

<b>Report to:</b>	Cabinet	<b>Date of Meeting:</b>	Thursday 6 October 2022
<b>Subject:</b>	Disposal of Land at Southport Old Road and Holgate, Thornton		
<b>Report of:</b>	Executive Director of Corporate Resources & Customer Services	<b>Wards Affected:</b>	Manor Ward
<b>Portfolio:</b>	Cabinet Member - Regulatory, Compliance and Corporate Services		
<b>Is this a Key Decision:</b>	Yes	<b>Included in Forward Plan:</b>	Yes
<b>Exempt / Confidential Report:</b>	NO but Appendices 1, 2 and 4 of the Report are NOT FOR PUBLICATION by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended). The Public Interest Test has been applied and favours the information being treated as exempt.		

### Summary:

Asset Maximisation is a project within the Council's Framework for Change, Public Sector Reform programme. As part of this project, the Council's assets will be defined as being required for operational purposes, having heritage value, being required for the economic growth programme or being available for disposal. The first phase of this review was completed in 2019. The site known as Land at Holgate, Thornton was identified as being not operational, surplus to requirements and therefore available for disposal.

In November 2019, Cabinet approved that Legal Services and Property and Facilities Management finalise an agreement for the disposal of the Council's land known as Plots B and C, Holgate, Thornton. In 2020 an option agreement was entered into with the developer and purchaser, Forth Homes. This has enabled Forth Homes to commence technical due diligence work to inform a planning application for 206 dwellings on the site that was approved in June 2022.

As part of the negotiated deal with Forth Homes, the developer was required to bring on board a strategic partner. Forth Homes has agreed terms for a sale of the Council's land to a larger housebuilder, Castle Green Homes (a management buy-out of Housebuilder Macbryde Homes, backed by Steve Morgan CBE, founder and former chairman of Redrow). The deal agreed between Forth Homes and Castle Green Homes effectively triggered an overage payment for the Council's land, and therefore changed some conditions of the land sale previously reported to Cabinet.

The Option Agreement sets out the gross land value and allows deductions for abnormal development costs, Section 106 contributions (including affordable housing contribution required by the Council), external highway works and planning gain costs.

Cabinet previously approved that Officers would be required to report back to Members when sale contracts and all financial issues were resolved. This final report now seeks Cabinet approval to conclude the land sale transaction for Plots B and C at Holgate, Thornton.

### **Recommendations:**

That Cabinet:

- (i) As per the terms of the Option Agreement, gives approval for Forth Homes to appoint Castle Green Homes as their Nominated Strategic Partner for the reasons detailed within 3.4 of this report
- (ii) Approves the Heads of Terms for the long lease of land on the north side of Southport Old Road, Thornton as detailed within Appendix 4 of this report.
- (iii) Gives approval for the Chief Legal and Democratic Officer to complete the long lease and land sale agreements to secure the capital receipt presented at Appendix A.
- (iv) Note the work undertaken by Property and Facilities Management to verify abnormal costs deductions and that the agreed disposal price as set out in Appendix 1 meets best consideration requirements in accordance with Section 123 of the Local Government Act 1972.
- (v) Approves that the land disposal receipt can be paid in two equal instalments, being 50% on completion and 50% twelve months thereafter.

### **Reasons for the Recommendations:**

- (i) The deal agreed will enable a comprehensive scheme to be brought forward. This will avoid the sterilisation of the Council's land (Plot C – 3.15 acres) if Orchard Farm was redeveloped in isolation with highways access provided from Holgate Road.
- (ii) The developer will fund and deliver an off-site highways solution, which provides an appropriate access into the Council's land at Plot A, unlocking this site. This site will be brought forward in future years as a separate disposal.
- (iii) A final capital receipt is supported by an independent valuation provided at Appendix 2 to verify the Market Value of the site. All costs associated with progressing ground investigations and technical surveys have been passed onto the developer – the Council has not had to fund these works. The basis of the deal therefore meets with the Council's duty to receive best consideration requirements in accordance with Section 123 of the Local Government Act 1972.

## **Alternative Options Considered and Rejected:** (including any Risk Implications)

- (i) Option 1 – “*Do nothing*”: the developer has successfully appealed their planning refusal and indicated that they will exercise their option and develop out their consented scheme, utilising Holgate for construction and residential access.

Risk: by redeveloping Orchard Farm in isolation, Holgate Road would be the main highways access into the site, but there would be insufficient capacity on this road to support the redevelopment of Plot C – this would likely remain as farmland. The impact would be the Council taking the remaining Plots A and B to market (see Option 2). The Council would incur costs associated with technical surveys, planning and marketing fees and lose the value of Plot C.

