

City Mayor Decision Report

9 September 2014

**Proposed community arena at
Charter Street**

Lead Director: **Liz Blyth/Mark Lloyd**



City Mayor

Useful information

- Ward(s) affected: **Abbey**
- Report author: **Neil Gamble/Margaret Mernagh**
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- Report version number: **final**

1. Summary

- 1.1 Council owned land at Charter Street has been identified as the preferred location for the development of a Community Arena. This is expected to bring significant benefits to the residents of Leicester and draw in significant external funding. It will provide a base for Leicester Riders Basketball Club ('Riders').
- 1.2 The development of a Community Arena at Charter Street will be a catalyst to the regeneration of the area. The Arena scheme will be coupled with other regeneration schemes in the area as a result of the Council's successful Local Growth Deal bid.
- 1.3 The Arena is proposed to consist of a building of minimum dimensions of circa 3,000 square metres featuring a large hall to hold the equivalent of 3 basketball courts (or 12 badminton courts). There will also be other accommodation including changing facilities, storage, bar, café, classrooms and a fitness suite. Fold away seating to create a 2,000 plus seat facility around the central court for Riders' matches and other events will also be provided.
- 1.4 The newly registered Leicester Community Sports Arena Ltd will act as the delivery partner. It will take a long lease on the site, and design, build and operate the Arena.
- 1.5 In order for the development to move forward it is necessary for the Council to give in principle support by confirming the availability of the site on long lease on terms as outlined in the report; and to consider the level and terms of financial support to be offered.

2. Recommendations:

- 2.1 It is recommended that subject to formal confirmation of proposed funding from Sport England, Leicester College and the Leicester and Leicestershire Enterprise Partnership (LLEP), the City Mayor approves:
 - i) the principle of the development of a Community Arena at the Charter Street site;
 - ii) the grant of a 125 year lease of the site to the Leicester Community Sports Arena Ltd on terms as outlined in the report;

- iii) a capital grant of £1.5m to the Leicester Community Sports Arena Ltd to facilitate the development, which will generate some £2.7m of external partnership investment in the City; and
- iv) the addition of the £1.5m grant to the capital programme, funded by resources set aside for the Economic Action Plan.

3. Main report:

3.1 The site

3.1.1 The Charter Street site as identified edged black on the attached plan (Appendix 1) amounts to 4 acres (1.65 hectares) and was purchased by the Council in 2010 for the relocation of the Royal Mail depot from the New Business Quarter. However, this did not proceed and the site is currently in use as a highways depot. Before any development can proceed, the site requires remediation for potential contaminants and removal of some underground features, estimated at £650k plus £100k for site preparation.

3.2 The outline proposal

3.2.1 The Riders will make an updated application to Sport England for part funding for the development (circa £1m has been set aside), and through the Leicester Community Sports Arena Ltd (LCSA) will take a long lease of the site and undertake the project delivery together with Leicester College. LCSA will design, build and operate the facility and the Council will benefit from an agreed community use programme. The Council will have full oversight of the capital project and direct involvement in the design approval.

3.3 The development

3.3.1 The Arena is proposed to consist of a building of minimum dimensions of circa 3,000 square metres featuring a large hall to hold the equivalent of 3 basketball courts (or 12 badminton courts). There will also be changing facilities, storage, bar, café, classrooms and a fitness suite. Fold away seating to create a 2,000 plus seat facility around the central court for Riders' matches and other events will also be provided.

3.3.2 The lease will be of the complete site and it is anticipated that the remainder will be laid to car parking, landscaping and circulation. The Arena will be located on the site such that any future additional leisure development could be accommodated if required.

3.3.3 The Riders have a project management/architect firm, Ball Hall, engaged, who will lead the design, planning, contracting and project management process on behalf of LCSA.

