

**Report to:** **Cabinet**  
**Date of Meeting:** 11 February 2015  
**Public Document:** No  
**Exemption:** Para 3 Schedule 12A Information relating to the finance or business affairs of any particular person  
**Review date for release** -



**Agenda item:** **24**

**Subject:** **Purchase of land at Mudbank Lane, Exmouth**

**Purpose of report:** This report seeks Cabinet support for the purchase of land at Mudbank Lane, Exmouth, subject to contract, and the back to back sale to Devon and Cornwall Housing (DCH), for the purpose of a mixed tenure housing development. The land in question is in the ownership of Devon County Council (DCC) and is occupied by former residential care facilities known as Danby House, Marjorie Moore Centre and Exebank.

The site has been offered to the Council for £1.3 million. Our development appraisal indicated that the opportunity was expensive and presented to many risks for the Council, discussions with DCH revealed that they could successfully develop the site subject to planning permission, site investigations, legal enquiries etc.

**Recommendation:**

**(1) To agree the offer for the purchase of land at Mudbank Lane, Exmouth, subject to contract, and**  
**(2) To agree a partnership with Devon and Cornwall Housing for the redevelopment of the land purchased.**

**Reason for recommendation:** To secure the site for a partner to deliver a mixed tenure housing development.

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**Financial implications:** There are a number of implications which need to be considered but they cannot be assessed in the timescale for this report to be presented to Cabinet. The overall financial implication is clear based on the current proposal in that agreements will be structured to protect the Council who will be incurring capital expenditure of £1.3m but will receive a capital receipt of the same amount on the same day. The issues that need to be considered relate to the accounting treatment, VAT and possible state aid implications and the partnering with DCH on this scheme without following any tender process (understandably because of the tight timeframe) these issues will need to be covered as part of the due diligence required before completion, if members agree to the recommendation.

**Legal implications:** Legal Services have been consulted by the Housing Enabling Officer ahead of time and there was close liaison on the terms of the offer letter presented to the seller of this site. That letter was heavily conditioned, so as to accommodate (explicitly wherever appropriate) the following issues that will remain to be addressed if our offer is accepted in principle by the seller:-

1. EDDC will need to be placed in a position to enter into a Joint Venture Agreement with DCHA contemporaneously with the Purchase Contract with DCC;
2. the conditions to be satisfied under both of the above documents will need to be tailored carefully so that they are compatible, eliminating any position of interim risk to EDDC;
3. consideration should be given as to whether EDDC transfers title to the entire site onwards to DCHA and then takes back the part on which the social housing units have been constructed by DCHA – as opposed to transferring to DCHA only the land they need for the open market units and communal infrastructure, thus prompting the need to appoint for EDDC to appoint DCHA as their building contractor for the affordable homes;
4. whichever route is chosen for construction of EDDC's affordable units, a full range of guarantees and warranties (including NHBC or equivalent defects cover and collateral warranties from sub-contractors) will need to be procured by DCHA, to just the same level as would apply on an open market sale;
5. advice will need to be obtained from appropriate EU Regulations specialists on any possible State Aid and Procurement implications (not least in regard to the construction by DCHA of the social housing units for EDDC); and
6. title investigations reveal adverse rights of way (enjoyed by [REDACTED]) over a small extent of the site near to where the two parts of it are split at its Mudbank Lane frontage – it is understood that these can be worked around in the context of preliminary layout proposals, but will need to be kept in view as plans evolve.

**Equalities impact:** Low Impact  
 The development proposal will provide affordable housing for low income households.

**Risk:** Medium Risk  
 We have de-risked our involvement by introducing a development partner with the credentials to deliver the site and take the development risks.

**Links to background information:** • -

**Link to Council Plan:** Living in this outstanding place.

**The development proposal**

1.1 In November 2014 I reported to the Housing Review Board an opportunity to purchase land at Danby House/Exebank in Halsdon Avenue/Mudbank Lane, Exmouth. The site, owned by Devon County Council (DCC), currently supports three residential care facilities that have stood empty for several years.

- 1.2 We exchanged correspondence with DCC expressing our interest in the purchase of the land and requested time (a period of exclusivity) to consider options for development, viability and consultation/decision making.
- 1.3 The site has been offered at £1.3 million and the Housing Review Board minutes to Cabinet (3 December 2014) stated:

**Minute 55 Danby House/Exebank – DCC updated proposals**

The Board's support to progress an opportunity to acquire the site.

- 1.4 Your officers undertook a detailed viability and risk assessment concluding that the redevelopment of the site was of a scale that the Housing Revenue Account could not afford to finance when land acquisition costs and construction costs were taken into account. The viability only worked if the site were a mixed market and affordable housing development, and we have little direct experience in marketing for sale and shared ownership properties. There were significant development risks associated with a site of this size and location, which were felt to be unacceptable.
- 1.5 Rather than simply turn the offer down officers discussed the matter with the Leader, Deputy Leader and Portfolio Holders for Homes and Communities and agreed that we would invite DCH to consider the site and explore a partnership approach. DCH were interested and prepared to undertake preliminary investigations/assessments at risk. We checked with DCC that this approach would be acceptable to them.
- 1.6 DCC gave us a deadline of the end of January to submit a conditional offer, if our offer is accepted on or before 18 February by DCC the Council is expected to exchange contracts on or before 20 March 2015.
- 1.7 We approached DCH because they are a locally based and successful Registered Provider (RP) with in-house development expertise and access to development finance. DCH are highly regarded by the regulator, have delivered a number of schemes in the area, are the selected Cranbrook RP, and have wide experience in the delivery of complex sites. DCH have effective housing management arrangements in place for the management of rented and shared ownership properties. The DCH organisation includes Westco a market housing delivery vehicle that ploughs surpluses back into the core business of affordable housing provision.
- 1.8 There was a short period given for us to make an offer subject to contract so I approached DCH confident that they could make the necessary assessments in the short timescale given, and it being consistent with their organisational ambitions for development growth in East Devon.
- 1.9 Over the last few weeks DCH and their architects have worked up a scheme and confirmed that they can provide a project with 50% affordable housing being subsidised by market housing in this attractive estuary side site. Initial considerations suggest 36 homes can be provided, although this will be subject to detailed planning considerations.
- 1.10 The subject to contract offer letter sent before the end of January deadline is attached at **annex 1** which includes site plans. You will see that our offer is heavily conditioned, including being subject to Cabinet and DCH Board approval. We have also stated that we expect a 'back to back' sale agreement with DCH to be in place to ensure that we are not left with the site after purchase. The normal due diligence, valuation, clean title, contract terms, vacant possession and site investigation conditions are required. We have also requested a period of exclusivity to de-risk some of the potentially abortive costs incurred by DCH between now and completion of site purchase.

- 1.11 The next steps will entail an urgent process of due diligence assuming DCC accept the offer. We have asked DCH to draw up the heads of terms for land transfer, undertake site appraisals, check title/contract and prepare detailed designs for planning permission.
- 1.12 Any completion of purchase will be subject to satisfactory planning permission being granted for development.
- 1.13 By working in partnership with DCH we can influence the design and development of this high profile, attractive site and achieve a high percentage of affordable housing, which is all consistent with our enabling role.