- (ii) Option 2 – “*Council bring forward Plots A and B in isolation*”: the Council would appoint consultants to progress desktop surveys (ecology, highways and ground conditions) and prepare a planning brief. The Council’s remaining land would then be marketed to prospective partners – the deal to be conditional upon planning consent.

Risk: The Council would incur costs and staff resource to progress the upfront technical works and due diligence to take the site to market, including the appointment of property agents to market the land.

- (iii) Option 3 – “*Council buy out the Option Agreement*”: this would ensure that the Council had control of the whole site and would be free to take the site to the open market seeking a disposal or joint venture partner.

Risk: Option would mean that the Council would need to pay compensation for costs incurred to date in pursuing planning and loss of future development profit, in addition to a land value to reflect the 14-dwelling scheme proposed. This would not be financially viable.

## **What will it cost and how will it be financed?**

### **(A) Revenue Costs**

Not applicable – work streams to conclude the sale will be progressed by internal team resources. As part of the draft terms issued to the developer they are required to pay the Council’s legal costs and surveyors fees (capped at £25,000).

### **(B) Capital Costs**

Not applicable – the Council’s contribution towards the off-site highways access from the A565 (Park View) is calculated on a pro-rata basis according to the respective site areas, and be deducted from the land receipt for Plots B and C. There are no cash flow implications arising.

## **Implications of the Proposals:**

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

**Resource Implications (Financial, IT, Staffing and Assets):** Property and Facilities Management to work alongside the Chief Legal and Democratic Officer to oversee the completion of the disposal.

**Legal Implications:** The Chief Legal and Democratic Officer will complete the legal documentation for the disposal in accordance with Section 123 of the Local Government Act 1972 (as amended).

**Equality Implications:** There are no equality implications.

**Climate Emergency Implications:**

The recommendations within this report will

Have a positive impact	N
Have a neutral impact	N
Have a negative impact	Y
The Author has undertaken the Climate Emergency training for report authors	Y

The recommendations within this report will have a negative impact on the carbon footprint of the Borough. There are the direct emissions which result from redevelopment of the vacant site for housing purposes as well as the long-term carbon emissions from each new building / operation created.

The development of the site with buildings will be required to go through the Planning and Building Regulations processes which will help to minimise their carbon impact by applying the nationally required environmental standards.

Redevelopment of the site will however be expected to contribute to energy efficiency and other public transport provision in line with standard planning policy requirements.

**Contribution to the Council's Core Purpose:**

Protect the most vulnerable: Not applicable.

Facilitate confident and resilient communities: The disposal will facilitate a comprehensive redevelopment that will provide a planning policy compliant scheme, providing for 30% on-site affordable housing for the benefit of the local community in Thornton.

Commission, broker and provide core services: The proposed housing development will provide 206 new dwellings on Plots B and C, which will deliver additional Council Tax contributions to allow the Council to invest in key services.

Place – leadership and influencer: Not applicable.

Drivers of change and reform: Not applicable.

Facilitate sustainable economic prosperity: The terms agreed with the developer requires (as a condition of the land sale) the developer to commit to providing local

apprenticeships and use of local labour during the construction works.
Greater income for social investment: The disposal of the land will secure a capital receipt that will directly contribute to funding of the Council's Growth Programme.
Cleaner Greener: Redevelopment of the site will be expected to contribute to energy efficiency and other public transport provision in line with standard planning policy requirements.

**What consultations have taken place on the proposals and when?**

**(A) Internal Consultations**

The Executive Director of Corporate Resources and Customer Services (FD.6959/22) and the Chief Legal and Democratic Officer (LD.5159/22) have been consulted and any comments have been incorporated into the report.

**(B) External Consultations**

Not applicable.

**Implementation Date for the Decision**

Following the expiry of the "call-in" period for the Minutes of the Cabinet Meeting.

<b>Contact Officer:</b>	Suzanne Rimmer
Telephone Number:	0151 934 3262
Email Address:	Suzanne.rimmer@sefton.gov.uk

**Appendices:**

The following Appendices are attached to this report.

Appendix 1 – Capital Receipt

Appendix 2 – Valuation

Appendix 3 – Site Plan

Appendix 4 – Head of Terms for long lease of land on the north side of Southport Old Road Thornton.

Appendices 1, 2 & 4 are Exempt.

