

Report Title:	York Road Phase I, Maidenhead
Contains Confidential or Exempt Information	No – Part I Main Cabinet Report Yes - Part II– <b>Appendices C and D (Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)</b>
Cabinet Member:	Cllr Bermange Cabinet Member for Planning, Legal and Asset Management Cllr Jones Cabinet Member for Finance
Meeting and Date:	Cabinet Meeting – 29 November 2023
Responsible Officer(s):	Andrew Durrant, Executive Director of Place
Wards affected:	<b>St Mary's</b>

## REPORT SUMMARY

1. The report provides information for Cabinet to note in relation to the potential 'windfall' from Countryside's anticipated headlease sale in the commercial units and the contractual obligation to provide a 4,000 sq.ft of commercial floorspace under the York Road Development Agreement with Countryside, but now not being provided. However, there is no legal or contractual mechanism within the Development Agreement to capture the resulting capital value.
2. To enable RBWM to capture this capital value, a separate legal agreement will need to be entered into with Countryside.
3. York Road - Phase I comprises Trinity Place and Cooper Court (see Site Plan - **Appendix B**). The 4,000 sq.ft of commercial floorspace is located within two occupied spaces in Cooper Court currently occupied by Masters and Anytime Fitness and therefore no longer physically available, as the space was never taken up by RBWM, but Countryside still owes RBWM the legal obligation. Consequently, they were tasked with enabling RBWM to realise the capital value proportion relating to the 4,000 sq.ft of commercial floorspace due to a lack of resource at the Council. Therefore, this is a notional commercial floorspace that RBWM is seeking the capital value of. Countryside are currently marketing and selling the residential and commercial plots by way of granting leases or sale of the whole portfolio.
4. 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 B**):
  - 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 Countryside’s headlease sale as relates to 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**

<b>Option 1</b>	<b>Comments</b>
<p>Note terms and approve the entering into a formal contract with Countryside for the Council’s receipt of the capital value to be realised from the sale of Countryside’s headlease relating to the contractual obligation to provide a 4,000 sq.ft of commercial floorspace.</p> <p><b>This is the recommended option</b></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.</p> <p>It forms part of the Property Company’s Business Plan, as well as a strategic delivery objective for RBWM.</p>
<p><b>Option 2</b></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 C** 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**

<b>Outcome</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date of delivery</b>
<b>Route A – Reversionary Lease Disposal</b> – 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
<b>Route B – Reversionary Leases Disposal</b> – 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
<b>Route C – Settlement Payment or Target Date Extension</b> - No disposals via Route A or B, RBWM to	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

receive a settlement payment or agree with Countryside to extend the target date to 30 months from the contract date.					
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#### 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 C**) 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.

4.5 An alternative to the receipt of capital value was considered with Countryside. This explored the possibility of RBWM generating a rental income stream on a long-term basis in lieu of receiving the capital value. However, this prospect did not gain the desired traction with Countryside because of the significant adverse impact it will have on their return on investment as it will be a disincentive to the investor market of having a portion of the future income from the commercial units earmarked to a 3rd party, in this instance, RBWM. The consideration and perception of the investor market, as advised by Countryside, is such that the opportunity will be considered encumbered with the effect of either a lack of interest

or of significant low interest where the level of return does not make it worthwhile to dispose of the headlease in the commercial units. As a result, Countryside do not want to be saddled with an interest they cannot dispose of, as they are not seeking to hold their headlease long-term.

4.6 As a result of this, Countryside confirmed they do not have any risk appetite to agree to a strategy of a long-term rental income stream to benefit RBWM.

## 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.

5.5 Countryside are a trader developer, meaning they purchase land in order to sell on, or purchase land in order to develop and sell on. They are not a property investor that would acquire, develop and hold land or property, where a long-term investment is created, with the intent to secure a mix of rental income and capital growth. The distinction is important, because profits of a trade are taxed entirely as income; whilst profit on sale of property held as an investment is taxed as chargeable gain.

5.6 Countryside’s business model as a trader developer therefore means that no assets, residential or commercial, are held as investments. Countryside’s developed commercial property is predominately sold with the benefit of commercial occupational leases in place and therefore the rental income stream is passed to the purchasing property investor.

