

# Agenda Item 26

CABINET

05 March 2014

14/1403



## Land adjacent St John's Road, Exmouth

### Exempt Information

Para 3 Schedule 12A information relating to the finance or business affairs of any particular person

### Summary

This report considers issues around the sale of land to facilitate access into a residential development scheme adjacent to St John's Road, Exmouth.

### Recommendation

- 1) The Council agree to provide a three year option to sell access to a development site on the terms outlined in the report
- 2) The Council provide delegated authority to the Principal Estates Surveyor, in consultation with the Portfolio Holder Economy, to resolve any necessary title deed issues with Devon County Council

#### a) Reasons for Recommendation

To achieve the Council's affordable housing priority and to facilitate expansion of Valley Park.

#### b) Alternative Options

Recommend that the developer seeks permission for a less dense and higher value scheme, avoiding the requirement for affordable provision, and enabling an economically viable scheme.

Sell the freehold interest in the land now with no tie into the scheme for which a resolution to grant planning permission has been made.

The Council grant a right of way over the access land for the construction of the highway and cycle path, (including services), prior to adoption by Devon County Council.

#### c) Risk Considerations

The scheme is not currently viable: While the lion's share of risk sits with the developer, Members might consider that it is in the interest of the community, and therefore the Council, for the housing and new open space to be facilitated.

#### d) Policy and Budgetary Considerations

The Council essentially holds a ransom to the scheme in terms of its ability to provide the land required for access to the proposed development. Based on a purely

commercially driven scheme, it would be expected that the Council would negotiate a figure based on a percentage of the gross development value of the site. However, this scheme has been configured to enable the provision of as much affordable housing as possible, and to meet the aspirations of the Valley Parks Local Plan policy. This has crippled viability and therefore the potential to obtain a capital receipt for the access on a commercial basis.

#### e) Date for Review of Decision

September 2014

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## 1 Background

- 1.1 In 2010, the Council was approached by a property developer with an interest in land adjacent to St John's Road in Exmouth and a proposal for a housing scheme. The site is subject to Local Policy LEX1 (the Valley Parks). However, the Council did not put in place any means to deliver this policy. The residential scheme proposed offered an opportunity to enable this part of the Valley Park to be opened up to the public. The Council owns the land which would provide the two access points into the site.

A former cabinet report dated the 1<sup>st</sup> September 2010 obtained the following resolution:-

- RESOLVED**
- (1) that the Principal Estates Surveyor be authorised to enter into negotiations to dispose of land required for access to the land proposed for development,
  - (2) that, in addition, Exmouth Town Council be asked if it would wish to be given the opportunity to acquire land designated under Local Policy LEX1 (Valley Parks) to adopt as open space,
  - (3) That the outcome of the negotiations and recommended future options be reported back to a future meeting of the Board.

- 1.2 A resolution was made for the grant of planning permission on 5 February 2013. This was for a 52 dwelling residential development scheme (12/1016/MUFUL). Section 106 obligations are under negotiation. In tandem, negotiations have been undertaken for the sale of the access points into the site.

