

Report to:	Cabinet	Date of Meeting:	7 November 2019
Subject:	Revenue and Capital Budget 2019/20- Public Sector Reform Maximisation Disposal		
Report of:	Head of Corporate Resources & Head of Economic Growth and Housing	Wards Affected:	Manor Ward
Portfolio:	Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	Yes	Included in Forward Plan:	Yes – part of Public Sector Reform Asset Maximisation
Exempt / Confidential Report:	Yes, Appendices 1 and 2 of the Report are NOT FOR PUBLICATION by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).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 had been completed and a number of assets have been identified for disposal. The first of these sites is Land at Holgate and Southport Old Road. This land is not operational and is surplus to requirements.

The Council is negotiating terms for the Freehold disposal of Plots B and C within the overall site which together form part of a housing allocation in the Sefton Local Plan: MN 2.25 Land at Holgate in Thornton. Plots B and C have a combined gross area of 15.02 acres.

The Purchaser is expected to be a Joint Venture partnership. The disposal represents an off-market transaction but is being conducted on an open-book basis to ensure market value and to satisfy best consideration in accordance with Section 123 Local Government Act 1972.

An Option Agreement has been secured to bring forward the redevelopment of the adjoining Orchard Farm site. A planning application for 14 houses (DC/2018/01568) was refused planning consent in December 2018. This decision was appealed and the Planning Inspectorate allowed the appeal and granted planning permission. Acquisition of the Council's land will enable the developer to bring forward a

comprehensive and phased housing scheme. The proposal is conditional upon the developer(s) securing planning consent for a policy compliant scheme, setting out a build-out programme, providing proof of funds for a programme of this size and demonstrating that they have the necessary financial standing to acquire the Council's land upfront. This will also require the developers to provide an appropriate vehicular access solution from Park View and agree to a restriction on the use of Holgate.

The scheme that is brought forward will include the provision of affordable housing. In support of the direct provision of housing by the Council to residents of the Borough, it is proposed that as part of the final contract that the option be included for the Council to purchase a number of these affordable homes. This would be agreed as part of any final negotiations with the cost being met from the potential capital receipt.

Based on a recent report from external Valuers, the Council's land at Holgate (within the scope of this proposal) was advised to have a minimum value (see Appendix 1). The figure specified in Appendix 1 is a pro-rata rate, calculated from the Council's larger land holding. The land receipt that the Council will ultimately receive will take into account deductions for abnormal development costs, Section 106 contributions (including affordable housing contribution required by the Council), external highway works and planning costs. External Valuers will be appointed to work on behalf of the Council to ensure an "open book" approach and to confirm the exact land receipt.

A condition of the contract will require the land to be paid for 'upfront' once all conditions of completion have been met. Members will be advised of the final receipt due prior to the completion of any transaction with the appropriate approval being sought.

Recommendations:

That Cabinet:

- (i) Approve that Legal and Property and Facilities Management finalise Heads of Terms for the disposal of the Council's land, Plots B and C at Holgate Thornton – this will result in the developer partner entering into an Option Agreement so that they can commence technical due diligence work and working up a planning application;
- (ii) Approve that subsequent to the agreement of Heads of Terms that the Chief Legal and Democratic Officer be delegated authority to negotiate sale contracts for the disposal of Plots B and C at Holgate Thornton;
- (iii) Approve that when sale contracts and all financial issues have been resolved, a final report will be provided the Cabinet in order that approval can be obtained to conclude the proposed transaction.

Reasons for the Recommendations:

- (i) The disposal will enable a comprehensive scheme to be brought forward. This will avoid the sterilisation of the Council's land (Plot C – 3.29 acres) if Orchard Farm was redeveloped in isolation with highways access provided from Holgate Road;
- (ii) Disposal will ensure that an off-site highways solution is funded and delivered at Park View, which provides an appropriate access into the Council's land at Plot A. This site will be brought forward in future years and does not form part of the proposed land disposal in this report;
- (iii) The proposal will pass all costs associated with progressing ground investigations and technical surveys onto the developer – the Council will not have to fund these works.

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 (see Appendix 2).

- (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 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) will be 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 would be 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 Corporate Legal Services 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.

