

## **CABINET**

<b>DATE</b>	16 <sup>th</sup> June 2021
<b>REPORT OF</b>	Councillor Stanley Shreeve – Deputy Leader and Portfolio Holder for Finance, Resources and Assets
<b>RESPONSIBLE OFFICER</b>	Sharon Wroot – Executive Director of Environment, Economy and Resources
<b>SUBJECT</b>	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Freehold disposal of Former Public Conveniences, adjoining and first floor offices at 98-100 Garibaldi Street, Grimsby
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	CB 06/21/09

### **CONTRIBUTION TO OUR AIMS**

The disposal of the Former Public Conveniences, adjoining ground and first floor offices at 98-100 Garibaldi Street, Grimsby, (the “Property”), by way of a freehold disposal will enable the Rock Foundation (the “Group”) to take over the management, maintenance and use of the Property and its facilities, to fulfil their Charitable aims and objectives.

Providing a freehold disposal at less than best (market) value is based on the submission of a detailed Business Case proposal setting out the social, economic and environmental (community) return on investment; the benefits of which outweigh the monetary freehold value that would be requested if the Property were to be sold at market value.

The disposal supports the Council’s outcome of ‘Stronger Communities’ by enabling the continuation of the current provision, and a Foodbank plus model being proposed by the Group. There would be no continued financial constraint on the Council in terms of managing the Property which will meet our determination to be an efficient and effective Council.

### **EXECUTIVE SUMMARY**

This report seeks authority to dispose of the subject Property by way of a freehold disposal, namely the former public conveniences and offices across the ground and first floor at 98-100 Garibaldi Street. The purpose of this report is to gain agreement to the Business Case proposal from the Group, which will provide a social return on investment far outweighing the monetary equivalent to the otherwise proposed freehold value, as part of the Council’s approach to Community Asset Transfers (CAT). Approval of the proposal will allow the granting of a freehold disposal of the Property at a nominal value.

The freehold disposal proposal is preferred in order to enable the Group to proceed with their intended use of the premises. The Council will include a covenant within the freehold transfer to restrict the use of the Property to Charitable aims and objectives and reserve to the Council an option to either re-acquire the Property or receive the market value consideration from the Group, should the property ever

cease to be used for charitable aims and objectives or be sold on for development. Such mechanism will not preclude a recognition of investment made by the Group where this has led to an enhancement of value.

## **RECOMMENDATIONS**

It is recommended that Cabinet:

1. approves the principle of a freehold disposal at a nominal value to the Rock Foundation subject to a covenant within the freehold transfer to restrict the use of the Property to Charitable aims and objectives and reserve to the Council an option to either re-acquire the Property or receive the market value consideration from the Group, should the property ever cease to be used for Charitable aims and objectives or be sold on for development.
2. delegates to the Executive Director of Environment, Economy and Resources, in consultation with the Deputy Leader and Portfolio Holder for Finance, Resources and Assets, authority to settle all terms and ensure that all necessary actions are carried out to complete the freehold disposal.
3. authorises the Assistant Director of Law, Governance and Assets (Monitoring Officer) to complete and execute all requisite legal documentation in relation to the matters outlined above.

## **REASONS FOR DECISION**

A proposal has been received from the Group which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal has been agreed in principle which could result in the transfer of the subject Property to the Group by virtue of a freehold disposal. Approval would enable the asset to transfer to the Group on the basis that their proposal is sustainable and viable, as outlined through a detailed Business Case.

### **1. BACKGROUND AND ISSUES**

- 1.1 The Council is the freehold owner of the former public conveniences and offices to the ground and first floor at 98-100 Garibaldi Street which for the purposes of this report is the Property shown edged red as per the attached plan at Appendix One and is the extent of the asset proposed to be transferred to the Group.
- 1.2 The Property is currently vacant and has been for a number of years, following the closure of the public conveniences and the tenants vacating the other areas during 2017. Since then, the property has been marketed on the open market, without interest, considered for use internally, and offered for Community Asset Transfer (CAT).
- 1.3 The Council has an agreed CAT approach to consider proposals where certain organisations and groups demonstrate they contribute significant social, economic or environmental benefits to the community - benefits which can be taken in lieu of the monetary value being proposed through a rent/ sale. The CAT approach allows proposals to be considered through an agreed governance process, including in principle support at key milestones, resulting in formal Cabinet approval.
- 1.4 The proposal, by way of a detailed Business Case, was received from the Group and was considered by a CAT Panel made up of officers, community

ambassador and Sector Support, North East Lincolnshire and recommended to decision makers for in principle support.

