

CANAL CORRIDOR NORTH SITE, LANCASTER: PROPOSAL FOR AN INDEPENDENTLY FACILITATED DIALOGUE

BACKGROUND

We were invited by the PINS / NPF Working Group to explore with a number of parties, whether mediation might appropriately be used as a means of making progress on development proposals in respect of the Canal Corridor North Site, Lancaster. This followed a recent refusal of an application for planning permission by the Secretary of State in January 2010. The application which was called in, was for a comprehensive retail led, mixed use development within Lancaster City Centre lying between the city's main shopping precinct and the Lancaster Canal.

All the parties identified below were willing to have a preliminary meeting with us on a clearly without commitment and confidential basis. We would like to thank them for making their time available and for the access we were given.

We met some parties locally over a two day period in Lancaster in January, namely It's Our City, Mitchell's of Lancaster (Brewery Ltd), Lancaster City Council, (Leader and officers) and Councillor Whitelegg who had approached us separately. We met the remaining parties in London in February namely, Centros UK Limited, SAVE Britain's Heritage and English Heritage. At the time of meeting English Heritage, we were informed that a decision by the relevant minister about the possible spot listing of a brewery on the site was thought to be imminent but were given no indication of what the decision was likely to be. The building has since been listed.

We were and remain aware that other parties in Lancaster have interests or views to express about the future of the site which will need to be considered in due course. We concluded that for the purpose of this proposal we did not need to meet them now but that consideration should be given to the best way of ensuring their voices are heard in future, should a fresh application be submitted.

We were offered further information by some parties, not all of which has been received but again we felt we had learned enough on what we have been told to make a proposal.

The basis of our meetings with all the parties was:

- To explain how mediation might work and answer questions
- That the content of any discussion would be confidential between us and each party who spoke to us
- That no one was, by meeting us, making any commitment to mediation at this stage or at all
- That as mediators we are neutral and impartial

- That an effective process would need to be voluntary, including a right to withdraw without an obligation to give reasons if a party found that the process was not meeting its needs
- That any process adopted was not in any way a substitute for the statutory planning application, consultation and determination process. Any proposals made would need to respect that pre-eminence and be transparent in outcome.

We do not propose to recite further the history of events leading up to the present time, because they are reasonably well known to the parties and our proposals are forward facing. That does not mean that parties should be prevented from referring to past events and behaviours but rather that too much emphasis on the past is likely to be counterproductive.

These proposals are offered to the parties for comment and further design within a defined period which we suggest should be three weeks. They are flexible and capable of further adjustment. We recognise that following the Secretary of State's decision and other events which have legal and practical ramifications, some parties may want to reflect and review their options and may not yet be ready to reengage. We also recognise that some things which have happened since may affect both the timing and the options open to the parties; we refer particularly to the status of the brewery and Conservation Area proposals which may introduce new parameters.

PRELIMINARY CONCLUSIONS

- There is a strong coincidence of view that it would be in the City's best interests for this site to be developed so that the citizens of Lancaster can enjoy the benefits of an enhanced "offer" for the City and sub region. No one that we met suggested otherwise, although there may be some who hold a contrary view
- Opinions are highly polarised about what form that development should take. It would not have taken a round of meetings to reach that conclusion.
- Trust between promoters and objectors is at a very low ebb. Quite apart from this, the City Council and some of its community groups have a history of ineffective dialogue. It is sufficiently deep rooted and polarised to be damaging to the proper consideration of proposals coming forward in future
- The belief of promoters that they have consulted thoroughly and effectively is not matched by a perception among some other parties that they have not been listened to
- The likelihood of a fresh application, in whatever form, achieving greater support and acceptability correlates quite closely to the willingness of all the parties to work more collaboratively. This is also strongly related to any new scheme coming forward which will need to work in its own terms

and in its setting and be sufficiently attractive to investors and future occupiers.