## 6. RISK MANAGEMENT

**Table 3: Impact of risk and mitigation**

<b>Risk</b>	<b>Level of uncontrolled risk</b>	<b>Controls</b>	<b>Level of controlled risk</b>
<b>Planning</b> –Non material amendments were previously approved by the LPA in relation to the	<b>Low</b>	Planning consultation with the LPA. Approval in place.	<b>Low</b>

commercial units which enabled Countryside to let the units.			
<b>Contractual – Contractual dispute</b>	<b>Medium</b>	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.	<b>Medium</b>
<b>Financial - Countryside going insolvent.</b>	<b>Medium</b>	There is Parent Company Guarantee.	<b>Medium</b>
<b>Income Reduction or Lack of Sale – Weakened demand for rental or sale of commercial properties against the backdrop of a weakened economy.</b>	<b>Medium</b>	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.	<b>Medium</b>

## 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 A**.

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. A further consultation was provided on the 17th November 2023 which included Cllr Werner.

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 8th December 2023.. The full implementation stages are set out in table 4.

**Table 4: Implementation timetable**

Date	Details
11 October/6 November 2023	RBWM Executive Leadership Team Briefing
29 November 2023	RBWM Cabinet Meeting
8 December 2023	Expiry of Call In Period
11 December 2023	Completion of Contracts with Countryside

## 10. APPENDICES

10.1 This report is supported by 4 appendices:

- Appendix A – Equality Impact Assessment – NOT APPLICABLE TO PROPOSAL
- Appendix B – Site Plan and Block Elevations/Commercial Units Floor Plans
- Appendix C – 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 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: Statutory Officer (or deputy)</i>			
Elizabeth Griffiths	Executive Director of Resources & S151 Officer	<b>02/10/23</b>	<b>11/10/23</b> At ELT Briefing <b>6/11/23</b> Star Chamber Presentation

			<b>17/11/23</b> Via email
Elaine Browne	Deputy Director of Law & Governance & Monitoring Officer	<b>02/10/23</b>	<b>12/10/23</b> Via email
<i>Deputies:</i>			
Andrew Vallance	Deputy Director of Finance & Deputy S151 Officer	<b>02/10/23</b>	
Jane Cryer	Principal Lawyer & Deputy Monitoring Officer		
<i>Mandatory: Procurement Manager (or deputy) - if report requests approval to go to tender or award a contract</i>			
Lyn Hitchinson	Procurement Manager		
<i>Mandatory: Data Protection Officer (or deputy) - if decision will result in processing of personal data; to advise on DPIA</i>			
Samantha Wootton	Data Protection Officer	<b>03/10/23</b>	<b>26/10/23</b>
<i>Mandatory: Equalities Officer – to advise on EQiA, or agree an EQiA is not required</i>			
Ellen McManus-Fry	Equalities & Engagement Officer		
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Stephen Evans	Chief Executive	<b>02/10/23</b>	<b>11/10/23</b> At ELT Briefing <b>17/11/23</b> Via email
Andrew Durrant	Executive Director of Place	<b>02/10/23</b>	<b>11/10/23</b> At ELT Briefing <b>17/11/23</b> Via email
Kevin McDaniel	Executive Director of Adult Social Care & Health	<b>02/10/23</b>	<b>11/10/23</b> At ELT Briefing <b>17/11/23</b> Via email
Lin Ferguson	Executive Director of Children's Services & Education	<b>02/10/23</b>	<b>11/10/23</b> At ELT Briefing

Confirmation relevant Cabinet Member(s) consulted	Cllr Adam Bermange - Cabinet Member for Planning, Legal and Asset Management.	Yes (06/09/23) (17/11/23)
	Cllr Lynne Jones – Deputy Leader of Council and Cabinet Member for Finance	Yes (06/09/23) (17/11/23)
	Cllr Werner – Leader of Council	Yes (17/11/23)



## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>	<b>To follow item?</b>
Key decision: First entered into the Cabinet Forward Plan: September 2023	No	No

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

# Appendix A - Equality Impact Assessment

For support in completing this EQIA, please consult the EQIA Guidance Document or contact [equality@rbwm.gov.uk](mailto:equality@rbwm.gov.uk)

**NOT APPLICABLE OR RELEVANT TO PROPOSAL**

www.rbwm.gov.uk



## 1. Background Information

Title of policy/strategy/plan:	
Service area:	<u>RBWM Property Company Limited</u>
Directorate:	<u>Place</u>

### **Provide a brief explanation of the proposal:**

- What are its intended outcomes?
- Who will deliver it?
- Is it a new proposal or a change to an existing one?

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.

## 2. Relevance Check

### **Is this proposal likely to directly impact people, communities or RBWM employees?**

- If No, please explain why not, including how you've considered equality issues.
- Will this proposal need a EQIA at a later stage? (for example, for a forthcoming action plan)

No, as the proposal relates to the receipt of income.