- 1.5 When considering proposals such as these, the Council must demonstrate the social return on investment reflects, as a minimum, the loss of any potential rent/ sale, and reasons that a rent element or sale price could impact negatively on the viability of the proposal which may result in the management of the Property becoming unsustainable.
- 1.6 The Council has been satisfied that the proposal to approve a 'less than best' transaction is based on sufficient social, economic and environmental benefit, which is stated as part of the submitted Business Case. The Business Case far outweighs the monetary value that could be requested and supports wider community benefits which are a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.
- 1.7 The proposal of a freehold disposal at a nominal value would ensure the Property is brought back into operational use and management of the Property becomes sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the Property will be that of the Group, as would all future investment opportunities.
- 1.8 The Council must also consider the strategic reasons in holding assets that are unable to be resourced fully to meet full operational use. The proposal will see the Property benefit from investment and brought back into full use by the Community, as this has not seen effective use in recent years by the Council or its Partners and would benefit from the proposal from the Group.

## **2. PROPOSAL**

- 2.1 A proposal was received from the Group which sets out their objectives to take over the ownership of the former public conveniences and offices at Garibaldi Street (the "Property") including all the maintenance and opportunities to enhance the facility.
- 2.2 The Group will undertake general investment and maintenance to improve the Property for it to be used to provide support for young people and adults with learning disabilities and those who are disadvantaged.
- 2.3 The freehold sale will be subject to covenant to restrict the Property's use to Charitable aims and objectives. Should the sale be granted, the Group will have full autonomy to concentrate on the sustainable provision of their current services, as well as to expand the current offer.
- 2.4 Workshops and retail opportunities will provide revenue to subsidise the costs and the potential to expand the services. A twelve-bed supported housing scheme for adults with learning disabilities is now being provided by the Group in Caistor. Alongside these services, the Group hosts two foodbanks in Grimsby.
- 2.5 A Community Asset Transfer of the Property would provide a focal point for the community through an extended service offer, with the Property acting as a resource for people with learning difficulties and the disadvantaged by providing a place to offer advice, assistance, and organising programmes of physical, educational, and other activities as a means of:
  - Helping them to advance in life and helping to develop their skills,

capacities, and capabilities to enable them to participate in society as independent, mature, and responsible individuals.

- Advanced education.
- Relieving unemployment.
- Providing recreational activities and leisure time in the interest of the social welfare of people living in the area who would benefit and have need by reasons such as age, infirmity or disability, poverty, or social and economic circumstances, with a view to improving the life conditions of such persons.

- 2.6 The Property is currently unused and in need of investment. By enabling the Group to use the Property, plans include transforming the space to maximise the Group's use of current resources, develop new services and to increase their uptake of service users. A foodbank plus community hub within this Property would create a sharper focus for the work already being done by the Group, creating more opportunities for community action and cohesion, thereby reducing social isolation.
- 2.7 The current property the Group occupy, the Former Education Development Centre/ Holme Hill School, is in the process of being considered for a freehold sale, meaning the Group is at risk in future if an alternative property is not identified. The additional office space at the proposed Property would enable the Group to shift to a Foodbank plus model, providing life skill sessions, and addiction and recovery groupwork. This is in addition to the current food, fuel and hardship grant provision that is provided.
- 2.8 The transfer would make a tangible community impact, not only alleviating poverty, but also seeking to undertake preventative work with some of the most deprived and marginalised members of the community. It is envisaged that the space would become a community hub with usage outside of the three current Foodbank slots each week, with the potential for a Christians Against Poverty (CAP) debt service and life skills coaching. The Property would become a hub for those facing disadvantage offering support and signposting and create positive change in their circumstances, whilst also providing volunteering opportunities for the community.
- 2.9 Transferring this Property to be used by the community would see an asset with an ongoing cost to the Council brought back in to use with a positive community impact as well as improving the street scene.