- There is a strong divergence of opinion on the fundamental design approach which will not easily be overcome. At one extreme is a view that the Secretary of State's decision creates a framework for making decisions and that as long as his concerns are responded to then it is possible to move to a fresh application. At the other extreme is a view that any fresh application would need to go back to first principles. Since then, the listing of the malt house will have changed some of the parameters dramatically and it is possible that decisions about conservation areas could change them further. Understanding whether, and the extent to which, parties are willing and able to achieve some meeting of minds on this polarity is key to making progress.
- It appears to us from our discussions and reading of papers in the public domain the key areas of concern related to the scheme (in no order of priority) are:
 - What does a heritage led scheme mean? Impact of brewery, other conservation features, historicity, street pattern, severance and viability
 - Linkages to the existing centre
 - Investment in the existing centre
 - Development mix and volumes of uses, timing of implementation
 - Environmental / sustainability considerations including routes through the site
 - Level of detail needed for understanding in relation to a fresh application.

On the basis of what we have heard, we believe that it is possible to design a process which enhances a dialogue between all the relevant parties. We think there is a reasonable prospect that such a process could lead to a scheme which has greater acceptability than has so far been achieved. However, the process is not aimed at securing a planning permission for a specific development. It is about achieving the best possible outcome for the City of Lancaster. There are no guarantees about an outcome which is likely to depend initially on a decision by each party about willingness to try it. Nor can progress be divorced from considerations of viability.

It seems to us that no party is currently in a position to move forward without considerable potential for perpetuating old grievances, however genuinely and passionately held. The least one might hope for is a better understanding of positions and a more respectful dialogue. The prize is a proposal which benefits from a creative dialogue and strengthens the City's local and sub regional offer on the most important available site in the City.

PROPOSAL

We have in mind a process which would involve three stages, each stage resting on the one before. The design of the second and third stages would involve the parties

The first stage could be said to have already begun – a round of without commitment meetings to enable us to understand the issues, familiarise the parties with how mediation works and allow time for reflection, leading in turn to this proposal.

The second stage would include the facilitation of separate dialogues between what for convenience we have called “promoters” and “objectors”. It remains without commitment to an agreement to move to the third stage. Its purpose is for those groups separately to define where they have a common approach and where they have not. It would also enable each group to seek to define the “comfort factors” which they might need to move to stage three.

The third stage would be a dialogue about the next iteration of a scheme. We have deliberately not sought to lay out possible approaches to the design of this stage because they are likely to depend uniquely on what happens during stage two and on external events still unfolding.

We currently have a number of qualifications to this approach:

- We see any wider dialogue between the Council, It's our City and other community or interest based groups in the City longer term as to some extent a separate issue. It seems to us that the Council and It's our City need to prove to each other first that with some facilitation, they can have a mutually respectful and constructive dialogue. City officers have talked to us about a protocol that they would like to consult upon. We see things more as a compact in which the process by which the Council and other groups reach agreement is as important as the content of written statements
- We do not see English Heritage as participating in stage two, for the obvious reason that they are in a statutory arms' length position. However we do see them participating in stage three and our conversation with them suggests that they would be keen to participate and (subject to their statutory obligations) adopt a creative approach if there was agreement to move to that stage
- We think there is a need before attempting the separate dialogues in stage 2 to do some preliminary work with the City Council for reasons we identify below
- We think it is important that the agenda of each conversation within the two groups is known by the other group and that each group undertakes to

- produce a statement of the outcome of their separate discussions for the other in aid of mutual confidence and transparency
- If the parties then decide to move to stage three, it should be on the basis that they intend jointly to produce a public statement of any conclusions they have reached in aid of transparency and to demonstrate that any sense of direction achieved will not be at the expense of proper consideration of a future planning application
 - It will be important throughout not to make the mediators “part of the problem” by raising with them early any assertions they may encounter about what the mediators or others are doing or not doing and why.

