Level Access Platform Lift. The deductions for the investment sale fees and costs are assumed based on Legal, Sale Agent and Marketing to enable the proposed sale.
- 4.4 There are no revenue and capital expenditure costs assumed for RBWM, as Countryside are carrying and taking on the lettings and sales risks associated with the commercial units. Ultimately, it is assumed Countryside will sell off the commercial units as they are developers which typically do not hold assets long term.

5. LEGAL IMPLICATIONS

- 5.1 The legal implication on RBWM of the proposed freehold reversion sale as relate to the notional 4,000 sq. ft commercial floorspace is limited. The Council maintains its freehold interest in land.
- 5.2 Countryside are taking the sales and marketing risks under the Development Agreement and by RBWM approving the entry into contract with Countryside outside of the prevailing Development Agreement enables the Council a legal mechanism to capture the capital value and provides the legal safeguard in so doing.
- 5.3 The Framework and Development Agreements with Countryside for the delivery of York Road means this proposal remains within the scope of the Public Contracts Regulations 2015 ("PCR 2015") given the procurement process to selecting Countryside as RBWM's contractual joint venture partner.
- 5.4 There is a draft contract in place which has been extensively negotiated with Countryside subject to the approval of RBWM.

6. RISK MANAGEMENT

- 6.1 Table 3: Impact of risk and mitigation

Risk	Level of uncontrolled risk	Controls	Level of controlled risk
Planning –Non material amendments were previously approved by the LPA in relation to the commercial units which enabled Countryside to let the units.	Low	Planning consultation with the LPA. Approval in place.	Low
Contractual – Contractual dispute	Medium	Contractual safeguards including expert determination, Interest accrual on sum not paid and clearly defined obligations on Countryside. There is restriction on registration at Land Registry until RBWM is in full receipt of all payment. There is also restriction on permitted disposal on Countryside as relates to its headlease.	Medium
Financial - Countryside going insolvent.	Medium	There is Parent Company Guarantee.	Medium
Income Reduction or Lack of Sale – Weakened demand for rental or sale of commercial properties against the backdrop of a weakened economy.	Medium	A minimum capital receipt as payment settlement is provided for in the event Countryside is not able to realise the sale by the target date or a defined period to be agreed.	Medium

7. POTENTIAL IMPACTS

7.1 Equalities. The receipted funds could be used to contribute towards future affordable housing provision for those who are on low incomes or unable to access such housing in the private sector. An Equality Impact Assessment is included at **Appendix C**.

7.2 Sustainability – The York Road development is sustainable given its location within the Town Centre with the development designed and constructed in accordance with the Approved Documents to meet the prevailing Building Regulations requirements and comply with RBWM's Corporate objectives.

7.3 Data Protection/GDPR. Screening form completed. GDPR is not relevant for this proposal and project, but a Data Protection/GDPR Assessment is included at **Appendix D**.

8. CONSULTATION

8.1 A Council Members briefing was provided on the 6th September 2023 to Cllrs Bermange and Jones.

8.2 This proposal has been considered by the Executive Leadership Team for RBWM prior to Cabinet approval.

8.3 There are no LPA consultation requirements given the nature of the proposal.

9. TIMETABLE FOR IMPLEMENTATION

9.1 Implementation date if not called is 3rd November 2023.

Table 4: Implementation timetable

Date	Details
11 October 2023	RBWM Executive Leadership Team Briefing
25 October 2023	RBWM Cabinet Meeting
3 November 2023	Expiry of Call In Period
10 November 2023	Completion of Contracts with Countryside

10. APPENDICES

10.1 This report is supported by 3 appendices:

- Appendix A – Block Elevations and Commercial Units Floor Plans
- Appendix B – Minimum Capital Value Calculation **Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.**
- Appendix C – Equality Impact Assessment
- Appendix D - Data Protection Impact Assessment
Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

11. BACKGROUND DOCUMENTS

11.1 This report is supported by no background documents.

12. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory:</i>		<i>Statutory Officers (or deputies)</i>	
Elizabeth Griffiths	Executive Director of Resources/S151 Officer	02/10/23	11/10/23 At ELT Briefing
<i>Deputies:</i>			
Andrew Vallance	Deputy Director of Resources (Deputy S151 Officer)	02/10/23	
Elaine Browne	Deputy Director of Law and Governance	02/10/23	12/10/23 Via email

