



EXECUTIVE BOARD DECISION

REPORT OF: Executive Member for Growth and Development

LEAD OFFICERS: Executive Member for Growth and Development

DATE: 7 December 2023

PORTFOLIO/S AFFECTED: Growth and Development

WARD/S AFFECTED: (All Wards);

KEY DECISION: Y

SUBJECT: Disposal of Land at Mellor Brook for Residential Development

1. EXECUTIVE SUMMARY

- 1.1. This report outlines the outcome of the informal tender exercise for the sale of Council owned land at Branch Road and Myerscough Smithy Road, Mellor Brook as illustrated on the plan attached at **Appendix 1**.
- 1.2. To note the land is located in the district of South Ribble Borough Council ('South Ribble'), and is owned by Blackburn with Darwen Borough Council and had been previously let under an agricultural lease.
- 1.3. The Mellor Brook site is of 5.62 Ha (13.89 Acres) and is allocated for "Village Development" in the South Ribble Local Plan.
- 1.4. The Council submitted a pre-planning application to South Ribble as part of the feasibility process and received positive feedback on the Council's development plans.
- 1.5. An Informal tender exercise was undertaken over the summer of 2023 with fourteen (14) bids received from developers interested in purchasing the site.
- 1.6. Three (3) bidders were invited to submit final bids for the Mellor Brook and these have now been assessed with a Preferred Bidder identified for the site.
- 1.7. This report also outlines the process for the appropriation of the land from the Finance and Governance and Growth & Development portfolios for planning purposes.

2. RECOMMENDATIONS

That the Executive Board:

- 2.1. Approves the appointment of **Prospect Homes** as Preferred Bidder for the Mellor Brook site;
- 2.2. Approves the appointment of Bidder 2 and Bidder 3 as Reserve Bidders for the Mellor Brook site;
- 2.3. Authorises the Growth Programme Director to finalise and complete the terms of the disposal, including the appointment of the Reserve Bidder should the Preferred Bidder withdraw from the process or is unable to finalise terms with the Council;
- 2.4. Authorises the Deputy Director of Legal and Governance to complete the necessary legal formalities in the disposal process of the Council owned land;
- 2.5. Authorise the Strategic Director of Growth & Development to appropriate the land at Mellor Brook shown edged red on the attached plan, **Appendix 1** from the Finance and Governance and Growth & Development portfolios for planning purposes pursuant to section 122 Local Government Act 1972;
- 2.6. Notes the land is currently used for agricultural purposes and not used as open space. As such there is no need to advertise disposal of open space;
- 2.7. Notes that in authorising the commencement of the appropriation process of the Mellor Brook site, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report;
- 2.8. Delegates authority to the Strategic Director of Growth & Development in consultation with the Executive Member for Growth & Development to consider any objections to the appropriation proposal and, if no objections are received then for the appropriation to be deemed approved;
- 2.9. Notes the Council's powers under section 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. Where necessary to enable the planning purpose to be achieved, authorise the Strategic Director of Growth & Development to override any said third party rights or easements; and
- 2.10. If the appropriation for planning purposes is approved and any third party rights and easements have been overridden, authorise the Strategic Director of Growth & Development for the negotiation and payment of any compensation claims arising from overridden easements / other rights, under section 204 of the Housing and Planning Act 2016.

3. BACKGROUND

- 3.1. The Mellor Brook site consists of 5.62 Ha (13.89 Acres) and is owned with freehold title by Blackburn with Darwen Borough Council.
- 3.2. The Mellor Brook site is bounded by Myerscough Smithy Road and Branch Road in Mellor Brook. Myerscough Smithy Road is linked to the A59 which provides access to a number of employment premises nearby. Branch Road is to the east of the site and it is anticipated that access to the site will be taken from both of these roads.

- 3.3. The site comprises a linked series of fields contained by hedgerows and hedgerow trees. There are field ponds at a central position on the site but otherwise the site is used for pasture. The land falls from a high point on the southern boundary towards Myerscough Smithy Road to the north.
- 3.4. The Council submitted a Pre-Planning Application to South Ribble and Lancashire County Council as Local Highways Authority to establish development principles and receive guidance on the Community Infrastructure Levy ('CIL') level for the Mellor Brook site. The application was received favourably by South Ribble as proposals outlined a mix of housing for market sale together with affordable rent and share ownership tenures.
- 3.5. Following the favourable response by South Ribble, the Council prepared a comprehensive suite of marketing and technical documents and issued the documents for open tender in May 2023.
- 3.6. An informal tender exercise commenced in May 2023 for the disposal of land at Mellor Brook for housing development and was concluded in November 2023 following two stages of assessment.
- 3.7. The final stage of assessment including inviting the three highest bidders to meet with Council officers to clarify aspects of their tender before a final 'Best and Final Offer' submission was made which identified the Preferred and Reserve Bidder preference.
- 3.8. The Council administered the tender process throughout and subsequent evaluation stages in accordance with the Council's Disposal Strategy.

