

Report to: Cabinet

Date: 2nd July 2018

Title: Anchor Field, Ringmer

Report of: Ian Fitzpatrick, Director of Regeneration and Planning

Cabinet member: Councillor Bill Giles (Cabinet Member for Finance)
Councillor Ron Maskell (Cabinet Member for Housing)

Ward(s): Ouse Valley and Ringmer

Purpose of report: To update the Cabinet on proposed residential development on the Anchor Field, Ringmer and confirm changes from the details outlined in the Report to Cabinet in February 2017.

Decision type: Non-key Decision

Officer recommendation(s):

- (1) To note the revised project on Anchor Field Ringmer
- (2) To agree to proceed with the proposal as outlined as 'Option 1' in paragraph 6.2 of disposing of Council land holdings at Anchor Field, Ringmer as outlined in this report to allow for the delivery of affordable housing
- (3) To give delegated authority to The Director of Regeneration and Planning in consultation with the Lead Member for Housing, to dispose of land and easements at Anchor Field held within either the Council's General Fund or Housing Revenue Account subject to appropriate due diligence being completed. This delegation is to include authorisation not to dispose by auction or invitation of tenders following public advertisements as is usually required by the Council's Contract Procedure Rules (para. 18.1).
- (4) To give delegated authority to the Director of Regeneration & Planning in consultation with the Lead Member for Housing to enter a Development Agreement with the developer of the Anchor Field site in Ringmer.
- (5) To give delegated authority to The Director of Regeneration and Planning in consultation with the Lead Member for Housing to invest in the development of a small number of additional affordable housing units in addition to those that will be built out by the developer for the Council

at no cost

Reasons for recommendations: **To allow for changes to the approved project following a reappraisal of the deliverability and benefits realisation of the scheme.**

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1 Introduction

1.1 A Cabinet Report in September 2015 first outlined the recommendations for Lewes District Council (LDC) to use its land holdings at Anchor Field, Ringmer in the delivery of a residential scheme through a development agreement with a private developer. A subsequent Cabinet report in February 2017 included amendments to the Development Agreement whereby the Council would receive completed affordable housing units in exchange for its land holdings and easement.

1.2 Since the last Report in February 2017, Council officers have commissioned a number of valuations and cost assessments of the project as part of due diligence. This work has resulted in the need to further amend the proposed Development Agreement to take into account rising build costs and ensure the deliverability, benefits realisation and risk mitigation are all given appropriate weight.

2 The Proposal

2.1 Amended Details to Approved Proposal

The Cabinet Report from February 2017 delegated decision making on the majority of details of the development agreement to specified senior officers in conjunction with relevant Lead Members. However a number of aspects of the project were outlined within the report that have now been amended:

Within Paragraph 3.7 (old report)

- Further valuations and costs assessments commissioned by LDC in December 2017 show that there is unlikely to be sufficient development value to deliver the full 40% affordable housing on the site. This is in part due to the high cost of relocating the Football Club. The viability of affordable housing provision will be assessed under the planning application in the same way any other application would be.
- The majority of the affordable housing will be transferred to LDC at nil cost (in lieu of payment for the land and easements transferred to the developer). However, an opportunity to invest in a small number of additional affordable housing units has arisen for LDC, which would require a monetary payment to deliver.

- LDC will now be restricted through a planning requirement to keep the completed dwellings they receive as affordable housing.
- Rights (easements) will be granted to the developer over the LDC land to facilitate the development.

Within Paragraphs 3.8 and 3.9 (old report)

- To ensure the viability of the overall scheme, it has been agreed that the timing of the transfers of the land and the grant of the easement is changed so that the transfers and the grant of the easement will take place before construction of the LDC affordable housing. However, it has been agreed that the Council will secure a legal charge over part of the development site as security for the delivery of the affordable homes.

2.2 **Disposal of Land to Aspiration Homes or LHICL**

The Council land at Anchor Field, Ringmer has historically been held within the Housing Revenue Account, but the Cabinet Report 2017 approved the appropriation for the land into the Council's General Fund.

It is the intention that the affordable housing land will be transferred to either Aspiration Homes LLP or Lewes Housing Investment Company. This will be the subject of a further report to Cabinet if it is proposed to proceed with this transfer. The Development Agreement will have provision so that the rights to have the units built will be assignable.

3 **Outcome expected and performance management**

- 3.1 The Council expects to receive new affordable housing, and see the delivery of market housing, new sports provision for the College and Football Club, as well as improved open communal space for the wider community.