3.4. Project governance

- 3.4.1 LCSA has recently been established to design, build and operate the Arena. Representatives from the Council and Leicester College will be included on the company Board. LCSA is a private limited company wholly owned by the Leicester Riders Foundation Limited (itself a newly created charitable company limited by guarantee). LCSA will be VAT registered and will run on a commercial basis, with profits used for both further development of the Arena and its activities, together with donations to the Foundation.
- 3.4.2 It is anticipated that 6% of court time will be dedicated to events (Riders' games and others) which it is assumed will almost exclusively be at weekends. Riders' use will equate to around 3% of total usage.
- 3.4.3 The Arena will be open 15 hours a day (8am – 11pm), 7 days a week, 362 days per year. There will be 6 main user groups:
1. Community sports participation use
 2. Local schools' bookings
 3. Leicester College Students (up to 2 courts; term time, booked in advance)
 4. Cobras wheelchair (tbc)
 5. Events (including Riders' games and training)
 6. Riders' elite (men/women; seniors/underage)
- 3.4.4 It is anticipated that the Arena will be well used and the business plan suggests it will be financially sustainable. The Arena will be managed by an experienced Arena Manager, supported by two Assistant Managers.
- 3.4.5 All other staff will be part time/casual/coaching staff. A significant advantage to the Arena is Riders' established Community Development programme. Currently they have:
- 40 plus after school clubs
 - 80 schools attending their development days
 - 30 primary schools engaged in Riders' Hoops 4 Health programme
 - Nearly 20,000 children involved
 - Large 'Shoot 2 the future' Programme with the Police
- 3.4.6 Significant investment of over £100k is anticipated over the next three years from the British Basketball League (BBL) Foundation (who in turn are receiving a grant from Sport England of £1.86m) for developing community basketball clubs in the city and county. This will be a good marketing tool for encouraging use of the Arena.

3.5 Project Budget/ Funding

3.5.1 The expected cost of the project is £4.2m (excluding any irrecoverable VAT). This comprises £0.75m for site remediation works, £3.25m for the design and build of the Arena and £0.2m for car parking. These estimates are subject to a number of variables at this stage, including the final design, agreement on ground remediation works, receipt of tenders, etc.

3.5.2 Funding is expected from a range of partners. The Council's £1.5m contribution will generate external partnership investment of some £2.7m. The proposed funding for the project is summarised below.

Funding	£m	Comments
Leicester College	0.50	
Leicester City Council	1.50	This can be funded from resources set aside for the Economic Action Plan.
Sport England	1.00	In principle agreement to provide circa £1m.
Regional Growth Fund (Round 4)	0.84	Approved by the Leicester and Leicestershire Enterprise Partnership (LLEP) Board, to safeguard and create jobs, subject to completion of formal documentation.
Leicester Riders	0.36	The Riders have undertaken to secure the balance of funding.
Total anticipated funding	4.20	

3.5.3 Full landscaping of the site, with the full car parking potential of the site fully delivered, will be subject to discussions with the Canal and River Trust, and it is assumed could be contracted later, as funding becomes available from other sources.

3.5.4 The proposed heads of terms for the lease of the site have been agreed in principle and have been signed off by Sport England. The main heads of terms are as follows:

1. The property: The property comprises the land at Charter Street as identified edged on the attached plan. The lease will be subject to the existing rights that the Canals and Rivers Trust enjoy over the site.
2. The parties: Leicester City Council (the lessor) and the Leicester Community Sports Arena Ltd (the lessee).
3. Term: The lease shall be for a term of 125 years.
4. Commencement: Upon the receipt of full planning consent for an agreed Community Arena development (with buildings placed to allow provision of additional facilities in the future), approved remediation strategy and completion of full funding package for the scheme the parties will enter into a building lease for construction of the scheme with the main lease to commence on completion of the agreed necessary works to enable the Community Arena facility to open.

It is accepted that further works on the site to complete all the agreed works may be undertaken as a second phase after the start of the main lease.

