

CABINET

13 JULY 2021

LAND TO THE EAST OF NORTHDANE WAY, LORDSWOOD

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

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Summary

This report advises Cabinet of:

- The proposed residential development of land at Gibraltar Farm
- A revised offer from the owner's agent for the Council to dispose of/grant rights over Council-owned land, that can provide access to the proposed development.

The Report 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.

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.
- 2.5 Cabinet at its meeting on 7 August 2018:
- Decision No: 103/2018: Agreed to take action not to dispose of the land to the East of Northdane Way, Lordswood as shown hatched black in the Plan set out at Appendix 1 of the report.
- Decision No: 104/2018: Confirmed the position that it will continue to use its best endeavours to protect the Capstone Valley from any form of development and will not facilitate or sell any land in the Capstone Valley or at the head of the Capstone Valley south of Hempstead for development.
- 2.6 The agent for the owners of Gibraltar farm has now confirmed a revised offer for the Council to dispose of/ or grant rights over its land hatched black on the plan at appendix 1 of this report. Details of the revised offer are set out in the Exempt Appendix to this report.
- 2.7 Under planning application reference MC/19/0336, the adjoining land-owners applied for planning permission for a residential-led development with access from Ham Lane and thereby avoiding the need to purchase the Council’s land. That application was refused on 21 January 2021, on 4 grounds. These grounds related to an existing by-way, which needs to link the site to Lordswood and the need for this to be surfaced and lit to make the development sustainable and enable the footpath to be safely used 24 hours a day 7 days a week. The lighting and surfacing of the by-way would though have an unacceptable impact on the ancient woodland and ecology. The refusal is now the subject of an appeal to the Planning Inspectorate and will be heard by way of a Public Inquiry.

3. Options

3.1 Cabinet can decide to either:

- 3.1.1 Take no action, which will mean that the land edged black may still be developed, but the Council will not receive a significant 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 A sustainability assessment is not required as part of this Report, as the sustainability issues have been considered by the Council's Planning Committee.

4.2 A Diversity Impact Assessment is not required as part of this report, as this report is not recommending any policy or service changes.

4.3 If adopted, the proposals set out within this report could 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.

4.4 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 around 1/3 of the increase in value between the value of the land as farmland 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 could 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	Risk Rating
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.	B2

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.	A2
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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. Climate Change Implications

- 7.1 These have been considered as part of the Planning Committee's decision.

8. Financial and legal implications

- 8.1 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.
- 8.2 The Council is likely to receive many millions of pounds from the disposal of its land, or the grant of rights across it. Details of the revised offer by the landowner's agent are included in the Exempt Appendix.
- 8.3 The landowner will be expected to pay all 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 highways agreement obligations.

- 8.4 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 or its appointed agent would negotiate with the land-owner over several months to arrive at an agreed value. The sale is then referred to the parties' respective legal teams for completion. According to the terms of the agreement, the Council receives the agreed value plus all its costs.
- 8.5 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.
- 8.6 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 several 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.

9. Recommendations

- 9.1 Cabinet is asked to decide whether to agree option A or option B, as set out in section 3 of the report.
- 9.2 Should the Cabinet agree option B, it is also asked to agree to delegate authority to the Director of Place and Deputy Chief Executive, 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.

10. Suggested reasons for decisions

- 10.1 Should the Cabinet agree option A: To reflect local community concern about the proposed development.
- 10.2 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>

Land to the East of Northdane Way, Cabinet : 7 August 2018

<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=4063&Ver=4>