Kirsty Hunt	Service Lead (Electoral and Democratic Services)	02/10/23	
<i>Mandatory: Procurement Manager (or deputy) - if report requests approval to award, vary or extend a contract</i>			
Lyn Hitchinson	Procurement Manager		
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Stephen Evans	Chief Executive	02/10/23	11/10/23 At ELT Briefing
Andrew Durrant	Executive Director of Place	02/10/23	11/10/23 At ELT Briefing
Kevin McDaniel	Executive Director of Children's Services	02/10/23	11/10/23 At ELT Briefing
<i>Heads of Service (where relevant)</i>			
<i>External (where relevant)</i>			
N/A	N/A		

Confirmation relevant Cabinet Member(s) consulted	Cllr Adam Bermange - Cabinet Member for Planning, Legal and Asset Management. Cllr Lynne Jones – Deputy Leader of Council and Cabinet Member for Finance	Yes (06/09/23)
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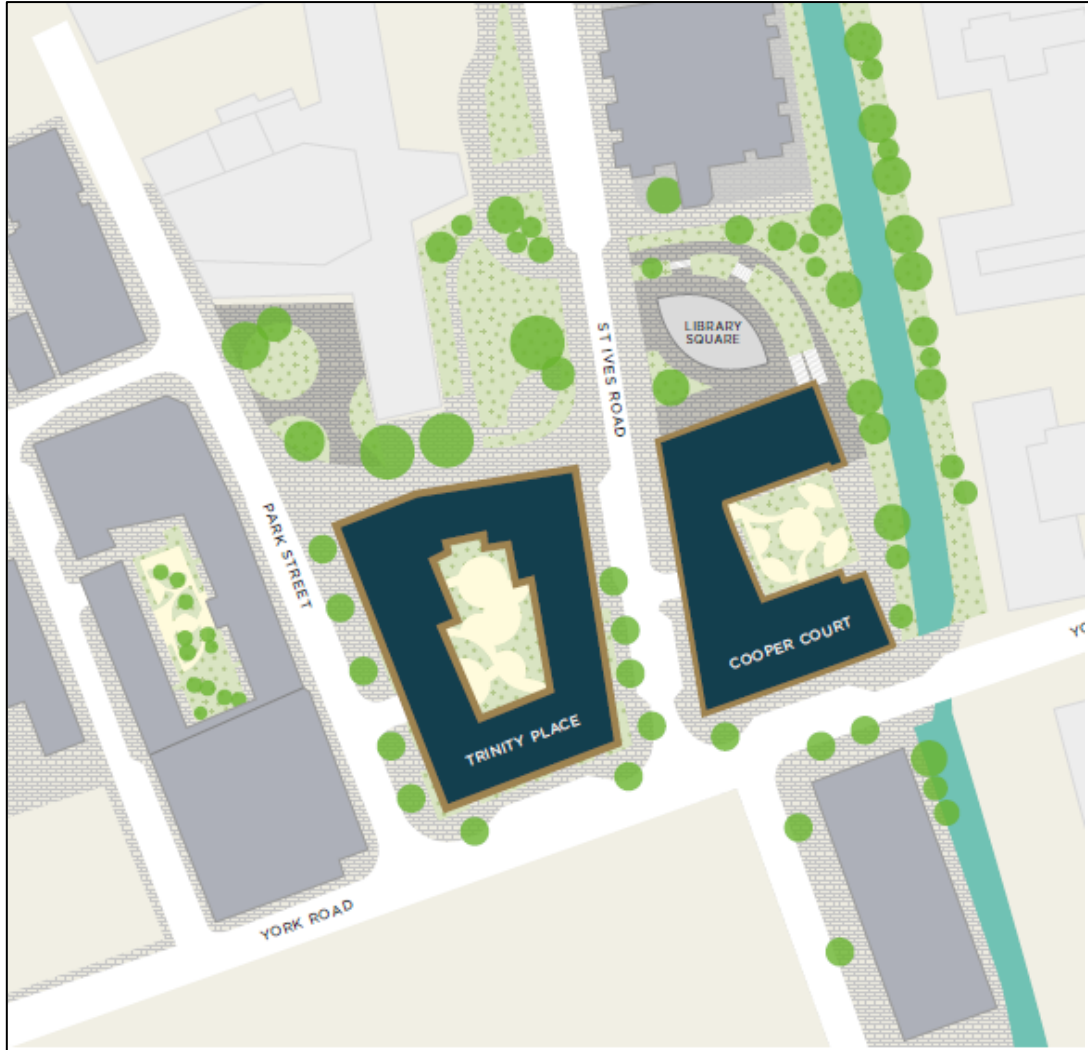
REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Key decision First entered the Cabinet Forward Plan: Sept 2023	No	No