5. Rent: The ground rent payable will be £40k p.a. (plus VAT, if the Council opts to tax the site), to be reviewed on every fifth anniversary in line with increases in Retail Prices Index (RPI).
 6. Outgoings: The lessee will be responsible for the payment of the general rate and water/sewerage charges on the premises, the cost of all consumer services and any other taxes or assessments incurred by or imposed upon the premises by virtue of the lessee's occupation thereof.
 7. Assignment/Underletting: The lessee shall not at any time during the first 21 years of the term hereby granted assign the lease. Thereafter the lessee may assign subject to the lessors approval. Sub lettings or licensing of part is allowed throughout the term subject to the lettings being at open market rental value, of not more than 10% of the overall floor space of the building and for a term of less than 10 years. Any proposed letting outside of these terms will be subject to lessor approval.
 8. Use of Premises: The use of the demised premises shall be limited to sports and leisure use (including corporate events, weddings, private parties, etc.) with ancillary parking and landscaping and will meet the requirements of the conditions as regards to use of financial support received from Sport England and Leicester College for as long as such conditions remain effective.
 9. Maintenance and Repair:
 - i) General: The lessee will put and keep the whole of the premises, both internally and externally, buildings and land clean and tidy and in good and substantial repair and condition to the satisfaction of the Director of Investment. The lessee will also yield up the premises at the expiration or other determination of the lease to this standard and shall, if required by the Director of Investment, reinstate the premises to their original state and condition.
 - ii) Life cycle maintenance: The lessee will put in place a full life cycle facilities maintenance contract based upon a detailed lifecycle maintenance, repair, service and replacement plan for each element of the premises.
 10. Insurance: The lessee will be responsible for the provision of all insurances including buildings, such insurance to include provision of full costs of demolition, supervision and loss of rent, public liability, contents etc.
 11. Other terms: As agreed by the Director of Investment.
- 3.6 VAT
- 3.6.1 The budget assumes recovery of the majority of VAT on all the capital costs of the project; this assumption has been reviewed by Riders' accountants who are understood to be confident this can be achieved.

3.6.2 The VAT position will be kept under review as the project progresses and further discussions are held with HMRC. The Riders in their wider sense have agreed to take the VAT risk, in that any additional non-recovery would increase the capital funding requirement.

3.6.3 An alternatively structured project to secure full VAT recovery has been considered but would require the Council procuring the Arena's construction and then leasing the completed facility to the operating entity to manage. This would necessitate the redirecting of Sport England's funding to the Council and the novation of any existent contracts with Ball Hall from Riders to the Council followed by an appropriate procurement exercise. Given the short timeframe to deliver the Arena this option is not practical.

3.7 Delivery

3.7.1 The project is intended to be delivered through the following process.

- i) LCSA/Riders are seeking funding from the sources identified in the report to enable the scheme.
- ii) Ball Hall will provide project management services under their existing contract and lead the construction process.
- iii) LCSA, as advised by Ball Hall, will tender the construction contract and employ the contractor.
- iv) LCSA will take a long lease of the site from the Council.
- v) LCSA will operate the facility in accordance with the terms of Sport England funding and the Council lease.

3.7.2 As noted in para.3.6.3 a different approach involving the Council undertaking the development was considered. However in the light of the issues this would raise in terms of the Sport England grant, timetable and risk this is not viewed as a viable alternative and has not been progressed in any further detail.

3.7.3 The Council has received details of the procurement process undertaken with Leicester College to contract Ball Hall, as well as the contract itself. This has been reviewed by the Council's legal team.

3.8 Disposal at less than best consideration

3.8.1 An independent valuation has been commissioned and the site valued on an unrestricted basis at £1.2m. However, the Council will impose restrictions as described above. The proposed disposal of the site by long lease at an annual ground rent of £40k is considered to be at market value, taking the restrictions into account.

3.8.2 The Council is however in any event empowered to dispose of land at less than best consideration up to £2m by the General Disposal Consent, should social, economic or environmental wellbeing benefits be provided through the disposal (which it is presumed will be the case with the Arena).

3.8.3 Benefits of the project include:

- The Arena will increase substantially weekly sports participation in Leicester.
- The Arena will help fund sports outreach work by the Riders in deprived communities.
- The Arena will improve substantially the availability of indoor sport facilities for Leicester College (LC) students (by factor of 3); and substantially increase in sport enrichment offer for 29,000 students at LC.
- The Arena will provide availability of indoor sports facilities for a number of partner primary schools.
- The Arena will provide a centre for increased coach/ sport education.
- The Arena will help regenerate a run-down part of the old industrial heart of the City.
- The Arena would support the ongoing operation and success of Leicester Riders basketball club; the oldest operating at the top flight in England (47 years); and with 1,516 registered members the 4th biggest club in the country
- The Arena will provide placements and apprenticeships for LC students in sports, coaching, catering, and hospitality

3.8.4 The Council will safeguard wellbeing benefits and outputs from its funding contribution through the lease terms. These will link to the Sport England grant conditions and the provision of the outputs contained therein.

