

# EXECUTIVE BOARD DECISION



**REPORT OF:** Executive Member for Finance and Governance,  
Executive Member for Growth and Development

**LEAD OFFICERS:** Director of Growth & Development

**DATE:** Thursday, 12 March 2020

**PORTFOLIO(S) AFFECTED:** Growth and Development

**WARD/S AFFECTED:** Livesey with Pleasington;

**KEY DECISION:** Y

## **SUBJECT:**

Disposal of Council Land at Lomond Gardens, Blackburn, Site Appropriation and Disposal of Open Space

## **1. EXECUTIVE SUMMARY**

1.1 This report outlines the outcome of the Informal tender for the Council owned land at Lomond Gardens, Blackburn and seeks approval to dispose of the site for housing development to the recommended preferred bidder.

1.2 This report seeks the Executive approval to authorise the Director of Growth and Development to appropriate the Council owned land known as the Land at Lomond Gardens for planning purposes under section 122 of the Local Government Act 1972.

The appropriation is for the purpose of enabling the construction of up to 35 new family homes.

1.3 Executive approval is also required to authorise the Director of Growth and Development for the consideration of any objections and approval for the disposal of 'open space' under section 123(2A) of the Local Government Act 1972.

1.4 The land at Lomond Gardens was previously used as an all-weather pitch for St Bede's RC High school. The former all weather pitch has not been used by St Bede's RC High School for any sports or recreational purposes since at least 1997. An options assessment was undertaken during 2019 which identified the site as being suitable for housing development. Outline planning consent was secured in August 2019 to develop new homes on the site and the site has been offered for sale through an informal tender exercise with tender's scheduled to be returned January 2020.

## **2. RECOMMENDATIONS**

That the Executive Board:

2.1 Approves the appointment of Bidder A as preferred bidder.

2.2 Approves the appointment of Bidder B as reserve bidder.

2.3 Grants permission for Council officers to negotiate Heads of Terms to finalise the terms of the disposal.

2.4 Delegates authority to conclude negotiations, including terms of any land sale and contracts to the Growth Programme Director and Director of Finance and Customer Services in consultation with the Executive Member for Finance and Governance and Executive Member for Growth and Development to approve the final heads of terms.

2.5 Authorises the Director of HR, Legal and Governance to complete the necessary legal formalities.

2.6 Delegates authority to agree a contribution from the purchase price to St Bede's RC High School's Capital programme to the Growth Programme Director in consultation with the Executive Member for Finance and Governance and Executive Member for Growth and Development.

2.7 Authorise the Director of Growth and Development to appropriate the land at Lomond Gardens shown edged red on plan attached Appendix A from the Education and Environment portfolios to Growth & Development in accordance with section s.122 of the Local Government Act 1972 and subsequent use of 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.

2.8 Authorise the Director of HR, Legal and Governance to advertise the proposal to appropriate in accordance with the statutory process under Section 122 of the Local Government Act 1972

2.9 Authorise the Director of HR, Legal and Governance 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 Lomond gardens 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 Director of Growth and Development for the consideration of any objections to both the appropriation proposal and 'open space' disposal.

2.12 If the appropriation is approved, authorise the negotiation and payment of any compensation claims potentially emerging from the appropriation.

### **3. BACKGROUND**

3.1 The land (shown edged red on the attached plan Appendix A) has been identified as surplus by the Council's Education department. The former all weather pitch has not been used by St Bede's RC High School for any sports or recreational purposes since at least 1997, which has been confirmed in writing by the current Head teacher.

3.2 Outline planning permission for up to 35 Class C3 dwellings and associated works was successfully secured in August 2019 under application number 10/19/0542.

3.3 The plot of land has been marketed for sale by informal tender as outlined in the Executive Board Decision - Growth Programme 2019/20: Site Disposal & Development Projects March 2019 as this has been identified as a priority.

3.4 The tender period was from 20th November 2019 to 13th January 2020.

3.5 A 'Data Room' was set up on the Council's website which contained all tender information along with a host of technical reports and surveys commissioned on the site by the Council. Over 100 developers were e-mailed directly by the Growth Team with full marketing particulars, and follow up calls being made.

