

EXECUTIVE BOARD DECISION



REPORT OF: Executive Member for Growth and Development

LEAD OFFICERS: Strategic Director of Place

DATE: Thursday, 8 April 2021

PORTFOLIO(S) AFFECTED: Growth and Development

WARD/S AFFECTED: Blackburn South East;

KEY DECISION: Y

SUBJECT:

Disposal of Council land for residential development at Haslingden Road to a Preferred Developer

1. EXECUTIVE SUMMARY

- 1.1 The Haslingden Road development site in South East Blackburn (Appendix A) is identified as a strategic site within the Council's Growth programme. The site is well placed to provide vital keyworker homes for use by staff at the Royal Blackburn Hospital alongside providing a number of family homes for market sale.
- 1.2 A number of technical surveys were undertaken for the site as part of a feasibility study to assess suitability and viability of the site to develop new homes. The feasibility study supported the development of the site to provide a mix of tenure and type of new homes.
- 1.3 The site was offered for development via a three stage tender exercise through the Homes England Developer Procurement Panel 3 (DPP3).
- 1.4 10 bidders expressed initial interest in developing the site. Officers diligently assessed bids through the three stages of the tender process and identified a suitable bidder that could develop the site to meet with the Council's aspiration.

2. RECOMMENDATIONS

That the Executive Board:

- 2.1 Notes the outcome of the Tender undertaken for the Haslingden Road development site through the Homes England Developer Procurement Panel 3 (DPP3)
- 2.2 Notes the financial offer for the Council owned site in the part 2 report
- 2.3 Authorise officers to confirm bidder 'A' as preferred bidder and bidder B as reserve bidder.
- 2.4 Grants permission for Council officers to negotiate Heads of Terms to finalise the terms of the disposal.
- 2.5 Delegates authority to conclude negotiations, including terms of any land sale and contracts to the Growth Programme Director and Director of Finance in consultation with the Executive

Members for Finance and Governance, and Growth and Development to approve the final heads of terms.

- 2.6 Authorises the Director of HR, Governance & Engagement to complete the necessary legal formalities.
- 2.7 Authorise the Strategic Director Place to appropriate the land at Haslingden Road shown edged red on plan attached Appendix A from the Resources and Growth & Development portfolios to the Growth & Development department for planning purposes pursuant to s226 Town and Country Planning Act 1990.
- 2.8 Noting that the land is generally open space in character then such appropriation must also comply with s122(2A) of the Local Government Act 1972 and hence authorise the Director of HR, Governance & Engagement to advertise the proposal to appropriate accordingly.
- 2.9 Authorise the Director of HR, Governance & Engagement to advertise the proposal to dispose of 'open space' in accordance with the statutory process under Section 123(2A) of the Local Government Act 1972
- 2.10 Note that in authorising the commencement of the appropriation process of the Haslingden Road site, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report.
- 2.11 Authorise the Strategic Director Place for the consideration of any objections to both the appropriation proposal and 'open space' disposal.
- 2.12 Note the Council's powers under s.203 – 206 of the Housing and Planning Act 2016 to override any third party rights and easements on the land once planning permission for the planning purpose has been obtained and so where necessary to enable the planning purpose to be achieved, authorise the Strategic Director of Place to override any said third party rights or easements.
- 2.13 If the appropriation for planning purposes is approved and any third party rights and easements have been overridden, authorise the negotiation and payment of any compensation claims potentially emerging from the appropriation.

3. BACKGROUND

- 3.1 The Haslingden Road site is located in South East Blackburn (shown edged red on the attached plan Appendix A), which is an important growth area for the borough. The site was identified as being suitable for housing development providing new family homes for market sale
- 3.2 The site is also seen as an important location to develop Keyworker homes for use by medical trainees/staff working at the Royal Blackburn Hospital. Council officers have worked closely with management at East Lancs Hospital Trust to assess demand levels for keyworker homes by the trust.
- 3.3 The trust has identified a need for keyworker homes for short-term accommodation (between 12 to 24 months). The majority of the key workers will be medical trainees, nurses, specialist staff along with some junior doctors. Most are expected to work at Royal Blackburn, some accommodation will be used for staff working at Burnley General Hospital
- 3.4 A key priority for the Council and ELHT was to ensure that Keyworker accommodation should be provided as an early phase of the development. Due to this requirement, Council staff

chose the formal DPP3 route, which gave access to a large number of developers and Registered Providers.