3.8.5 The Heads of Terms for the long term lease of the site have been agreed in principle; these include a specific clause requiring compliance with the Sport England and Leicester College contracts, which mandate the community usage.

4. Details of Scrutiny

4.1 The Heritage, Culture, Leisure and Sports Scrutiny Commission has received updates regarding site options for the Arena scheme, have carried out site visits to four sites and has provided a report on their findings which were supportive of the Charter Street site as the preferred location.

5. Financial, legal and other implications

5.1 Financial implications

5.1.1 The expected cost of constructing the Arena and related works is £4.2m. This cost excludes VAT, although the Riders' accountants have a high level of confidence that VAT can substantially be recovered; however, to the extent that it is irrecoverable beyond the assumptions the costs would increase by up to 20%.

- 5.1.2 The expected funding is an "in principle" commitment of circa £1m by Sport England, £0.5m from Leicester College and £0.84m from the Regional Growth Fund. It is proposed that the Council should provide £1.5m, which could be funded from resources set aside for the Economic Action Plan. The LCSA/Riders would source/underwrite the balance of £0.36m against the £4.2m cost estimate.
- 5.1.3 With regards to the land, the report identifies a number of issues and restrictions; it is proposed that a long lease will be granted with an annual ground rent of £40k plus periodic indexation.
- 5.1.4 The costs do not include any potential complementary improvements that the Council might wish to see in due course. The funding for such improvements would need to be identified, for example from the Local Growth Deal bid.
- 5.1.5 The Council's Taxation Officer has reviewed the proposals. VAT implications across the project have been mitigated wherever possible and no implications for the Council specifically are expected.
- 5.1.6 The Riders have produced a business plan covering the build and operation of the Arena, which has been reviewed in some detail by external Due Diligence processes for the LLEP and the Council. These have reported positively and hence provide some considerable assurance. However, it should be noted that should the Arena get into financial difficulties once operational, the site rental due to the Council would be at risk. The Council could also be called upon to provide on-going revenue support to avoid closure.

Colin Sharpe, Head of Finance, ext. 37 4081.

6.1 Legal implications

- 6.1.1. The Briefing sets out a number of matters that have legal implications, as follows:-
- 6.1.2 Title: The site was purchased from two parties, Parkers and British Waterways Board (now the Canal and River Trust). The plan indicates the boundary between the two sites with a dotted line. Due to the canal side location the Trust included a number of constraints on the title that the development will need to take account of and it is likely that a negotiation will be needed with the Trust as part of the design process.
- 6.1.3 As identified in para. 3.3.2 above it is intended that the Arena will be sited so as to allow development of other leisure facilities in the future and this will raise options as to what mechanism the Council uses to enable such land to be available. This could involve exclusion from the leased area or an option to take land back under certain circumstances.

6.1.4 The key issues are as follows:

- i) The land indicated hatched on the plan is subject to an option in favour of the Canal and River Trust to take a 999 year lease at consideration of £1. The ability to take up the option remains in place for 21 years from 16th March 2010 and can be triggered by the Trust being granted planning permission for construction of a waterway facility building for use of boaters or for the operations of the Trust.
- ii) The land bought from the Canal and River Trust is subject to an overage payment should the site be developed for use within Classes A, C or D of the Use Classes Order based on 50% of increase in value resulting.
- iii) No drainage pipes are to be allowed to discharge into the adjoining waterway.
- iv) The Canal and River Trust retains rights of access over the site to the option land along the routes from Charter Street and Memory Lane as identified on the plan coloured grey and the right to use 8 car spaces in the location identified on the plan cross hatched.

The existence of the option and overage conditions may have implications for the development of the Arena project unless they are released or modified. The Council would need to obtain the agreement of the Canal and River Trust (as successor body to British Waterways) to the removal or variation of these conditions, for which a premium may be paid.