This process would be encapsulated in a “facilitation charter” which we would produce between stages two and three and would need to take account of the manageability of numbers of people who might become involved but which we do not need to draft at this stage. Discussions would be in private in order to provide an environment in which individuals can listen to each other more effectively but their outcomes would be expected to be a statement of progress made or otherwise. Discussions would be conducted under simple ground rules and managed by us.

We do not call this a mediation in that no agreement could properly be reached which binds a planning application process or decision later. We prefer to call it an independently facilitated dialogue. All parties would know in advance who they would be meeting and it would be on a “no surprises” basis.

The Council

We mention above the need to do some work with the Council first. Our view is that the Council has the task of managing three sets of interest under one roof:

- managing its politics and officers with a view to identifying and promoting the best outcomes for its community.
- as a trustee landowner, charged with achieving best value for public assets and making judgements about the form which any return should take
- as a planning authority, enabling development and at the same time fulfilling a quasi judicial role in determining applications for development.

We would like to explore with the Chief Executive and Cabinet whether this analysis is accepted and be clear what the respective roles are and how they are best supported going into this process. We would also like to discuss with respective political parties whether they can do more to make the sense of direction given by the City Council more robust.

Promoters

We describe them currently as the Council (wearing its landowner hat), Mitchells and Centros. We acknowledge the effort and resources that have been invested so far in both time and direct expenditure both of which have been considerable. We understand that in a time of recession or emergence from recession, risks are generally higher and investment decisions more challenging. We also recognise that there are commercial issues to be negotiated and managed between them which are not the business of the process we are proposing. The agenda for this discussion, if and when they are ready to enter one would basically cover:

- Their joint or otherwise appetite to continue to promote the site in principle
- Any comfort factors that would help them engage with objectors
- Anything they may need to do to reassure objectors that a dialogue is worth attempting
- Any other interests for against the most recent application who should be represented within a third stage
- The basis upon which they would be willing to enter a dialogue about the future development of the site (principles or a further developed plan or something in between).

Objectors

We describe them currently as Its Our City, SAVE and Councillor Whitelegg who we met in our initial round of meetings. We recognise that these three interests are by no means identical. It's our City demonstrates a broad homogeneity of opinion but it would be surprising if everyone held the same view. SAVE's interests are national and local and more directly related to heritage matters. The Councillor is only tentatively included with this group because, again, his interests do not exactly coincide with those of either of the others and because he has his own unique mandate and responsibilities as an elected person.

The agenda for this discussion if and when they are ready to enter one would basically cover:

- Whether what they hear from the promoters provides a basis for entering stage three
- What they do agree about and what they do not
- Any comfort factors that would help them engage with promoters
- Any other interests for against the most recent application who should be represented within a third stage
- Anything they may need to do to reassure promoters that a dialogue is worth attempting
- How they expect to relate to and maintain a mandate from their constituent bodies where appropriate

POSTSCRIPT

We said we would not make proposals if we thought they offered no hope of success. Clearly, we do think the process framework offered above has a reasonable prospect of success but it would require commitment by all parties.

We are inviting each party to respond to us directly within three weeks on:

- Whether in principle they would be willing to try stage two
- When they would be willing or in a position to try
- Comments, concerns, improvements to the stage two framework or stage three
- Anything else

Given that there are some things happening outside the control of the parties which create additional constraints or opportunities in respect of the site, we would like to hear views as to the timing of events from parties if they are willing to consider adopting the process. That would not, meanwhile, prevent us from doing some work with the City Council as mentioned above.

On any basis and should a fresh application come forward, we would recommend that it should be independently facilitated and engage parties in advance to secure some agreement on the process and how the outcome will be reported.

We said that we would mention other options for moving forward. It would be possible for the Council to restart the planning brief process afresh with all the implications that would have for timing, investment and commitment of various stakeholders. The third stage mentioned above would provide an opportunity not only to seek a better understanding of design and viability issues but also to be as creative as the parties want it to be about how to move forward. There may be other options worthy of exploration which stage three could explore.

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Co mediators

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