4. KEY ISSUES & RISKS

- 4.1 **Stage 1 Tender Results**– The Council received fourteen (14) tenders for the Mellor Brook site as detailed in Table A below.
- 4.2 The developers outlined in the part 2 report submitted tenders for proposed housing schemes as listed in the table below:

Table A: Stage 1 Tender Results			
Bidder Reference	No of Homes	Mix of Homes include	No of Affordables
1	121	2, 3, 4 Beds	42
2	118	2, 3, 4 Beds	41
3	117	2, 3, 4 Beds	41
4	140	2, 3, 4 Beds	49
5	145	2, 3, 4 Beds	Not stated
6	130	2, 3, 4 Beds	46
7	135	2, 3, 4 Beds	47
8	153	2, 3, 4 Beds	100%
9	122	2, 3, 4 Beds	Not stated
10	135	2, 3, 4 Beds	47
11	102	2, 3, 4 Beds	36
12	113	2, 3, 4 Beds	40
13	109	2, 3, 4 Beds	Not stated
14	115	2, 3, 4 Beds	40

4.3 **Bidder 1, Prospect Homes** proposed a scheme of 121 homes and presented the highest value bid and also offered an alternative bid which is substantially higher, the alternative proposal would need support from South Ribble. Bidder proposed a scheme of housing of a quality, type and tenure that meets the vision of the Council and planning objectives of South Ribble.

- Quality scheme with enhanced green spaces, play area, green corridors for pedestrian. all green spaces to be managed by a Management Company;
- Good mix of new homes for sale, discounted sale (First Homes), shared ownership and affordable rent; and
- Established housing developer which is wholly owned by the Riverside Group Limited (housing association) based in Liverpool and manage over 75,000 homes across England and Scotland.

4.4 **Bidder 2**, proposed a refined scheme of 115 homes and presented the second highest value bid. Bidder 2 is a quality housebuilder who has developed a number of housing schemes across the borough.

- Quality scheme with enhanced green spaces, play area, green corridors for pedestrian. all green spaces to be managed by a Management Company;
- Established developer with good track record of building quality housing in Lancashire; and
- Good scheme mix with 40 affordable homes for rent and shared ownership.

4.5 **Bidder 3**, proposed a scheme of 117 homes and presented the third highest value bid. Bidder 3 provides a scheme of good quality homes of mixed tenure and type.

- Quality scheme with enhanced green spaces, play area, green corridors for pedestrians, all green spaces to be managed by a Management Company;
- Established developer with good track record of building quality housing in North Wales and the North West of England; and
- Good scheme mix with 41 affordable homes for rent or shared ownership.

4.6 **Stage 2 Tender Results** – The Council invited the three bidders to respond to clarification questions at a meeting with Council officers. Following this meeting all three bidders were invited to submit their '**Best and Final Offer**' for the tender.

4.7 Table B below details the updated offers received following the Stage 2 process. The three bids were reviewed and assessed, by Council officers and includes an assessment and comparison of layouts, affordable housing provision and proposed commercial terms.

Table B - Stage 2 Tender (Best and Final Offer)				
Bidder Reference	No of Homes	No of Affordables	Key Assumptions	Payment Terms
1	121	42	<ul style="list-style-type: none"> • Drainage assumptions • BNG S106 assumptions • S106 Health & Education Excluded 	5% deposit (refundable) and 95% on completion
2	115	40	<ul style="list-style-type: none"> • Foul pumping station included • Electrical sub-station included • S106 Health & Education Excluded 	5% deposit (refundable) and 95% on completion
3	117	41	<ul style="list-style-type: none"> • Progress Housing as RP for affordables • S106 Health & Education Excluded • Overage scheme proposed 	5% deposit (refundable) + 50% on completion + 45% deferred 9 months from completion