### 3. CONSTITUTIONAL REQUIREMENTS

- 3.1 The Constitution includes a Protocol on Disposal of Land for 'Less than Best' Consideration ("the Protocol") which contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property
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The Council has provided a valuation report from a qualified Chartered Surveyor which contains the following key information.
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Unrestricted Value (i.e. market	£50,000
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value as a capital sum)	(Fifty Thousand Pounds)
Less Restricted Value (i.e. market value subject to proposed lease)	Nil.
Equals Discount (i.e. total amount of undervalue)	£50,000 (Fifty Thousand Pounds)

The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if the proposal is approved.

(ii) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e. social, economic and environmental benefits)

The Property would predominantly remain underutilised with associated revenue costs and lack of directed capital investment should the proposal not progress. The proposed transfer passes the ownership and maintenance costs of the Property to the Group thus representing a saving to the Council.

The value of the proposed asset transfer in non-monetary terms cannot fully be quantified. Nevertheless, the Group have evidenced the cost benefit analysis within their Business Case which provides a value in excess of the freehold value quoted above, through interventions and savings associated with managing the Property as a void.

The proposal supports the Council's outcomes of a 'stronger economy' and 'stronger communities' by providing the Group with a platform from which to deliver and enhance its Charitable objectives.

(iii) Confirmation that the disposal will contribute positively to the Council's priorities.

The Community Asset Transfer will contribute positively by enabling the Group to actively invest, manage and use the Property in support of the Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.

(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the disposal takes place at an undervalue sale and confirming that no reasonable alternative means of funding are available to the purchaser.

The Group is committed to provide a local community amenity that will allow continued support for young people and adults with learning disabilities and those who are disadvantaged. The Group will offer a service to develop life and employment skills, to increase self-esteem and independence, and ultimately to improve the overall quality of life for service users. These outcomes affect peoples' lives and cannot be directly quantified.

<p>(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.</p>
<p>A full Business Case was received and considered. The Group is of sound grounding and can provide a use of the Property to benefit both the ward and the wider community.</p>
<p>(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic, and environmental wellbeing of the area.</p> <p><i>NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy</i></p>
<ul style="list-style-type: none"> <li>• Freehold property disposal at nil consideration.</li> <li>• Use to be for Charitable aims and objectives.</li> <li>• Transferee to be responsible for full repairing and insuring.</li> <li>• Transferee to be responsible for insuring building, contents, fixtures, and fittings.</li> <li>• Utilities to be procured by transferee.</li> <li>• Option to transfer ownership back to the Council or for the Council to receive the market value of the Property in the event the Property ceases to be used for charitable purposes or is sold for development.</li> <li>• Each party to bear its own professional fees in preparing the legal documentation.</li> </ul>
<p>(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.</p>
<p>See Section 11 of this Report “Legal Implications”</p>
<p>(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium-Term Financial Plan.</p> <p><i>There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value</i></p>
<p>See Section 10 of this Report “Financial Implications”</p>

ESTATES PROGRAMME BOARD - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.

SUBSIDY CONTROL RULES - The Protocol further requires that the Council ensures that the nature and amount of any undervalue complies with the European Commission’s State Aid Rules and does not create a state aided subsidy for a commercial organisation. From 1<sup>st</sup> January 2021 the State Aid rules have been

replaced by the Subsidy Control Rules for subsidies granted in the UK. The Council now has to ensure the nature and amount of the undervalue, as a subsidy, complies with the obligations in the UK-EU Trade and Co-operation Agreement (“the TCA”). That requires the application of the follow tests:

Does the proposal meet the four-limb definition of a Subsidy under the TCA?  
*Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute a Subsidy:*

Is there financial assistance arising from resources of the parties?	Yes
Does the financial assistance confer an economic advantage on one or more economic actors?	Yes
Is it selective, favoring certain economic actors over others?	Yes
Has it or could it have an effect on trade or investment between the UK and the EU?	No

#### 4. RISKS AND OPPORTUNITIES

- 4.1 The risk to the Council in progressing with a freehold disposal to the Group is considered minimal. The Council will impose covenants within the freehold transfer to ensure the Property is being used to meet Charitable aims and objectives. Further, the Council will reserve an option so in the event the Property use, or ownership is proposed to change to non-charitable purposes, the Council will assess the market value to confirm if any share should be received or the Property be transferred back to the Council.
- 4.2 Future risks will be passed to and remain with the Group in respect to the operational costs of maintenance and the obligation of repair and maintenance to an acceptable standard to ensure ongoing use, as well as investment opportunities in respect to the Property. There are no identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of the Property will be improved and maintained based on an operational use. The Property investment and usage will be a positive reflection to the street scene and will remove the financial commitments of the Council.