4 **Consultation**

- 4.1 Ringmer Parish Council have been consulted continually throughout the past 12 months of this project and remain broadly supportive of the proposals.

Ringmer Football Club have worked closely alongside the private developer on drawing up plans for the relocation of the football club.

Ringmer College and East Sussex County Council have both been consulted and are in full agreement to the plans for relocating the football club and providing improved sports facilities for the College.

A public meeting was held for Ringmer residents in November 2017 where the plans were displayed and discussed.

5 **Corporate plan and council policies**

- 5.1 The overall outcomes of this project support the Council's Corporate Plan to improve:

- “Communities” through improving local access to sports facilities
- “Place” through providing market and affordable housing, helping improve and maintain local park and community space, and also working with Parish Councils in unlocking local development projects.

6 Business case and alternative option(s) considered

6.1 Options Appraisal

As part of the valuation and cost assessment exercise an options re-appraisal was undertaken to ensure that the approach the Council was proceeding with was still the best. The following options were considered:

1. Continue with the existing proposal of disposing of the Council’s land holdings in return for completed affordable housing units.
2. Sell the Council’s land holdings for a monetary receipt.
3. Develop the Council’s land holding for housing without any development agreement with a third party developer.

It is recommended that the Council proceeds with Option 1.

| Option | Benefits of Approach | Negatives of Approach |
|--------|--|--|
| 1 | <ol style="list-style-type: none"> 1. Delivery of homes for less than it would cost the Council to build them separately.* 2. Value of completed affordable housing units are worth more than the value of the Council land.* 3. It would give the Council more control of the design and management of the affordable housing 4. The Council input helps to drive forward delivery of the overall scheme. | <ol style="list-style-type: none"> 1. The more complicated structure of the scheme requires greater input of Council Officers to ensure delivery. 2. Risk mitigation required in the Development agreement which would require action if Development failed to deliver benefits. |
| 2 | <ol style="list-style-type: none"> 1. Reduces risk of the Council not receiving receipt for the land. | <ol style="list-style-type: none"> 1. Value of the receipt for the land is worth less than value of affordable housing units* 2. A Housing Provider willing to purchase the affordable housing would need to be found, and many providers will not consider schemes 50 units. |

| | | |
|---|--|---|
| | | 3. Once the land is disposed of the Council would have reduced influence to bring forward the development of it stalls |
| 3 | 1. The Council could deliver a reduced number of homes without the need for a third party involvement. | 1. The delivery of improved facilities for the Football Club and College through the development would be unachievable. 2. Delivery of homes on the current football ground would be in doubt, impacting on the Council's overall housing targets. 3. The delivery of homes would cost the Council more money than a joint partnership scheme.* |

*Details within Appendix 1

7 Financial appraisal

- 7.1 The financial appraisal of this project remains largely as shown in the February 2017 report to Cabinet. The proposal means that instead of a capital receipt as envisaged when Cabinet agreed draft Heads of Terms in September 2015, the Council will receive property worth several million pounds. The newly constructed affordable housing units would generate an ongoing income stream, a future capital receipt (if sold) or a combination of the two.
- 7.2 The current proposal will enable 6 additional homes to be purchases through Aspiration Homes. The financial implication of this was explained in a report to Cabinet in April 2018 'Housing Development Update'. It will be for Aspiration Homes to determine how the acquisition and development costs are to be financed. The majority of the cost would be funded through long term borrowing, with the rent generated from the new homes being used to repay the principal borrowed and associated interest charges.
- 7.3 The Council will seek advice on the Stamp Duty Land Tax implications of the proposal at Ringmer to ensure that the transaction is carried out in the most tax efficient manner.
- 7.4 Section 123 of the Local Government Act 1972 requires that a local authority achieve best consideration for any freehold or disposal or a leasehold disposal in excess of seven years. The negotiations for this proposal has been conducted in light of this statutory requirement.

8 Legal implications

8.1 Contract Procedure Rules (Section 2 – Disposal of interests in land)

The Council's CPRs say that no sale of land where the value exceeds £50,000 or £25,000 if amenity land shall be made except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

The disposals of the sites to the developer has been authorised by Cabinet by the giving of delegated authority in accordance with Recommendation 3 of this report.

Best consideration - section 123 Local Government Act 1972

The Council cannot dispose of land held in the general fund for a consideration less than the best that can be reasonably obtained in the market, except with the express consent of the Secretary of State. Disposal includes transfers.