If 'No', proceed to 'Sign off'. If unsure, please contact [equality@rbwm.gov.uk](mailto:equality@rbwm.gov.uk)

### 3. Evidence Gathering and Stakeholder Engagement

**Who will be affected by this proposal?**

For example, users of a particular service, residents of a geographical area, staff

None.

**Among those affected by the proposal, are protected characteristics (age, sex, disability, race, religion, sexual orientation, gender reassignment, pregnancy/maternity, marriage/civil partnership) disproportionately represented?**

For example, compared to the general population do a higher proportion have disabilities?

**What engagement/consultation has been undertaken or planned?**

- How has/will equality considerations be taken into account?
- Where known, what were the outcomes of this engagement?

**What sources of data and evidence have been used in this assessment?**

Please consult the Equalities Evidence Grid for relevant data. Examples of other possible sources of information are in the Guidance document.

**Sources of Data used do not impact Equalities.**

## 4. Equality Analysis

Please detail, **using supporting evidence**:

- How the protected characteristics below might influence the needs and experiences of individuals, in relation to this proposal.
- How these characteristics might affect the impact of this proposal.

Tick positive/negative impact as appropriate. If there is no impact, or a neutral impact, state 'Not Applicable'

More information on each protected characteristic is provided in the Guidance document.

	Details and supporting evidence	Potential positive impact	Potential negative impact
Age			N/A
Disability			N/A
Sex			N/A
Race, ethnicity and religion			N/A
Sexual orientation and gender reassignment			N/A
Pregnancy and maternity			N/A
Marriage and civil partnership			N/A
Armed forces community			N/A
Socio-economic considerations e.g. low income, poverty			N/A
Children in care/Care leavers			N/A

## 5. Impact Assessment and Monitoring

If you have not identified any disproportionate impacts and the questions below are not applicable, leave them blank and proceed to Sign Off.

**What measures have been taken to ensure that groups with protected characteristics are able to benefit from this change, or are not disadvantaged by it?**

For example, adjustments needed to accommodate the needs of a particular group

**Where a potential negative impact cannot be avoided, what measures have been put in place to mitigate or minimise this?**

- For planned future actions, provide the name of the responsible individual and the target date for implementation.

**How will the equality impacts identified here be monitored and reviewed in the future?**

See guidance document for examples of appropriate stages to review an EQIA.

## 6. Sign Off

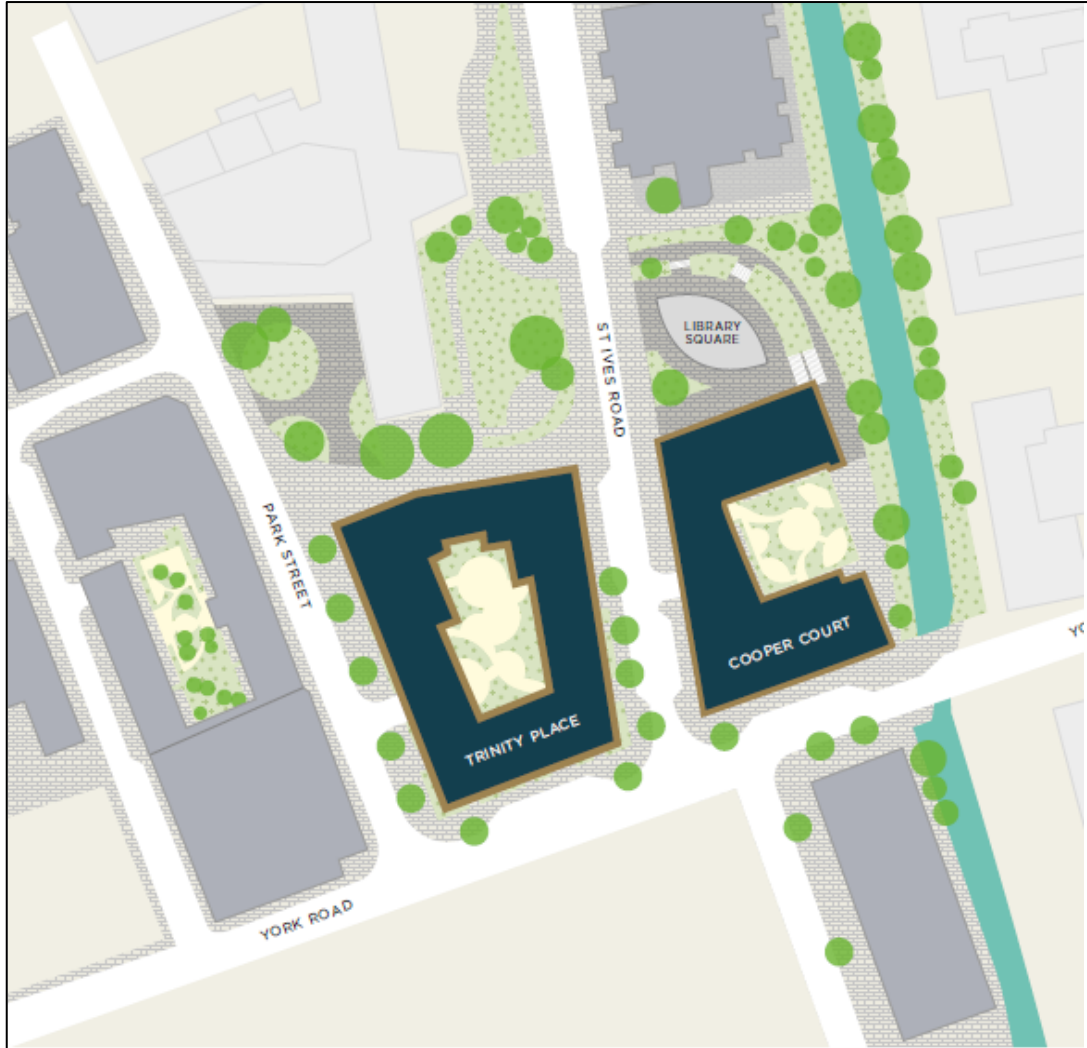
<b>Completed by: Emmanuel Ogedengbe</b>	<b>Date: 17/11/23</b>
<b>Approved by:</b>	<b>Date:</b>