Report Author: Emmanuel Ogedengbe, Head of Development, 07827 880171
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APPENDIX A

YORK ROAD PHASE 1 SITE PLAN



APPENDIX A



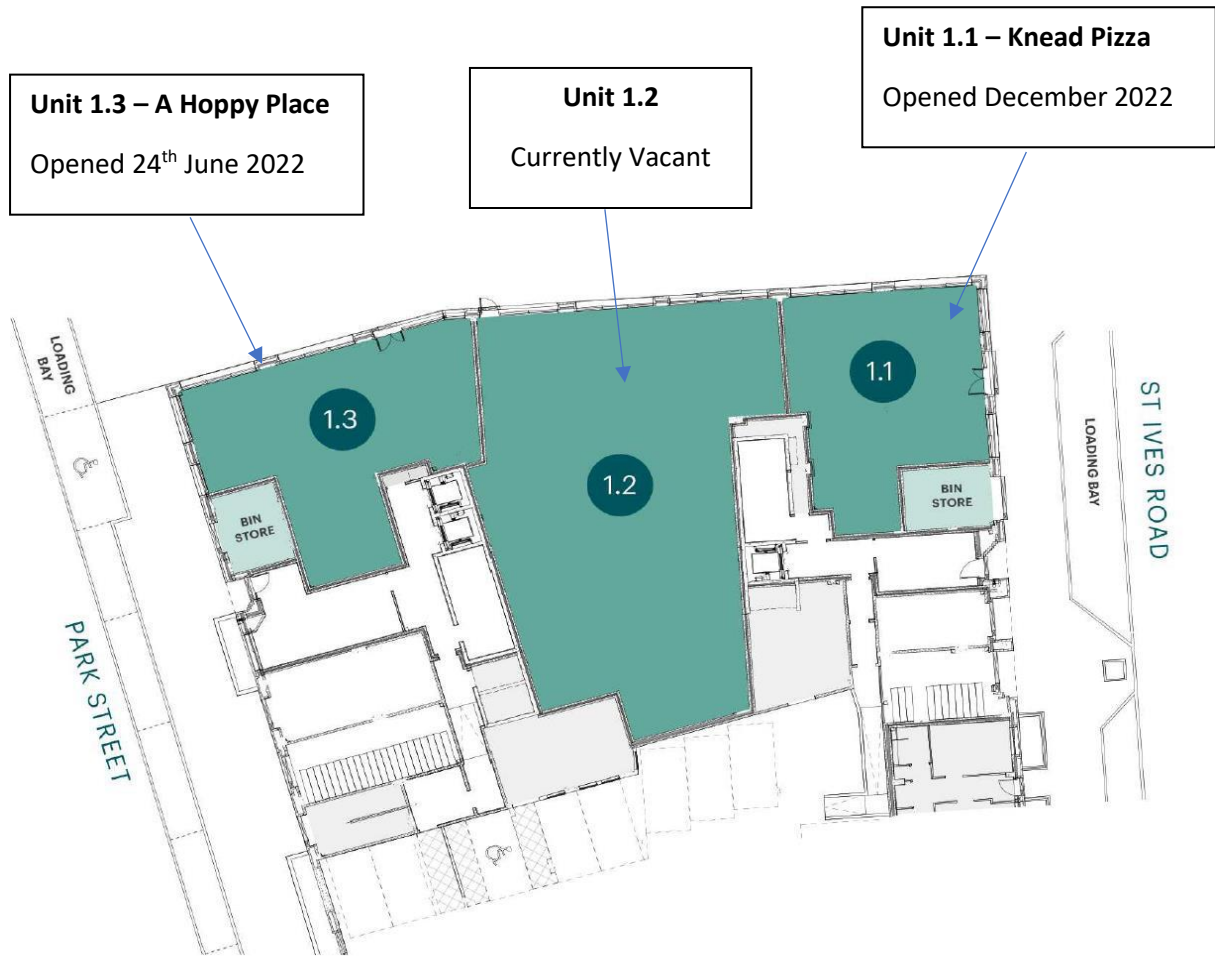
BLOCK D – TRINITY PLACE, YORK ROAD



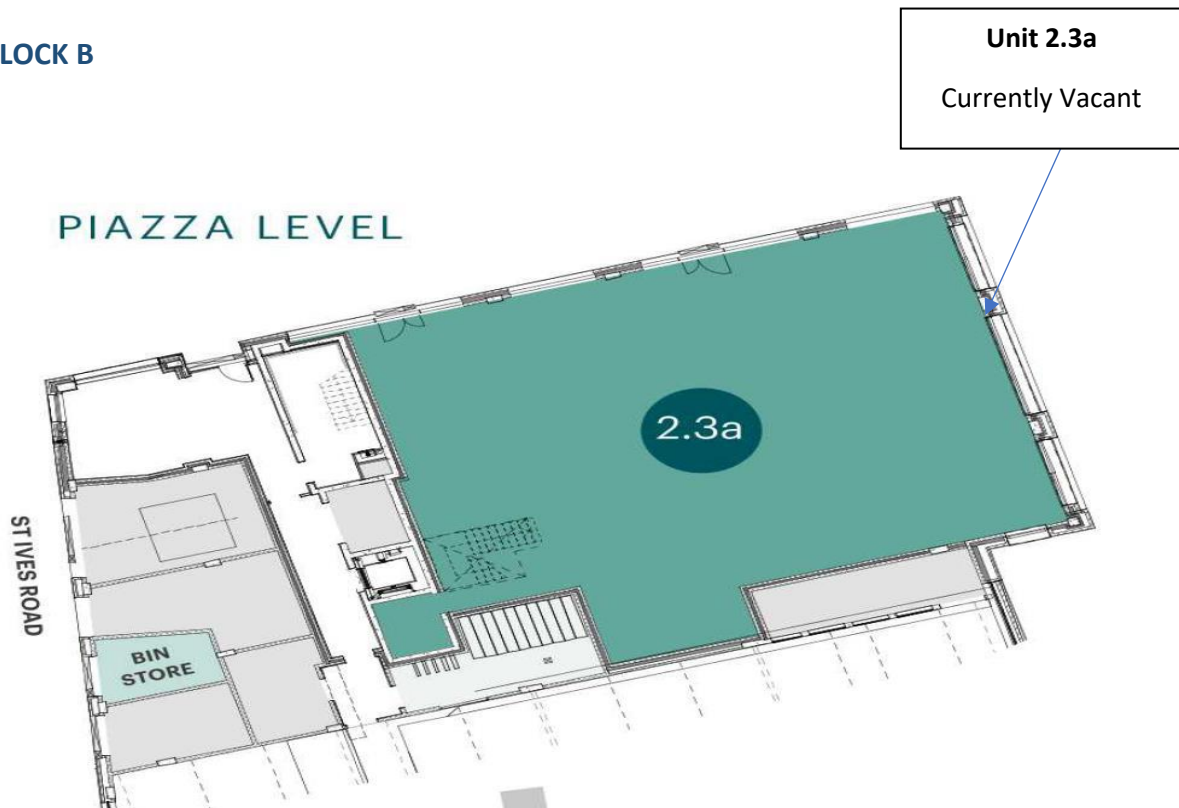
BLOCK B – WATERMARK - COOPER COURT, YORK ROAD