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 on-site affordable housing for the benefit of the local community in Thornton.
Commission, broker and provide core services: The Local Plan sets out an indicative site capacity of 221 dwellings for 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 to be agreed with the developer will require (as a condition of the land sale) for the developer to commit to providing local apprenticeships and use of local labour during the construction works.
Greater income for social investment: 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 include:

- The Head of Corporate Resources has been consulted (FD 5839/ 19)
- The Chief Legal and Democratic Officer has been consulted (LD4073/19)
- These consultations 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.

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Appendices:

(Appendices 1 and 2 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).

Appendix 1 – Heads of Terms

Appendix 2 – Site C Land Value

Background Papers:

N/A

Disposal of Freehold for Land at Holgate and Southport Old Road, 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 44.5 acres 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 provided in the Heads of Terms at Appendix 1.
- 1.2** Site B is more rectangular in shape and the largest of the three sites at 11.73 acres and is bounded by the A565 to the west and Holgate to the east. To the south are existing residential houses and to the north is a planned 14-unit residential development.
- 1.3** Site C is also rectangular in shape, 3.29 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 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 recently allowed the Appeal and granted planning permission. This scheme can now be implemented in full. Furthermore, the developer partner 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. The developer 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 to be able to accommodate the additional traffic associated with the 30-40 residential units that this particular site could accommodate, in addition to the 14 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** The developer has engaged positively and proactively with the Council since the original refusal of planning permission and also since their positive appeal decision. They have made their intentions clear that they intend to honour their deal with the landowner and develop their Orchard Farm scheme, if there is no other realistic option available. A proposal involving the adjacent land parcels and a requirement to ensure both 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, a proposed off-market transaction has been offered on an open-book basis to ensure transparency. These proposals would therefore 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 – Basis of a potential transaction

- 3.1** An independent valuation for Holgate plots B and C has been commissioned by the Council and is due for completion by mid-November. The valuation will establish a Gross Land Value, based on a policy compliant scheme. External valuers will then be appointed to work on behalf of the Council to ensure an open-book approach and to confirm the exact land receipt. The land receipt to the Council will take into account deductions for abnormal development costs, S106 contributions (including affordable housing contribution required by the Council), external highway works and planning costs. Members will be advised of the final receipt due prior to the completion of any transaction with the appropriate approval being sought towards.
- 3.2** On completion of the independent valuation, the Council and its' development partner will enter into an Option Agreement.

- 3.3** The Option Agreement will give the developer the right to acquire the Council's land subject to strict conditions being achieved within agreed timescales. The developer will progress all necessary technical surveys and submit a planning application for Plots B and C (to include Orchard Farm land). Timescales: 12 months for progressing works and planning submission.
- 3.4** As part of the technical due diligence works, Civil Engineers/Highway Consultants will be appointed to fully cost and design a solution to provide the necessary off-site highways access off Park View into Plots B and C and to the adjacent Council land (Plot A). This will be independently verified by a cost consultant. The Council's contribution towards the capital cost of these highway works will be calculated on a pro-rata basis according to the respective site areas shown at Appendix A. The Council's contribution of 37% will be reflected in the agreed Purchase Price and as would be expected this will form a reduction on the land value and final receipt.
- 3.5** Following the completion of technical due diligence, abnormal development costs will be independently verified and be deducted from gross value. The Council shall appoint an external Valuer to negotiate an agreed Net Land Value – this will be the actual Purchase Price (capital receipt) that the Council will receive. It will be this value that will be presented to Cabinet for final decision.

Timescales

- 4.1** Having entered into the Option Agreement in January/ February 2020, the developer will then have twelve months to progress all necessary technical surveys and submit a planning application for the site.
- 4.2** On submission of planning application and LPA verification, Exchange of Contracts will take place. This is anticipated to take place in December 2020/ January 2021.
- 4.2** The conditions of completion will include obtaining Cabinet approval as set out in this report and the expiry of the Judicial Review period. The longstop date for Completion will be four months from Exchange. On completion of Contracts the developer will pay the full balance of the agreed Purchase Price (less 10% deposit on Exchange) and it is expected that the purchase price will be paid in full by July 2021.

Best Consideration

- 5.1** 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 and detailed in Appendix 1 for the disposal complies with such an obligation. Market value will be established by the procurement of independent valuation advice.

5.2 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.

5.3 The sale contract will include an Overage Deed lasting for a period of 21 years from completion. This will ensure that the Council receives 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).