**Background Papers:**

N/A

## **Disposal Land at Southport Old Road and Holgate, Thornton, L23 1TJ**

### **Introduction**

- 1.1** Land at Holgate and Southport Old Road (“Land at Holgate”) collectively forms three neighbouring sites located on the northern edge of the village of Thornton and is owned by the Council. Immediately to the east of the sites is the Thornton Garden of Rest, a cemetery and crematorium. Agricultural and greenfield land lies to the north of the sites, which are separated by the road network. A site plan is located within in Appendix 3 of the report.
- 1.2** Site B is more rectangular in shape and the largest of the three sites at 11.74 acres and is bounded by the A565 to the west and Holgate to the east. To the south are existing residential houses.
- 1.3** Site C is also rectangular in shape, 3.15 acres and is located to the east of Site B across Holgate with the A5758 to the north and Thornton Garden of Rest to the east.
- 1.4** Site A is a triangular parcel of land of 8.82 acres bounded by the A565 to the north and east and residential properties to the south.

### **Planning Policy Context**

- 2.1** Land at Holgate is allocated in the Local Plan and forms a significant housing development opportunity. The Council’s land ownerships (Plots B and C) together with Orchard Farm (in private ownership) are identified as Site MN2.25. Plot A is a separate site allocation – MN2.24. The Local Plan sets out a policy requirement for the development of the sites to provide a proportional financial contribution towards the implementation of the A565 Route Management Strategy. All vehicular access to the sites is to be from a new signal-controlled junction onto Park View.
- 2.2** A planning application for 14 houses (DC/2018/01568) on Orchard Farm was refused in December 2018. This decision was appealed. The Planning Inspectorate allowed the Appeal and granted planning permission, meaning that the scheme can be implemented in full. Furthermore, the developer (Forth Homes) submitted a revised pre-application proposal for an alternative scheme for 44 homes on the same site, but with a social/affordable housing emphasis. This was an attempt to deal with certain aspects of the original reasons for refusal, however most significantly, it failed to address the significant highway issues previously raised. Forth Homes agreed to hold this proposal in abeyance, awaiting the outcome of the appeal and the concurrent discussions regarding the adjacent Council land assets.
- 2.3** The impact of the appeal decision is that – if implemented - it undermines the Local Plan requirement to deliver a comprehensive redevelopment of Plots B and C which form the remainder of the Local Plan site allocation MN2.25. It also involves the development of this site taking sole construction and residential traffic from Holgate (contrary to the Local Plan requirements), which was a main concern raised by the community, Ward Councillors, Parish Council and Planning

Committee in refusing the original planning application. Redevelopment of Orchard Farm in isolation will also mean that the Council's land forming Plot C will be landlocked, as Holgate will unlikely be able to accommodate the additional traffic associated with the 30-40 residential units this site could accommodate, in addition to the 14 dwellings on Orchard Farm. Given the objections to the 14 units, irrespective of highway and junction capacity, this additional development would likely receive an even stronger level of opposition. The land value for Plot C would be lost if the disposal to the developer partner does not proceed.

- 2.4** Forth Homes engaged positively with the Council since the original refusal of planning permission, however, they made their intentions clear that they would honour their deal with the landowner and develop Orchard Farm in isolation, if there was no other realistic option available. The proposal involving the adjacent land Plots B and C, the closure of Holgate to vehicular traffic beyond a specified point (so it cannot be used for construction traffic nor to serve the new residential properties), and the creation of a new vehicular access onto Park View to serve both Local Plan allocations at Holgate and Southport Old Road offers that opportunity.
- 2.5** To resolve the situation and secure an agreeable way forward for both parties, Cabinet agreed (7 November 2019 – Item 70) to an off-market transaction with the land disposal to be structured with the necessary financial checks and protocols in place to ensure that the Council receives “best consideration” in accordance with Section 123 of the Local Government Act 1972 (as amended).

### **Land Disposal Deal**

- 3.1** Further to Cabinet Approval, the Council and Forth Homes entered into an option agreement in 2021, which gives the developer the right to acquire the Council's land subject to conditions being achieved within agreed timescales. The option agreement set out a gross land price that was supported by an independent valuation. The basis of the deal accepted that the gross land price would be reduced to take into account deductions for abnormal development costs, S106 contributions, external highway works and planning costs. Deductions from the gross land price were to be calculated on a pro-rata basis according to the respective site areas.
- 3.2** The option agreement required the developer to progress all necessary technical surveys and submit a planning application for Plots B and C (to include Orchard Farm). The planning application (DC/2021/00417) was approved in June 2022.
- 3.3** Overage provisions were also made in the option agreement, setting out that the sale contract would include an Overage Deed lasting for a period of 21 years from completion. This was to ensure that the Council would receive an additional payment should either of the following scenarios take place within this period:
- Future land sales of undeveloped land parcels forming part of Plots B and C: the Council to receive 50% of any receipt (to be independently verified) over and above the agreed Purchase Price, reflected on a pro-rata basis per acre. Any undeveloped land sale will be sold subject to the overage deed and the Buyer will enter a direct covenant with the Council.