APPENDIX A

BLOCK D



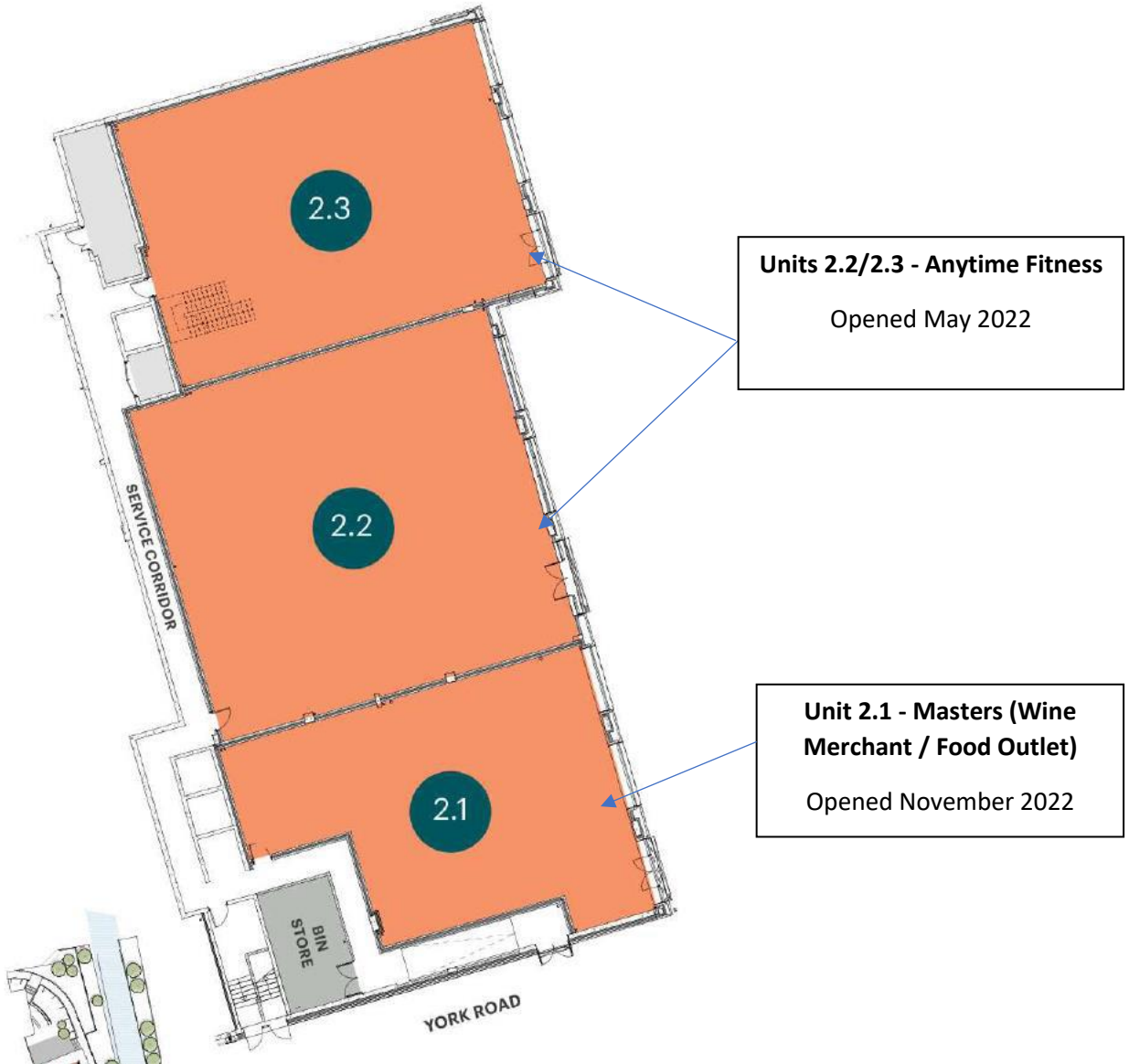
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APPENDIX A

BLOCK B

STREAM LEVEL



APPENDIX C

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD EQUALITY IMPACT ASSESSMENT

EqIA: York Road Phase I – Reversion Sale Receipt

Essential information

Items to be assessed: (please mark 'x')

Strategy	X	Policy		Plan	X	Project	X	Service/Procedure	
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Responsible officer	Emmanuel Ogedengbe	Service area	X	Directorate	RBWM Property Company Limited
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Stage 1: EqIA Screening (mandatory)	02/10/2023	Stage 2 : Full assessment (if applicable)	N/A
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Approved by Head of Service / Overseeing group/body / Project Sponsor:

"I am satisfied that an equality impact has been undertaken adequately."