Recommendation

- 4.8 All three bidders have presented schemes of good quality design that meet the tender brief and all clarifications have been addressed in their final submission.
- 4.9 In summary, Prospect Homes presented the highest bid offer and submitted a compliant scheme which includes a mix of tenure that best meets the aspirations of South Ribble. Prospect Homes provided an attractive scheme layout demonstrating a thorough understanding of the site constraints and local market requirements.
- 4.10 Therefore, it is recommended that **Bidder 1 'Prospect Homes'** is appointed as '**Preferred Bidder**' and Bidder 2 and Bidder 3 are appointed as 'Reserve Bidders'.
- 4.11 Council officers will work with the appointed 'Preferred Bidder' to finalise the scheme in readiness to submit for planning permission in early 2024.
- 4.12 Prospect Homes parent company is the Riverside Group, which is a leading housing association based in Liverpool and is rated as G1/V1 by the regulator for social housing in England.
- 4.13 Analysis of recent land sale transactions of similar size and density across the region highlights the offer from Prospect Homes represents a significant bid and demonstrates the Council will have achieved best consideration by disposing of the Mellor Brook site for the offered amount.
- 4.14 As a contingency, and especially given the prevailing market condition, should the Council be unable to finalise terms with Bidder 1 or if they withdraw from the process then the Council will engage with the Reserve Bidders on the terms set out in this report. Should the Council be unable to finalise terms with either of the Reserve Bidders then the scheme will be re-tendered.

Appropriation

- 4.15 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).
- 4.16 The Council's powers to appropriate land for planning purposes which is not already held for planning purposes is contained in section 122 of the 1972 Act. While "planning purposes" is not specifically defined it is referred to in s246 of the Town and Country Planning Act 1990. In essence it states that you can only appropriate for planning purposes land which could have been acquired compulsorily by use of either s226 or s227 of the same Act (i.e. compulsory purchase powers for a planning purpose). Therefore for the avoidance of doubt 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 our Borough (*section 226 (1A)*).
- 4.17 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 Mellor Brook is identified as being suitable for residential development to provide new homes to meet demand in South Ribble. In this Council's opinion the proposed appropriation will bring the site forward to deliver new homes in line with South Ribble's requirements. Any objection on the proposed appropriation will need to be formally considered by a subsequent formal decision by the Executive Member for Growth & Development.

4.18 The Council is not aware of any informal private rights of way and other informal easements having been accrued over time over the site as the site has been used as a grazing pasture for a considerable number of years. However, in case any such rights are highlighted the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016 to override easements or rights of in the land.

5. POLICY IMPLICATIONS

5.1 The proposed residential development at Mellor Brook will support the delivery of quality new market sale and affordable homes in accordance with South Ribble aspirations

5.2 Disposal of the Council's land at Mellor Brook is in accordance with the Council's Disposal Policy.

6. FINANCIAL IMPLICATIONS

6.1 The final bid offer for the Site is outlined in the part 2 report.

6.2 The Council's land at Mellor Brook is not elected for VAT.

6.3 The Purchase Price is subject to any additional section 106 funding required by the Local Planning Authority and not included in the tender documents, specifically relating to education and health contributions.

6.4 Payment will be received in two instalments; 5% on exchange of contracts and 95% on legal completion.

6.5 Legal completion is estimated to be achieved late 2024.

6.6 The Purchaser will be responsible for their own legal costs and shall pay the Vendor's legal costs which will be capped at £25,000 + VAT.

6.7 Whilst it is not envisaged that any compensation will be payable for rights/easements over the site, should the Council be required to rely on the provisions of Section 203 of the Housing and Planning Act 2016 to override these, there may be additional costs. These are not quantifiable at this stage but, subject to the exercise of the delegation sought in this report, any such costs will be funded by way an abatement of the capital receipt.

7. LEGAL IMPLICATIONS

7.1 The disposal of the Council's land is in accordance with the Council's Disposal Policy.

7.2 The Council has achieved best consideration by choosing to dispose of the land through an open and competitive informal tender process.

7.3 As the proposed disposal is for the freehold of the land then various aspects of S123 of the Local Government Act 1972 ("the Act") shall apply.

7.4 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 section 1 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.

- 7.5 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. “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). However, this land has been used as agricultural and grazing land under a lease and license and as such is not considered ‘public open space’. Furthermore, there is no evidence to suggest that the land has been used informally as ‘public open space’.
- 7.6 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.”
- 7.7 This appropriation process is a helpful avenue for the Council where agreement cannot be reached or the beneficiaries of any (possible) rights which 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.

8. RESOURCE IMPLICATIONS

Growth & Development teams are leading on the tender and disposal of the land at Mellor Brook and legal resources will be required to complete the conveyance and legal agreements for the sale of the land.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

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 site is allocated in the South Ribble Local Plan for Village Development (Policy B2). The South Ribble Local Plan makes provision for new development on the periphery of certain villages, including Mellor Brook. Policy B2 (Village Development) allows the release of land during the Plan period for development (including local affordable housing, health care, community facilities or employment) provided that it cannot be accommodated within the existing built up area of the village or the allocated site is preferable for the use proposed.

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.

VERSION:	1.0
CONTACT OFFICERS:	Simon Jones, Growth Programme Director, Growth & Development
DATE:	November 2023
BACKGROUND PAPER:	None.