6.1.5 Contamination - The Council as the current owner of the land may be subject to the contaminated land regime under the provisions of Part 2A of the Environmental Protection Act 1990 (as amended). Therefore the Council is currently responsible for the site conditions and any pollution resulting from it. The Council should ensure that any sale or lease documentation contains appropriate provisions for the proper decontamination of the site in accordance with the Environment Agency's (EA's) requirements, and to be provided with information on known contaminants, and carry out their own environmental surveys.

6.1.6 Land Disposal - The Council is under a duty to dispose of land for the best consideration reasonably obtainable (other than a lease for less than 7 years), under s.123 of the Local Government Act 1972. The Council is permitted to dispose of land for less than best consideration under the provisions of the 2003 General Disposal Consent. This gives local authorities consent to the disposal of land within specified circumstances i.e. where the authority considers that the purpose for which the land is to be disposed of is likely to contribute to the achievement of the promotion or improvement of economic, social or environmental well-being. In each case it is a condition that the undervalue must not exceed £2 million. If this is exceeded, then a specific consent from the Secretary of State will be required. The Council will also need to act with regard to its general fiduciary duty in land and property disposals, and consider the disposal on the basis of evidence as to how these objectives will be met. Any sale documents should include appropriate provision relating to the future use of the property to ensure sustainability of the well-being objectives.

- 6.1.7 The Lease for the Arena site should include appropriate provisions for the Council to recover the site in the event that the purposes set out above cease to be delivered or the objectives set out in the business plan are not achieved, such as a right for the Council to terminate the lease early or to “step in”. However these rights may be subject to the rights of Sport England, Leicester College and other funding bodies who may have secured charges over the site and liaison may be required with other parties in these circumstances.
- 6.1.8 Procurement – The procurement of the construction contract with Ball Hall and any other contracts required will be undertaken by LCSA and the Council will not be a party to these contracts, therefore the Council’s own procurement rules do not apply.
- 6.1.9 The Council is not proposing to enter into a contract for services with the LCSA and therefore no procurement implications arise. There will be a SLA/grant agreement between Sport England and the Riders and the Council will not be a party to it. The proposed site lease agreement contains a condition that the conditions of the Sport England grant (and therefore the SLA) will be met, to evidence how the Arena will achieve the community use and wellbeing referred to in the report.

Neil Bayliss, Head of Procurement, Extn. 37-4021

6.2 Climate Change and Carbon Reduction implications

- 6.2.1 Any developments that the Council may be involved in as a landlord or other arrangement should encourage/require the design of any project to reach high environmental standards, such as a BREEAM excellent rating. As a minimum, this project will be classed as a major development therefore any planning application will be subject to the Council’s retained policy BE16 on Renewable Energy which requires a percentage of energy requirements to be met with onsite renewables. This is complemented by Core Strategy Policy 2 which addresses the topics of climate change, energy efficiency and flooding for new developments in the city. The Better Buildings Officers in the Environment Team can advise developers on meeting the above requirements.

Chloe Hardisty, Senior Environmental Consultant - Ext 372252

6.3 Equality Impact Assessment

- 6.3.1 The main equality issue is ensuring accessibility of the facility, particularly by potential disabled users. The design of the structure and surrounding landscaping should incorporate the Council's Inclusive Design principles.

6.3.2 The proposed Community Arena will increase the profile of the sport in the city and to its residents. This will hopefully encourage more children, young people and working age people to take up the sport as a leisure activity, thereby providing another opportunity for them to improve their health through increased fitness. The main protected characteristics likely to take up this potential positive impact would be: age, gender and disability. It is understood that the Riders have agreed specific targets for age, gender, ethnicity and disability with Sport England.

Irene Kszyk, Corporate Equalities Lead, ext. 374147

6.4 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

None.

7. **Background information and other papers:**

None.

8. **Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?**

No.