#### 5. OTHER OPTIONS CONSIDERED

- 5.1 To do nothing would see the Property continue to be under-utilised and would not offer a solution to the Group to continue to provide much needed support to service users and to expand their current offer. The condition of the Property would continue to deteriorate attracting further anti-social behaviour and all the repair and maintenance obligations and cost would rest with the Council. This would result in a negative impact to the community. The Group have presented a robust Business Case which demonstrates extensive social return on investment and preference for a freehold disposal in support of the proposal and will result in a full community use of the Property. It is not considered a viable option to improve the maintenance activities or fully manage the Property as is currently and the Council risk unnecessary and negative publicity as well as potentially being wholly liable for the Property,

together with all future associated expenditure including any missed opportunity of investment into or expansion of the potential use and activities.

- 5.2 A lease of the Property was considered, which would need to have been granted for a long term. However, given the type and location of the Property, the Council does not require the retention of an element of control. The conditions set out above as part of the proposed freehold transfer of the Property will mitigate any risks to the Council of the Property being used for non-charitable purposes or being redeveloped for a profit.

## **6. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

There are positive reputational implications for the Council resulting from the decision to support the freehold transfer of the Property to the Group. The proposal, if supported, will primarily enable investment and use of the Property to become a hub for those people who are disadvantaged, offering support and signposting to create positive change in their circumstances, also providing volunteering opportunities for the Community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

## **7. FINANCIAL CONSIDERATIONS**

- 7.1 The proposal outlined within the report supports the Council's key priority of 'stronger communities', by enabling the Group to use and enhance the site for the benefit of the community.
- 7.2 The repair and maintenance cost of the Property will be financed through resources obtained by the Group. Any future investment will be subject to the Group using their own resources which will remove the financial commitment from the Council.
- 7.3 The proposal will result in ongoing annual revenue savings associated with holding the property void. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

## **8. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The recommendations outlined within this report have been considered so far as their impact of the proposal on climate change and the environment. In reference to the Council's environmental policy, the proposal supports the Council's environmental priorities:

- By recognising and realising the economic and social benefits of a high-quality environment.
- By working towards a low carbon North East Lincolnshire that is prepared for, and resilient to, the impacts of climate change.

## **9. CONSULTATION WITH SCRUTINY**

There has been no consultation with Scrutiny to date.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The disposal will achieve social value to the community that exceeds the value of a lost capital receipt.
- 10.2 The disposal will also generate ongoing maintenance and utility cost savings to the Council that will offset any loss of capital receipt.

## **11. LEGAL IMPLICATIONS**

- 11.1 Local Government Act 1972, s123, provides that the Council may dispose of land in any manner it sees fit subject to the constraint that (except in the case of leases for less than 7 years) disposal must be for the best consideration reasonably obtainable.
- 11.2 The General Disposal Consent (England) 2003 provides a general consent removing the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposing Authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social, or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).
- 11.3 Constitutionally and as outlined in the above report, the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed disposal is capable of falling within the terms of the General Disposal Consent (England) 2003.
- 11.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:
- (a) the amount of undervalue would be below the £2m threshold.
  - (b) it is the professional opinion of the Executive Director for Environment, Economy and Resources that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.
- 11.5 The Scheme of Delegation in the Constitution provides for the Executive Director for Environment, Economy and Resources to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration and maintain a register of all undervalue disposals. This report therefore complies with those provisions.
- 11.6 In terms of subsidy control, it is clear from the analysis set out earlier in this report that the proposal fails to fully satisfy the four-limb definition of a subsidy under the UK-EU Trade and Co-operation Agreement. Further, the proposal would fall within de minimis contained in the UK-EU Trade and Co-operation Agreement. This recognises that small amounts of subsidy, less than €380,000.00 over a rolling 3-year period, are unlikely to distort competition.

## **12. HUMAN RESOURCES IMPLICATIONS**

There are no HR implications contained within this report.

## **13. WARD IMPLICATIONS**

This proposal directly impacts on the East Marsh Ward.

