

CABINET

7 AUGUST 2018

LAND TO THE EAST OF NORTHDANE WAY, LORDSWOOD

Portfolio Holder: Councillor Adrian Gulvin, Resources
Report from: Perry Holmes, Chief Legal Officer
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Summary

This report advises Cabinet of the proposed residential redevelopment of land at Gibraltar Farm and seeks Cabinet's decision on options to delegate authority for officers to dispose of or grant rights over Council owned land to allow the completion of the proposed development or not.

Consideration of this matter was deferred by Cabinet on 10 July 2018 so that officers may present further financial information.

1. Budget and Policy Framework

- 1.1 As the consideration payable to the Council for the disposal of or grant of rights over the Council's land will exceed £100,000, this is a matter for Cabinet and as the consideration will exceed £500,000, there is a requirement to submit a report to Full Council for information only, in accordance with the financial limits in the Constitution.

2. Background

- 2.1 Planning permission was refused by the Council, however permission was subsequently granted on appeal under reference MC/14/2395 for residential development of the land shown edged black on the attached plan. (Appendix 1.) The Council's Planning Committee approved application MC/18/0556 on 6 June 2018 (see paragraph 6.2 for further details). The extent of public highway is shaded grey on the attached plan and the Council owns the land hatched black.
- 2.2 The Council has previously managed to rebut two attempts by the adjoining owner to convince central government to use its powers to force the Council to sell its land.

2.3 Cabinet at its meeting of 22 November 2016 (Decision no 133/2016) instructed the Director of Regeneration, Culture, Environment and Transformation to apply to designate the Hall Wood and Hook Wood areas as a Village Green, however acting on legal advice, the hatched black area was not included in this process.

2.4 Small parcels of land which can provide access to much larger development sites are often described as “ransom strips” and the owners of these are often able to secure a significant percentage of any increase in the value of the development land in exchange for the grant of access rights.

3. Options

3.1 Cabinet can decide to either:

3.1.1 Take no action, which will mean that the land edged black may not be developed and the Council will not receive a significant capital receipt or possibly the land owner will be able to secure an alternative access and the development will go ahead but the Council will not obtain a capital receipt (option A).

Or

3.1.2 Agree to dispose of the land hatched black or grant rights over it, in which case the development will go ahead and the Council will obtain a significant capital receipt (option B).

4. Advice and analysis

4.1 If adopted, the proposals set out within this report will facilitate the development of up to 450 dwellings (including 25% affordable units). In addition to this, the Council should be able to realise a significant capital receipt from this transaction. The land in question does not form part of Hook Wood or Hall Wood.

4.2 The value of the ransom strip that the Council owns will be subject to a negotiation with the current landowner, but will be based on the Council receiving 1/3 of the increase in value between the value of the land as farm land and the value of the land for residential development, with planning permission for 450 units.

5. Risk management

5.1 If the Council refuses to dispose of its land or grant rights over it, this will frustrate the proposed development of the adjoining land and the Council will not be able to realise a significant capital receipt.

Risk	Description	Action to avoid or mitigate risk
A decision to agree the sale of the land is contrary to the local community's wishes.	Planning consent has been granted for the development of the adjoining land but as the proposals stand, the land cannot be developed unless the Council disposes of its land or grants rights over it.	The report details the various steps the Council has taken to prevent development.
The adjoining land is developed with access from non-Council owned land.	The owner secures access over another route, the development goes ahead and the Council does not receive a capital receipt.	Grant delegated authority to allow the Council's land to be disposed of or to grant rights over it.

6. Consultation

- 6.1 The Council's planning department carried out a full consultation exercise in respect of planning application reference MC/14/2395 and the Council as planning authority received 295 Letters of objection from 285 respondents, a petition of 2730 signatories and 3 petitions of 169 signatories objecting to the proposals. The Council's Planning Committee refused the application, however, as set out in paragraph 2.1 above, the application was granted on appeal. The Council also carried out consultation concerning the proposal to register Hall Wood and Hook Wood as a Village Green as it recognised local concern about the potential loss of these assets. The land which is required to access the proposed development is not part of Hall Wood or Hook Wood.
- 6.2 The Council's Planning Committee considered and approved application MC/18/0556 on 6 June 2018 (outline application with some matters reserved (appearance, landscaping, layout, scale) for construction of up to 450 market and affordable dwellings with associated access, estate roads and residential open space (Renewal of Planning Permission MC/14/2395) subject to a) the applicants entering into agreement under Section 106 of the Town and Country Planning Act on a number of matters and b) conditions.

7. Financial and legal implications

- 7.1 The Council is under a duty to obtain the best consideration reasonably obtainable when it disposes of interests in property, unless consent is obtained from the Secretary of State or one of the general consents applies.
- 7.2 The Council is likely to receive several million pounds from the disposal of its land or the grant of rights across it. Details of a valuation provided by the current landowner are included in Exempt Appendix 1. Very recent correspondence with the landowner's land agent suggests significant interest in the site from developers and therefore a likelihood that a figure closer to higher valuation would be achieved.

- 7.3 The landowner will be expected to pay all of the Council's legal costs and surveyors fees in disposing of its land/granting rights over it. Also any infrastructure costs (for example roads and services) will be borne by the owner, or if the land is sold, the developer, either as planning conditions or as part of Section 106 or highway's agreement obligations.
- 7.4 The process expected to be followed in this case, based on recent experience for another ransom strip is as follows. Cabinet approval is sought, Full Council is notified as the sale is over £500,000. The Council's Property Team officers negotiate with the land owner over several months and comes to an agreed value. The sale is then referred to respective legal team for completion. According to the terms of the agreement, the Council receives the agreed value plus all of its costs.
- 7.5 With a large development of 450 units and low existing use value and therefore a significant increase in value, it may be that the owner and therefore the Council will receive payment in stages over 12 to 18 months rather than all in one tranche. However, the Council will negotiate in order to secure a single payment up front. If the owner sells the land with planning permission (and access) to a developer as expected, there would be every reason to receive the ransom strip payment in one sum, at the point of completion of the ransom strip sale or lease. The recent correspondence from the landowner's land agent suggests completion within this financial year.
- 7.6 The Council will also, as part of the negotiation, secure its ability to receive further payments in the situation where the Council has allowed access to the Gibraltar Farm site and further development sites are accessed from that site. This might not come to fruition for a number of years (the Council's position would be secured for 80 years). If such a further similar scale development took place, even at the reduced rate used in such a circumstance (50% of 33% of the uplift in value), a further capital receipt to the Council in the low £millions could be anticipated.

8. Recommendations

- 8.1 Cabinet is asked to decide whether to agree option A or option B, as set out in section 3 of the report.
- 8.1.1 Should the Cabinet agree option B, it is also asked to agree to delegate authority to the Chief Legal Officer, in consultation with the Portfolio Holder for Resources, to declare surplus the Council's land as shown hatched black on the attached plan, as set out in Appendix 1 to the report and dispose of it and/or grant rights over it on the best terms reasonably obtainable.

9. Suggested reasons for decisions

- 9.1 Should the Cabinet agree option A: To reflect local community concern about the proposed development.
- 9.2 Should the Cabinet agree option B: Having considered local community concern about the proposal and taken significant steps to protect the land, to

avoid the development proceeding without a large capital receipt coming into Medway.

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Appendices

Appendix 1 – Site plan

Exempt Appendix - Financial information

Background papers

Planning Committee 6 June 2018 application MC/18/0556.

<https://democracy.medway.gov.uk/mgAi.aspx?ID=18831>