- 3.5 The Council prepared a raft of technical information, which included ground condition surveys, ecological and drainage studies among others. A three stage Tender exercise was undertaken through the DPP3 process, this involved:-
- Stage 1 Expression of Interest stage
 - Stage 2 Sifting Brief stage
 - Stage 3 Invitation to Tender stage
- 3.6 The development brief outlined the Council's desire to see a two-phased development programme with Phase 1 delivered first. Phase 1 would include 50 keyworker apartments and 150 family homes for market sale. Phase 2 is planned to be commenced around 18 months after the start of phase 1 and is planned to provide a further 100 keyworker apartments.
- 3.7 At stage 1 an Expression of Interest was initiated through the DPP3, this brought forward 10 interested parties. This was followed by a stage 2 Sifting Brief submission whereby interested parties were sent the detailed brief and technical surveys.
- 3.8 During stage 2, the Council received 6 bids; these were scored through the Sifting Stage. In line with DPP3 guidance the Council shortlisted four bidders to go through to stage 3 the final tender stage. This stage was delayed for a number of months due to the onset of the Coronavirus Epidemic.
- 3.9 During late 2020, an Invitation to Tender brief was sent to the four bidders asking for final bids to be submitted by the 4th February 2021.

4. KEY ISSUES & RISKS

4.1 The Council has received two bids for the Haslingden Road tender both of which have been comprehensively assessed. Both bids are compliant and outline a programme of phased development in line with the tender brief.

Development proposals outline delivery of phase 1 to provide 50 keyworker apartments and 150 family homes for market sale.

The remaining 100-keyworker apartments will be finalised for delivery in phase 2 following feedback from ELHT for the phase 1 apartments. Phase 2 is planned for delivery 18 months after phase 1 commences.

4.2 Both bidders have submitted a land receipt for phase 1 and phase 2 as outlined in the part 2 report. Bidders have also confirmed payment of S106 in line with the Council's expectations.

4.3 The bids have been assessed in accordance with the tender scoring criteria which is set as 30% Quality and 70% Price, as such the scores for the two respective bidders is as follows:

| Bidder | Quality score | Price score | Overall score |
|----------|---------------|-------------|---------------|
| Bidder A | 17.2% | 61.7% | 78.9% |
| Bidder B | 16.7% | 47.0% | 63.7% |

4.4 The proposed housing is as follows:

| Bidder | Phase 1 Keyworker Apartments | | Phase 1 Homes Open Market sale | | | | Phase 2 Keyworker Apartments | Total |
|-----------------|------------------------------|-------|--------------------------------|-------|-------|--------|------------------------------|------------|
| | 1 Bed | 2 Bed | 2 Bed | 3 Bed | 4 Bed | 4+ Bed | | |
| Bidder A | 0 | 50 | 15 | 79 | 56 | 0 | 100 | 300 |
| Bidder B | 5 | 51 | 15 | 72 | 59 | 4 | 100 | 306 |

4.5 It is recommended that bidder A is appointed as 'preferred bidder' and that bidder B be retained as reserve bidder whilst officers work on enhancing the scheme with bidder A.

4.6 Both bidders have presented schemes of good quality design that generally meet the tender brief. Further work is required to enhance either scheme to a level that the Council feels will provide an exemplar scheme of housing that is suitable to meet the needs and aspirations of the borough.

4.7 Council officers from the Growth and Development will work with the appointed 'preferred bidder' once they have been appointed. This will help develop the scheme in readiness to submit for planning permission in early summer. Should bidder A fall short of achieving the desired scheme enhancements, officers will engage with bidder B to work up an enhanced scheme.

4.8 Appropriation

4.8.1 The Council can appropriate land for any proper purpose for which it is authorised to acquire land by agreement. The general appropriation process is set out in section 122(1) of the Local Government Act 1972 (1972 Act).

4.8.2 The Council's powers to appropriate land for planning purposes is contained in s226 of the Town and Country Planning Act 1990. It is also clarified here for the avoidance of doubt that in this case the Council thinks:

- the acquisition will facilitate the carrying out of development, redevelopment or

improvement on or in relation to the land (*section 226(1)(a)*); and

- the proposed development and improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or part of the Borough (*section 226(1)(a) and (1A)*).

4.8.3 The Council should only resolve to appropriate land for another purpose if it is satisfied that the land is not required for the purpose for which it is currently held. The land at Haslingden Road is identified for housing development in the Council's adopted Local Plan. The site is included in the Council's Growth Programme to provide residential dwellings, the proposed appropriation will bring the site forward to deliver new homes in line with the site designation and the Council's Growth Programme. Any proper objection on the proposed appropriation will need to be formally considered by a subsequent formal decision. This will be in the form of an executive member approval.

4.8.4 The Council considers there could be a small chance of some informal private rights of way and other informal easements having accrued over time over the development site due to the site being 'open' for a considerable period. Where land is appropriated for planning purposes and planning permission for the planning purpose has been achieved, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. The Council has this statutory power to override easements or rights of way affecting land.

4.9 Disposal of Open Space

4.9.1 As the land at Haslingden Road can be considered to have been reasonably open to the public for use, it considers that it is best to act cautiously and deem this site suitable as one to which ought to be considered as 'open space'. A proposed disposal of open space must follow on from the process provided for under section 123(2A) of the Local Government Act 1972. This requires the Council to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, erect site notices, and consider any objections to the proposed disposal which may be made to them.

