

# Agenda Item

**Executive Board**

**10 February 2010**

**10/1001**



## **Beach Gardens, Exmouth.**

### **Exempt information**

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

### **Summary**

At the September 2007 Executive Board, Members agreed to dispose of public open space at Beach Gardens, Exmouth for a commercial development, by way of tender. To initiate the disposal the Council is required to advertise its intention to dispose of public open space for public comment.

### **Recommendation**

- 1. Members authorise the advertisement of the Council's intention to dispose of public open space with planning permission at Beach Gardens, Exmouth as required under the Local Government Act 1972.**
- 2. Members note that a review of any responses to the advertisements will be presented at the March Executive Board.**

#### **a) Reasons for Recommendation**

- i) To facilitate the proposed development
- ii) To secure best value for the development site

#### **b) Alternative Options**

Not to agree recommendations.

#### **c) Risk Considerations**

The risk considerations are considered within the main body of the report.

#### **d) Policy and Budgetary Considerations**

The costs of the advertising are estimated at £310 plus VAT. If following the advertisement of the Council's intention to dispose of the land, Members chose to proceed, marketing costs are estimated at around £6,000.

There would be a capital receipt upon disposal of the leasehold site.

There is currently no budget available to bring forward this project.

## 1 Main Body of the Report

### 1.0 Background

- 1.1 In September 2007 the Executive Board resolved to release an area of Beach Gardens, Exmouth (plan attached) for commercial development as defined by planning permission 07/3175/FUL.
- 1.2 To facilitate the development, negotiations were commenced with Clinton Devon Estates to vary a restrictive covenant which prohibited development upon Exmouth Sea Front.
- 1.3 In October 2008, Members made the following recommendation:

#### **\*94 Seafront Covenant negotiations, Exmouth**

Members considered the report of the Principal Estates Surveyor setting out the need for various restrictive covenants relating to the land on the Seafront in Exmouth to be lifted to enable negotiations for potential future developments to be progressed.

#### **RESOLVED**

(1) that the Council approve the Officer recommendation to proceed with an application to the Lands Tribunal to lift all historic restrictive covenants affecting its land at Exmouth Seafront if negotiations with Clinton Devon Estates are unsuccessful,

(2) that the sale of part of Beach Gardens by way of a lease is tendered only after negotiations to lift the covenants restricting the building of a shop on the land, are successfully completed approved a recommendation to proceed with an application to the Lands Tribunal to lift all historic restrictive covenants affecting its land at Exmouth Seafront. At the time it was also agreed that the sale of part of Beach gardens by way of a lease (on the basis of a 125 year lease), tendered only after negotiations to lift the covenants restricting the building of a shop on the land, are successfully completed.

- 1.4 Following the Council's resolution in October 2008, further legal advice was sought and in March 2009, the Executive Board was asked to consider Clinton Devon Estates offer and two other options for the removal of the restrictive covenants which included asking the Lands Tribunal to discharge and modify the covenants or, as advised by the Council's legal advisors, Michelmores, to make an application to the High Court to get a declaration that the covenants are not enforceable. Members resolved to take no further action at that time.

### 2.0 Proposal

- 2.1 The planning permission for the development of the shop expires on 10 August 2010 and it is proposed that the property is marketed despite the covenant issues remaining unresolved. Advice received from Michelmores LLP is that the restrictive covenants are not enforceable. It is understood that this is not the view Clinton Devon Estates hold and that if the Council allowed development to take place on the land, this would be at risk of the Estate taking legal proceedings against the Council.
- 2.2 The Council is required by s122 of Local Government Act 1972 to advertise its intention to dispose of public open space for members of the public to comment, prior to the site being marketed. It is anticipated that any disposal would be made by way of a 125 year ground lease allowing development as per the specific planning consent granted.

- 2.3 It is proposed a newspaper advert will be placed in the Exmouth Journal for two successive weeks, and a period of 21 days from the publication of the first advert will be provided to allow an adequate period for any objections to be made known to the Council.
- 2.4 It is anticipated that the notice will be publicised in the Exmouth Journal on 18 and 25 February 2010. The date by which all objections should be received is 11 March 2010.
- 2.5 Officers will compile a report and make any objections available to Members for consideration at the Executive Board meeting of 31 March 2010. Based upon the nature of the responses received, Members will then decide whether or not to proceed with the proposed disposal.

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### **Legal Implications**

The fee quoted for the adverts is the minimum fee for an advert for a small, none controversial sale, and if a more prominent advert is felt necessary the fee could be substantially more ( as in Seaton Redevelopment). In addition it would be advisable to re-check the position regarding covenants with the Solicitors employed to advise on the Exmouth re-generation programme before the site is marketed as the covenants affecting Beach Gardens may be enforceable because they derive from a different source. Subject to these points there are no additional legal issues requiring comment on this report

### **Financial Implications**

The financial implications are as indicated within the report.

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

None

### **Background Papers**

- Site Plan (1:500)
- Copy of September 2007 Executive Board Report and Minutes

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Donna Best  
Principal Estates Surveyor

Executive Board  
10 February 2010