Signed by (print): Emmanuel (signed electronically)

Dated: 02/10/2023

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ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

EQUALITY IMPACT ASSESSMENT

EqlA: York Road Phase I – Reversion Sale Receipt

Guidance notes

What is an EqlA and why do we need to do it?

The Equality Act 2010 places a 'General Duty' on all public bodies to have 'due regard' to:

- Eliminating discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advancing equality of opportunity between those with 'protected characteristics' and those without them.
- Fostering good relations between those with 'protected characteristics' and those without them.

EqlAs are a systematic way of taking equal opportunities into consideration when making a decision, and should be conducted when there is a new or reviewed strategy, policy, plan, project, service or procedure in order to determine whether there will likely be a detrimental and/or disproportionate impact on particular groups, including those within the workforce and customer/public groups. All completed EqlA Screenings are required to be publicly available on the council's website once they have been signed off by the relevant Head of Service or Strategic/Policy/Operational Group or Project Sponsor.

What are the “protected characteristics” under the law?

The following are protected characteristics under the Equality Act 2010: age; disability (including physical, learning and mental health conditions); gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

What's the process for conducting an EqlA?

The process for conducting an EqlA is set out at the end of this document. In brief, a Screening Assessment should be conducted for every new or reviewed strategy, policy, plan, project, service or procedure and the outcome of the Screening Assessment will indicate whether a Full Assessment should be undertaken.

Openness and transparency

RBWM has a 'Specific Duty' to publish information about people affected by our policies and practices. Your completed assessment should be sent to the Strategy & Performance Team for publication to the RBWM website once it has been signed off by the relevant manager, and/or Strategic, Policy, or Operational Group. If your proposals are being made to Cabinet or any other Committee, please append a copy of your completed Screening or Full Assessment to your report.

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Enforcement

Judicial review of an authority can be taken by any person, including the Equality and Human Rights Commission (EHRC) or a group of people, with an interest, in respect of alleged failure to comply with the general equality duty. Only the EHRC can enforce the specific duties. A failure to comply with the specific duties may however be used as evidence of a failure to comply with the general duty.

Stage 1 : Screening (Mandatory)

1.1 What is the overall aim of your proposed strategy/policy/project etc and what are its key objectives?

The proposal is for the potential 'windfall' from Countryside's reversion sale as capital receipt in lieu of the 4,000 sq.ft of commercial floorspace now not being provided due to the lack of take up under the Development Agreement with Countryside.

The overall aim of this proposal is to enter into a formal contract with Countryside for the Council's apportionment from the reversion sale by Countryside.

1.2 What evidence is available to suggest that your proposal could have an impact on people (including staff and customers) with protected characteristics? Consider each of the protected characteristics in turn and identify whether your proposal is Relevant or Not Relevant to that characteristic. If Relevant, please assess the level of impact as either High / Medium / Low and whether the impact is Positive (i.e. contributes to promoting equality or improving relations within an equality group) or Negative (i.e. could disadvantage them). Please document your evidence for each assessment you make, including a justification of why you may have identified the proposal as "Not Relevant".

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Protected characteristics	Relevance	Level	Positive/negative	Evidence
Age	N/A	0	N/A	<i>Key data: The estimated median age of the local population is 42.6yrs [Source: ONS mid-year estimates 2020]. An estimated 20.2% of the local population are aged 0-15, and estimated 61% of the local population are aged 16-64yrs and an estimated 18.9% of the local population are aged 65+yrs. [Source: ONS mid-year estimates 2020, taken from Berkshire Observatory]</i>
Disability	N/A	0	N/A	
Gender re-assignment	N/A	0	N/A	
Marriage/civil partnership	N/A	0	N/A	
Pregnancy and maternity	N/A	0	N/A	
Race	N/A	0	N/A	<i>Key data: The 2011 Census indicates that 86.1% of the local population is White and 13.9% of the local population is BAME. The borough has a higher Asian/Asian British population (9.6%) than the South East (5.2%) and England (7.8%). The forthcoming 2021 Census data is expected to show a rise in the BAME population. [Source: 2011 Census, taken from Berkshire Observatory]</i>
Religion and belief	N/A	0	N/A	<i>Key data: The 2011 Census indicates that 62.3% of the local population is Christian, 21.7% no religion, 3.9% Muslim, 2% Sikh, 1.8% Hindu, 0.5% Buddhist, 0.4% other religion, and 0.3% Jewish. [Source: 2011 Census, taken from Berkshire Observatory]</i>
Sex	N/A	0	N/A	<i>Key data: In 2020 an estimated 49.6% of the local population is male and 50.4% female. [Source: ONS mid-year estimates 2020, taken from Berkshire Observatory]</i>