4.9.2 It is recommended that the council delegates authority to the Strategic Director Place in consultation with the Executive Members for Finance and Governance and Growth and Development, to consider any objections or comments raised to the proposed disposal of 'open space' at Haslingden Road and if appropriate approve the proposed disposal of 'open space' at Haslingden Road for the proposed housing development.

5. POLICY IMPLICATIONS

5.1 The proposed residential developments will:

Support delivery of new homes in line with the Local Plan, the Council's 2030 Vision and the Council's Corporate Plan.

5.2 Disposal of the site is in accordance with the Council's Disposal Policy and the approved Housing Toolkit.

6. FINANCIAL IMPLICATIONS

6.1 The Council will receive a capital receipt from the sale of the council owned site

6.2 The development will provide 50 keyworker homes and 150 family homes for market sale in phase 1. Another 100 keyworker homes are planned to be delivered in phase 2.

6.3 All new homes will contribute to the Council's MTFs by way of Council Tax income and New Homes Bonus (if still available).

6.4 The Council previously secured sustainable grant from the One Public Estate to fund masterplanning works in South East Blackburn. This amount will need to be repaid to the One Public Estate from the capital receipt on sale of the land.

7. LEGAL IMPLICATIONS

- 7.1 The disposal of the site is in line with the Council's disposal policy and is supported by technical input from legal. The Council has ensured best value considerations by choosing to dispose of the site through the Homes England DPP3 panel, which is an approved formal procurement process.
- 7.2 The Council will look to safeguard its interests in ensuring that the land is developed in line with its future revenue benefit projections by agreeing a build programme with the developer.
- 7.3 The Haslingden Road development site is owned by the Council.
- 7.4 The National Planning Policy Framework has replaced the National Planning Policy on Housing (PPS3). However, requirements still remain with the Council to demonstrate the provision of an adequate mix of housing developments and setting of targets for affordable housing. As any future proposed disposal is likely to be for the freehold of the land or a very long lease, then various aspects of S123 of the Local Government Act 1972 ("the Act") shall apply.
- 7.5 Firstly, the Council should be seeking to achieve best consideration reasonably obtainable for the site, unless the Council can apply the exemptions permitted by Government Circular. Although the Council has a general power of competence pursuant to s1 of the Localism Act 2011 to do anything that individuals can legally do, the Local Government Act 1972 and General Disposal Consent (England) 2003 to seek Best Consideration still applies and so this must be minded when the Council makes any decision to sell via any process, including an informal tender process.
- 7.6 Secondly, to the extent that the land to be disposed of is considered to be "open space" then s123 (2A) of the Act shall apply. This requires the Council to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them. It is noted that for a number of years the Council has put up signage which has allowed the land to be used under licence for casual pastimes as indicated by signs posted at various access points to the land. Any rights of access under this licence will be withdrawn.
- 7.7 "Open space" is defined in section 336(1) of the Town and Country Planning Act 1990 as: "means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground" (emphasis added) And it is the conclusion in the body of the report that much of the site is reasonably likely to fall into that category to the extent that it would be prudent for the Council to treat it as such. While there is case law on such matters, it may be sufficient to only look at the plain English language meaning of the phrase in this case.
- 7.8 Section 122(1) of the 1972 Act states: "Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned."

7.9 This appropriation process is a helpful avenue for the Council where agreement cannot be reached or the beneficiaries of any (possible) rights are unknown. Section 203 authorises the overriding of any private rights affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person authorised by that authority. The ability to interfere with these (possible) rights is important in the context of enabling any development to proceed. The power to override such rights does not prevent such rights being compensated.

7.10 Section 122(2) of the 1972 Act requires the Council, prior to any appropriation of land comprising open space, to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.

8. RESOURCE IMPLICATIONS

8.1 The Growth team will lead on detailed negotiations. Legal resources will be required to support the preparation and discharge of the agreements.

8.2 Additional support will be required from Capita Property to carry out scheme assessments, viability appraisals and preparation of Heads of Terms.

9. EQUALITY AND HEALTH IMPLICATIONS

9.1 Provisions of the HRA which are relevant in relation to the proposed appropriation are:

(1) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe.

(2) The HRA still does not incorporate the Convention into UK law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.

(3) The main article of the Convention, which is of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.

(4) In appropriating land an authority must show that the appropriation is justified in the public interest.

9.2 Article 1 of Protocol 1 provides that:

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

(2) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.

(3) However, the above rules shall not prevent a State enforcing such laws, as it deems necessary to control the use of property in accordance with the general interest.

(4) The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is a relevant factor in considering the balance.

(5) With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.

9.3 In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

(1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

9.4 The Council has carried out an equality impact analysis checklist. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the proposed appropriation would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

Please select one of the options below.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

10. CONSULTATIONS

The Council has carried out a Housing and Economic Needs Assessment for the Borough and has an adopted Local Plan which is currently being refreshed.

These have outlined housing demand and type; further consultation will be carried out with local residents during the planning process for the developments.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

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| DATE: | 16 th March 2021 |
| BACKGROUND PAPER: | |