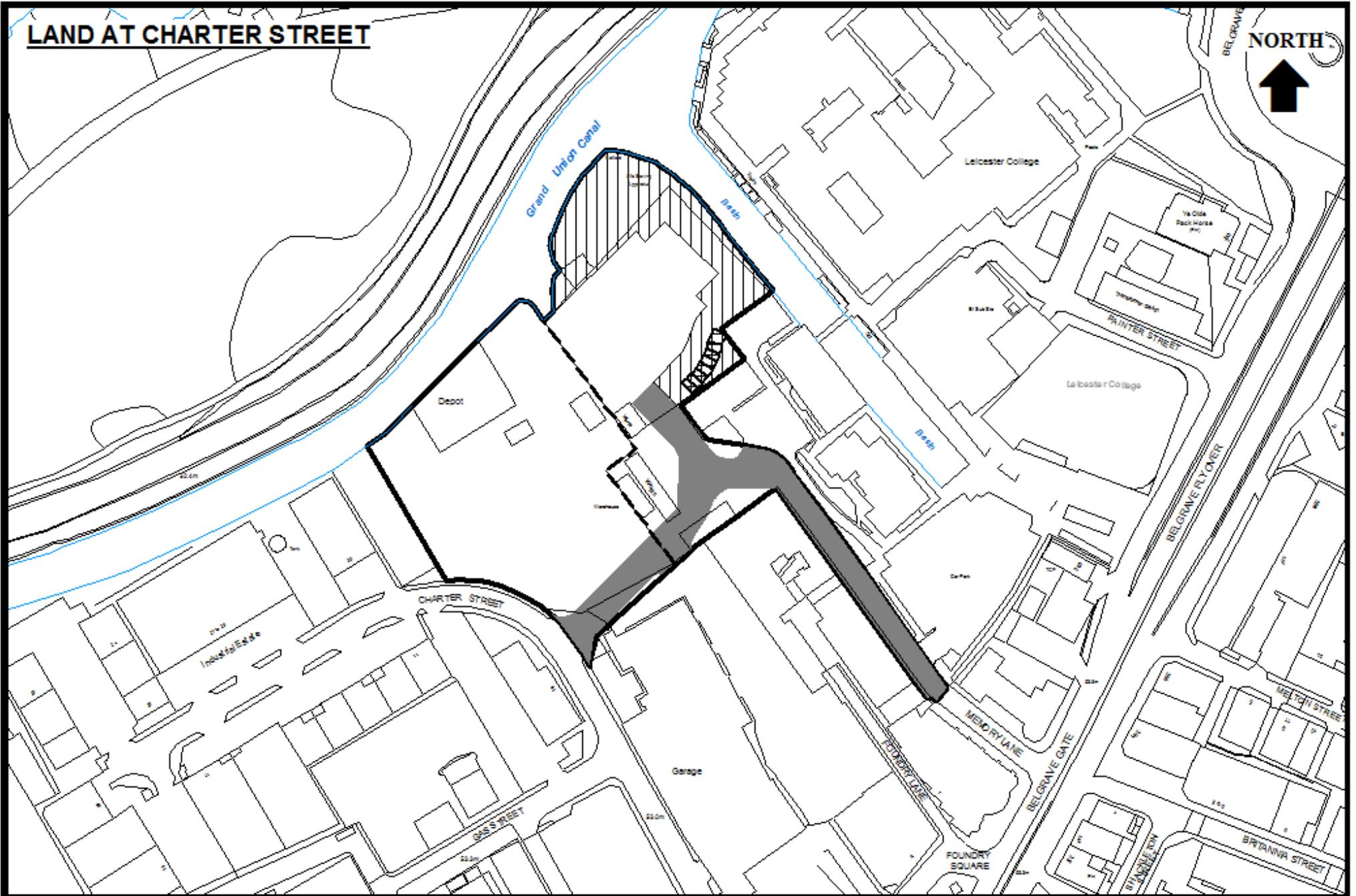
9. **Is this a “key decision”?**

Yes, as capital expenditure of over £1m is to be committed on a scheme not specifically authorised by Council.

10. **Summary of appendices:**

Appendix 1– Site plan

LAND AT CHARTER STREET



<p>BASED UPON THE ORDNANCE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER OF H.M. STATIONARY OFFICE. CROWN COPYRIGHT RESERVED. LICENCE No.100019264</p>	<p>DRAWN BYRF..... CHECKED BY.....NJG.....</p>	<p>PLAN No Citee 250 DATE14/01/2014.....</p>	<p>NOT TO SCALE</p>	<p>DIRECTOR OF PROPERTY LEICESTER CITY COUNCIL</p>
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