If this version of the EQIA has been reviewed and/or updated:

<b>Reviewed by:</b>	<b>Date:</b>
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APPENDIX B

YORK ROAD PHASE 1 SITE PLAN



**APPENDIX B**



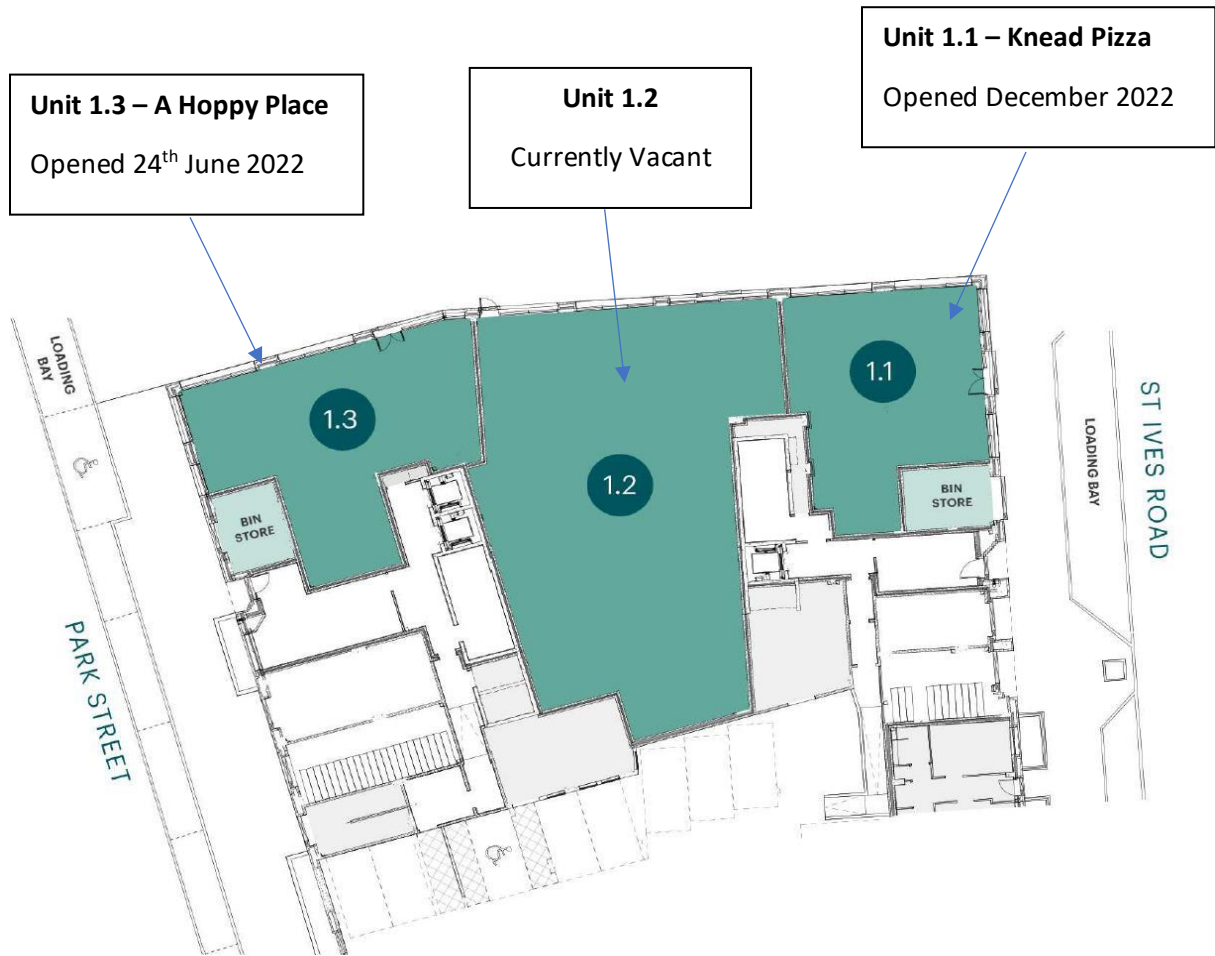