## 2.0 Access Land

- 2.1 The development of the site is dependent on the purchase of Council owned land edged red on the plan at Appendix A.
- 2.2 Owing to the social and environmental benefits arising from the design of the scheme, viability is challenging. The S106 remains under negotiation, but the requirements are pushing the scheme further into financial viability problems: At the time of writing, the requirements are £267,673 education contribution; £13,743 (plus £500 admin fee) play equipment at Hadrian's Way and £18,200 Exe Estuary Habitat Mitigation.
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- 2.3 While the biggest element of the S.106 contribution is that requested by Devon County Council for education, there is further contributions required for play equipment at Hadrian's Way and Exe Estuary Habitat Mitigation. Arguably the scheme will contribute to Exe Estuary Habitat Mitigation in its own right owing to the fact that publically accessible green space will be created. It will also provide a critical junction and crossing point in the Valley Park network, along with a footbridge across Withycombe Brook which will link the two sides of valley together. This not only compliments the Council's existing Valley Park Access Improvements Project, but Devon County Council's sustainable ambitions: Getting people out of cars, walking and cycling, improving home to school links (up to an estimated 20 minutes walking time to the Community College saved) and provision of safe routes to school for children (along with playing fields and parks.) This scheme will also provide a key link to the cycle paths in the town.
- 2.4 The unrestricted value i.e. the most profitable development of this land, would be the construction of 15 executive homes. This would alleviate the requirement to make affordable housing provision within the scheme, reduce build costs and reduce the S.106 payments. This would also increase the market value of the Council's access land up to as much as £736,000. However, planning permission would ever be granted for such a scheme.
- 2.5 The scheme for which a resolution for planning permission has been granted includes a 50% affordable housing contribution as well as onsite open space provision. In addition, the site is of a nature that the costs of construction, particularly the infrastructure and drainage costs, are abnormally high.
- 2.6 The amount offered for the access land is £52,000 (£1,000 per dwelling). The Council is able to dispose at less than best value under the provisions of the Local Government Act 1972. Please see the legal comment below for further information on the Act. With the affordable housing contribution and creation of public open space, the environmental and social benefits of the scheme are arguably a case for the sale of the access strips at less than best value.
- 2.7 Based on current evaluation, the scheme is financially unviable even without Section 106 contributions or the purchase of access land. A viability appraisal, complying with RICS Professional Valuation Guidance, has been made available to the Council's advisors. Rather than sell the access land prior to feasibility issues being overcome, it is proposed that the Council offer the developer a three year option to acquire the access land, conditional on delivery of the scheme (12/1016/MUFUL), at £52,000 (plus legal and professional fees). The option agreement would be drawn up in such a way as to run concurrently with the S.106 Agreement.

### **3.0 Covenant issues in relation to the Council's title**

- 3.1 Since the report to Cabinet in 2010, the access land required for the scheme has changed owing to the requirements of the tree officer's advice to the Planning Department (See Appendix B). The Council acquired the land, known as St John's Road Playing Fields, from the County Council in 1998 as part of a S.106 agreement. The access strip required for the scheme now includes a small area of the Council's demise which could trigger an option retained by the County Council: the land transferred was subject to a restrictive covenant that the land could only be used for playing fields and ancillary uses, together with an option agreement in

favour of DCC should planning consent for residential, commercial or industrial development be established.

- 3.2 The strip in question is a very small area of the demise affected and the Parks & Gardens Manager has advised that the proposal will not impact on the use of site as playing field. Indeed, the landscaping will have the overall effect of improving the condition of the playing field. (Works will include additional drainage, fencing, levelling of part of the site, a footpath into the Valley Park and re-planting). However, initial discussions with the County Council have been held and it is likely that a variation to the title deed will be required. A recommendation is sought to provide the Principal Estates Surveyor, in consultation with the Portfolio Holder Economy, to undertake and implement a resolution with DCC. It would be expected that the developer will be required to pay any costs resulting from these negotiations.

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### **Legal Implications**

Local authorities have wide land disposal powers under sections 123 and 127 of the Local Government Act 1972. However, they are required to seek specific consent from the Secretary of State where the consideration is less than the best that can reasonably be obtained. In England, the *Local Government Act 1972: General Disposal Consent (England) 2003* removes the requirement for authorities to seek specific consent from the secretary of state for any disposal of land where the difference between the unrestricted value of the interest to be disposed of, and the consideration accepted (the 'undervalue'), is £2 million or less and the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.

The position regarding the option and restrictive covenant is set out within the main body of the report. A full title investigation of the property has not however, been undertaken and is recommended prior to entering into the option agreement. The 1998 transfer from DCC also reserves rights in favour of DCC to lay, repair, maintain and relay service media under the land. These reservations should also be lifted in respect of the area to be sold and should form part of the DCC negotiations.

The legal team will also be involved in the negotiation of the s.106 agreement in due course.

### **Financial Implications**

The capital receipt under the recommendation will be much less than could be achieved. But the report refers to significant qualitative benefits to the Council.

### **Consultation on Reports to the Executive**

Ward Members have been consulted

### **Background Papers**

- Appendix 1 – Site Plan
- Appendix 2 – Plan detailing change to access off St John's Road