## **14. BACKGROUND PAPERS**

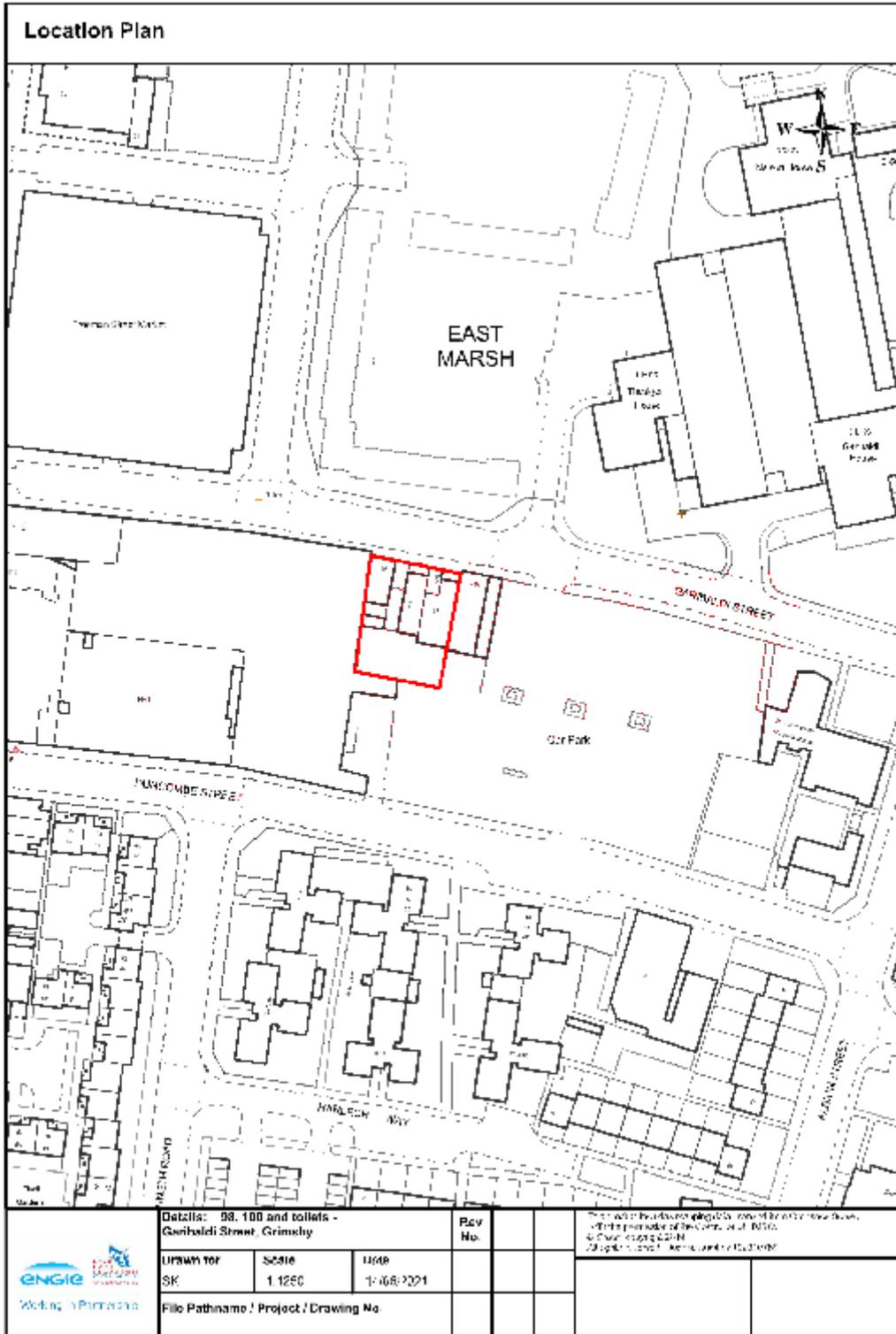
There are no background papers to this report.

## **15. CONTACT OFFICERS**

Wendy Fisher, Head of Estates and Business Development, NELC  
(01472) 323132

**COUNCILLOR STAN SHREEVE**  
**DEPUTY LEADER AND PORTFOLIO HOLDER FOR FINANCE,**  
**RESOURCES AND ASSETS**

# APPENDIX ONE - SITE LOCATION PLAN



Details: 98, 100 and toilets - Gerhald Street, Grimsby		Rev No.
DRAWN BY SK	SCALE 1:1250	DATE 17/08/2021
File Pathname / Project / Drawing No		

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