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Sexual orientation	N/A	0	N/A	
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Outcome, action and public reporting

Screening Assessment Outcome	Yes / No / Not at this stage	Further Action Required / Action to be taken	Responsible Officer and / or Lead Strategic Group	Timescale for Resolution of negative impact / Delivery of positive impact
Was a significant level of negative impact identified?	No	No further action required	N/A	N/A
Does the strategy, policy, plan etc require amendment to have a positive impact?	No	No further required	N/A	N/A

If you answered **yes** to either / both of the questions above a Full Assessment is advisable and so please proceed to Stage 2. If you answered “No” or “Not at this Stage” to either / both of the questions above please consider any next steps that may be taken (e.g. monitor future impacts as part of implementation, re-screen the project at its next delivery milestone etc).

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Stage 2 : Full assessment

2.1 : Scope and define

2.1.1 Who are the main beneficiaries of the proposed strategy / policy / plan / project / service / procedure? List the groups who the work is targeting/aimed at.

2.1.2 Who has been involved in the creation of the proposed strategy / policy / plan / project / service / procedure? List those groups who the work is targeting/aimed at.

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2.1.2 Who has been involved in the creation of the proposed strategy / policy / plan / project / service / procedure? List those groups who the work is targeting/aimed at.

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2.2 : Information gathering/evidence

2.2.1 What secondary data have you used in this assessment? Common sources of secondary data include: censuses, organisational records.

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2.2.2 What primary data have you used to inform this assessment? Common sources of primary data include: consultation through interviews, focus groups, questionnaires.

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Eliminate discrimination, harassment, victimisation

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Protected Characteristic	Advancing the Equality Duty : Does the proposal advance the Equality Duty Statement in relation to the protected characteristic (Yes/No)	If yes, to what level? (High / Medium / Low)	Negative impact : Does the proposal disadvantage them (Yes / No)	If yes, to what level? (High / Medium / Low)	Please provide explanatory detail relating to your assessment and outline any key actions to (a) advance the Equality Duty and (b) reduce negative impact on each protected characteristic.
Age					
Disability					
Gender reassignment					
Marriage and civil partnership					
Pregnancy and maternity					
Race					
Religion and belief					
Sex					
Sexual orientation					

Advance equality of opportunity

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Protected Characteristic	Advancing the Equality Duty : Does the proposal advance the Equality Duty Statement in relation to the protected characteristic (Yes/No)	If yes, to what level? (High / Medium / Low)	Negative impact : Does the proposal disadvantage them (Yes / No)	If yes, to what level? (High / Medium / Low)	Please provide explanatory detail relating to your assessment and outline any key actions to (a) advance the Equality Duty and (b) reduce negative impact on each protected characteristic.
Age					
Disability					
Gender reassignment					
Marriage and civil partnership					
Pregnancy and maternity					
Race					
Religion and belief					
Sex					
Sexual orientation					

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Foster good relations

Protected Characteristic	Advancing the Equality Duty : Does the proposal advance the Equality Duty Statement in relation to the protected characteristic (Yes/No)	If yes, to what level? (High / Medium / Low)	Negative impact : Does the proposal disadvantage them (Yes / No)	If yes, to what level? (High / Medium / Low)	Please provide explanatory detail relating to your assessment and outline any key actions to (a) advance the Equality Duty and (b) reduce negative impact on each protected characteristic.
Age					
Disability					
Gender reassignment					
Marriage and civil partnership					
Pregnancy and maternity					
Race					
Religion and belief					
Sex					
Sexual orientation					

2.4 Has your delivery plan been updated to incorporate the activities identified in this assessment to mitigate any identified negative impacts? If so please summarise any updates.

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These could be service, equality, project or other delivery plans. If you did not have sufficient data to complete a thorough impact assessment, then an action should be incorporated to collect this information in the future.