- On completion of individual development phases brought forward by the developer, the Council to receive 50% of any “windfall profit return”, over and above an agreed benchmark of 17.5% profit on GDV, (each development phase to be independently verified).

**3.4** The Option agreement also obliged Forth Homes to bring on board a strategic partner with the experience, financial and resource capability to deliver large housing developments. In 2021, Forth Homes applied to the Council for approval to appoint Castle Green Homes as their Nominated Strategic Partner. Further to Officers undertaking due diligence in relation the financial stability of Castle Green Homes, this was noted subject to award of planning, the finalisation of sale contracts/ overage deed, and final Cabinet approval.

**3.5** In practice, this means that Castle Green Homes will be the actual purchaser of Plots B and C and develop out the scheme in line with the approved planning consent. Castle Green offered a higher gross land price and as such would trigger the overage scenario of sale of undeveloped land. The higher land price offered by Castle Green Homes is conditional upon the Council accepting a staged payment: 50% on completion of sale contracts with the balance to be paid 12 months later, so in financial year 2023/24. It is advantageous for the Council to accept a staged payment of the capital receipt for the reasons detailed within the table at Appendix 1.

### **Assessment of Abnormal Costs**

**4.1** In June 2022 Castle Green submitted all cost and technical design works relating to accepted abnormalities and off-site highways works as required by the option agreement. Officers appointed a firm of civil engineers/quantity surveyors to review this information and independently verify costs that can be deducted from the gross land price, in line with the option agreement.

**4.2** The cost verification exercise has accepted the figure presented at Appendix 1 as a cost deduction from the agreed gross land value in line with the option agreement. A new valuation for the site, which was required due to the length of time that has passed since the initial valuation in 2020, has been completed and is appended at Appendix 2 and sets out the market value of the Council's land being sold to Castle Green.

### **Planning Consent**

**5.1** A Section 106 agreement finalised through the planning determination process will secure the following planning gain benefits presented at Table 1 below.

**5.2** The developer was also required to comply with the obligations for the Wildlife Mitigation Strategy as set out in the Section 106 Agreement to allow for the feeding of pink-footed geese on the land. Terms have now been provisionally agreed for the Council to grant a long lease of adjacent land on the north side of Southport Old Road Thornton. These are detailed within Appendix 4 of this report. The premium for the grant of the Lease is a deduction from the land value,



but effectively repaid to the Council and thereafter a rental of one peppercorn per annum if demanded.

<b>Section 106 Contributions</b>	
Education contribution	£459,380.00
Monitoring fee	£6,685.05
Recreational pressure contribution	£61,594.00
Road Management Contribution	£106,000.00
Wildlife Mitigation Contribution	£118,939.00
Wildlife Mitigation Strategy Monitoring Contribution	£60,000.00
Council Legal Fees	£4,000.00
<b>Total</b>	<b>£816,598.05</b>

Table 1: Section 106 Contributions

## **Timescales**

- 6.1** Pending Cabinet approval to the proposed deal, completion of sale contracts will take place in October 2022. Castle Green will start on site on 17<sup>th</sup> October with the first housing completions due October 2023 (after 12 months). Build out of the development is anticipated to last between two and a half to three years in total.

## **Best Consideration**

- 7.1** The Council is under an obligation to ensure that any offers for properties represent “best consideration” in accordance with Section 123 of the Local Government Act 1972 (as amended). The approach set out in the preceding sections of the report for the disposal complies with such an obligation. Market value has been established by the procurement of independent valuation advice.
- 7.2** The proposed approach also takes account of the Council agreed Asset Disposal Policy which enables sales by way of private treaty or negotiated disposal where there are compelling reasons to treat with a purchaser such as the nature of the sites and the identified parties’ status as a special or unique purchaser. The Councils Legal Services has reviewed the process undertaken and is satisfied that all aspects of this transactions are in order and comply with the above legislation and the Councils own policies.