**BLOCK D – TRINITY PLACE, YORK ROAD**



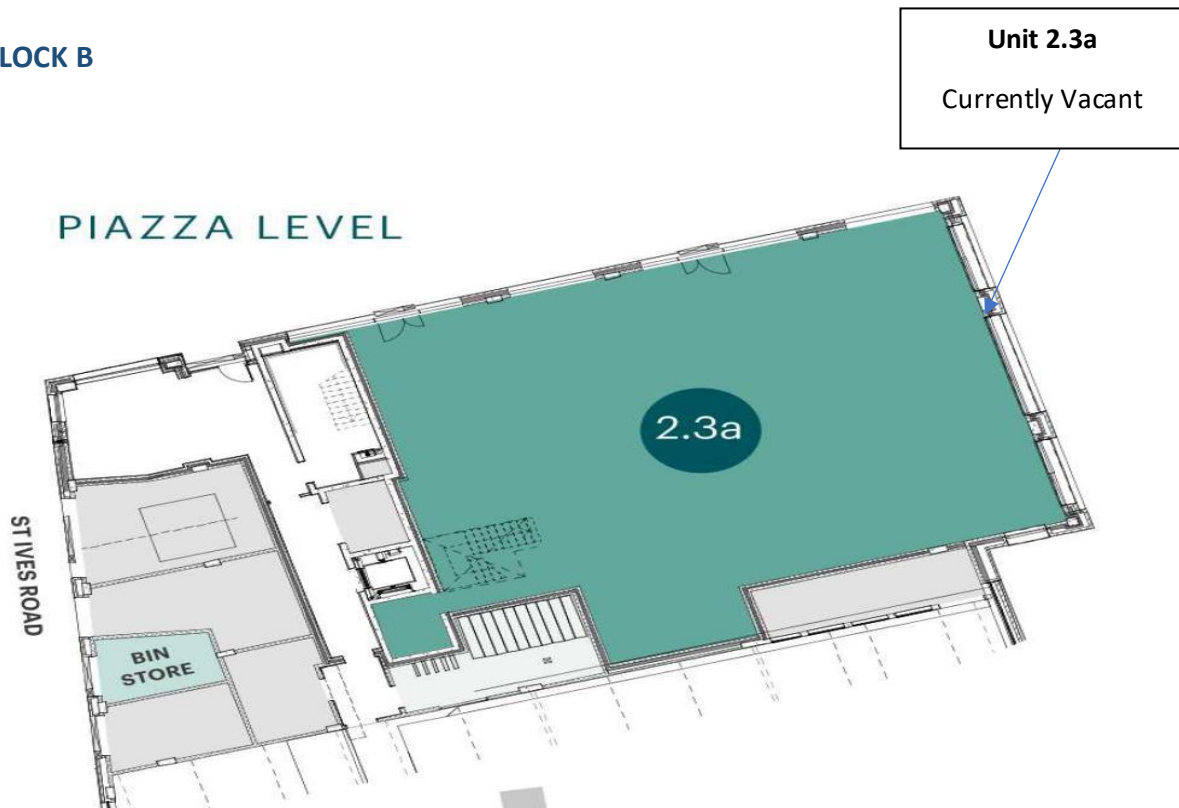
**BLOCK B – WATERMARK - COOPER COURT, YORK ROAD**

## APPENDIX B

### BLOCK D



### BLOCK B





APPENDIX B

BLOCK B

STREAM LEVEL