The disposal of land to the developer will need to comply with this principle and valuation advice has been taken to ensure that the terms of the disposal are the best that can reasonably be obtained.

Procurement

The sale of land is not in itself subject to the European public procurement regime and the Public Contracts Regulations 2015 (the "PCR").

The Council is not intending to impose conditions in relation to the development on the land in the scheme it is selling so as to create a works contract.

There is a linkage though at present in relation to the sale and the construction of the affordable housing for the Council. That element would be a works contract if taken as a stand-alone contract.

Where the different parts of a contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

In this case, if objectively, it is not possible to structure the contract for the sale/easement and the construction works separately AND the main object is the sale/easement rather than the affordable housing construction works then the whole arrangement would fall outside of the PCR. It is not considered that this scheme would be of cross-border interest so as to engage the need for a competition under the General Treaty Obligations. The intention is to approach the arrangement in this way so that the main object is the sale/easement.

Even if the arrangements are indivisible but the main subject matter is a works/services contract, then the Council may be able to use the negotiated procedure without competition to award the contract on the basis of "exclusive rights".

Once the terms of the arrangement are finalised a further legal analysis will be commissioned to ensure that the transaction in practice fits in with this procurement analysis.

State aid

Sale and grant of easement

The sale and grant of easement will be state aid compliant if they are:

- (i) in accordance with the "Commission Communication on State Aid Elements in Sale of Land and Buildings by Public Authorities" (the "Land Communication") **or**
- (ii) in accordance with the Market Economy Operator Principle

If consideration for the land and easement is being met wholly or partly by the construction of housing for the Council then the value of that construction contract will need to be assessed for this purpose. An independent expert valuation has been obtained

Construction of affordable housing on land retained by LDC – building contract is between LDC and developer

This will be compliant if in accordance with the Market Economy Operator Principle.

It will be necessary to establish that the Council is not paying more than market price for the construction work and that the terms of the contract are also in accordance with what would be expected in the market. If there is no form of competition the proposal will need to be benchmarked and the subject of independent expert opinion/valuation.

Once the terms of the arrangement are finalised a further legal analysis will be commissioned to ensure that the transaction in practice fits in with this state aid analysis

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9 Risk management implications

9.1 An assessment of the risks has been undertaken with the following risks and mitigations identified outcomes:

Risk 1: The Council fails to sign a Development Agreement with the private developer and the project does not continue.

Mitigation: The Council could develop the land that it owns for housing without any third party developer.

Risk 2: The scheme, or parts of the scheme, fail to get planning permission

Mitigation: The Council could endeavour to obtain planning permission for the land that it owns if the developer's scheme fails to obtain planning permission

Risk 3: Once planning permission is in place, the private developer will sell the football ground and assign the Development Agreement to a third party who may fail to deliver all or part of the project.

Mitigation: The Development Agreement will contain provisions controlling the status of the third party to whom the agreement can be assigned to ensure that it will only be assigned to a party with suitable financial standing

Risk 4: The developer builds out part of the project but fails to deliver the affordable element

Mitigation: A mechanism shall be included in the Development Agreement to protect the Council so that if the affordable element is not delivered the Council can enforce the terms of a legal charge that it will have over part of the developer's land and would be able to sell that land.

Risk 5: The developer builds out the affordable housing, but it does not meet the Council's requirements.

Mitigation: The Development Agreement will contain provisions relating to the standard of the affordable housing so that the Council will have recourse to the developer if it is not constructed in accordance with specified standards.

Risk 6: Delays in the project delivery cause complications for LDC, the Parish Council, the Football Club, the College, the Gun Club or the County Council.

Mitigation: This is a complicated deal due to the number of parties involved. There are provisions in the Development Agreement so that the deal is terminated after certain time limits so that all parties are not tied in indefinitely.

10 Equality analysis

10.1 There are no equality impacts as a result of the recommendations of this report.

11 Appendices - Exempt

- Appendix 1 – Valuation Reports Summary (Exempt)

12 Background papers

The background papers used in compiling this report were as follows:

- Cabinet Report Feb 2017- Anchor Field Ringmer and Old Malling Farm
<http://democracy.eastbourne.gov.uk/CeListDocuments.aspx?Committeeld=417&MeetingId=2127&DF=08%2f02%2f2017&Ver=2>

- Cabinet Report Sept 2015- Land for Development in Ringmer
<http://democracy.eastbourne.gov.uk/CeListDocuments.aspx?Committeeld=417&MeetingId=2115&DF=24%2f09%2f2015&Ver=2>