3.6 The informal tender form required interested parties to:

- Make an offer for the housing site using the technical surveys provided whilst still carrying out their own due diligence
- Make an offer conditional on planning, including s106 contributions which will be determined by the Planning Authority.
- Show proposed layout, house types and numbers.
- Demonstrate previous housing development experience
- Demonstrate financial resources and source of finance
- Outline timeframe for development

3.7 The tenders have been evaluated in accordance with the criteria referred to under paragraph 3.6 above.

## 4. KEY ISSUES & RISKS

### 4.1 Land Disposal

4.1.1 The Council received significant interest in the Lomond Gardens site. Seven informal tenders were received by the closing date 12.00 pm 13th January 2020. Tenders were opened at 3.30 pm on the 13th January 2020 and all bids were compliant.

4.1.2 Five of the tenderers have previously never built in the borough and were attracted by the quality of the site on offer and the comprehensive data pack.

4.1.3 The tenders are summarised as follows:

\* Financial offer includes agreed s106 contributions, for which the amount is yet to be determined, and will be done so by the Planning Authority. The agreed s106 contribution will be deducted from the purchase price.

Bidder ID Number	Scheme Proposal	Conditions of Offer / Bid Summary
<b>Bidder A</b>	29 No. 3 and 4 bed large family homes for sale.	Subject to planning, excludes S106. Good experience of house building.
<b>Bidder B</b>	31 No. 3 and 4 bed large family homes for sale.	Subject to planning, excludes S106. Good experience of house building.
<b>Bidder C</b>	28 No. 3 and 4 bed large family homes for sale.	Subject to planning, excludes S106. Good experience of house building.
<b>Bidder D</b>	35 No. 2, 3 and 4 bed homes for sale.	Subject to planning, excludes S106. Good experience of house building.
<b>Bidders E</b>	45 No. 2, 3 and 4 bed homes.	Subject to planning, excludes S106. Limited experience, proposals do not match Council's aspirations.
<b>Bidder F</b>	31 No. 3 and 4 bed large family homes for sale.	Subject to planning, excludes S106.
<b>Bidder G</b>	41 No. 2, 3 and 4 bed homes. 50 % Shared Ownership and 50% Affordable Rent.	Subject to planning, excludes S106. Unknown developer, proposals do not match Council's aspirations.

4.1.4 Following initial assessment Bidder A and Bidder B were shortlisted, both offers being above the Growth team's informal valuations.

4.1.5 A post tender clarification meeting was scheduled in January with Bidder A and Bidder B to discuss their offers.

4.1.6 Bidder A and Bidder B were formally requested to submit their final offers by on Thursday 6th February 2020 reconfirming their acceptance to the conditions of sale and completing the requested information.

4.1.7 The Council received final offers from Bidder A and Bidder B by the closing date. Tenders were opened at 15.05 pm on the 6th February 2020 and all bids were compliant.

4.1.8 The tenders are summarised as follows:

\* Financial offer includes agreed s106 contributions, for which the amount is yet to be determined, and will be done so by the Planning Authority. The agreed s106 contribution will be deducted from the purchase price.

<b>Bidder ID Number</b>	<b>Scheme Proposal</b>	<b>Conditions of Offer</b>
<b>Bidder A</b>	29 No. 3 and 4 bed large family homes for sale	Clean offer, subject to planning.
<b>Bidder B</b>	31 No. 3 and 4 bed large family homes for sale	Clean offer, subject to planning.

4.1.9 Analysis of recent land sales in West Blackburn of similar development size and density highlights that Bidder A's offer represents a significant offer for the land and the Council will have achieved best value by disposing of the site for the offered amount.

4.1.10 Bidder A's offer represents the highest price and best value following full evaluation of conditions of offer. Bidder A also provided a good level of detail showing a scheme layout, house types, floor sizes, previous experience of high quality housing delivery and 'open space' proposals. Bidder A is an established, trusted local developer and has been active in the borough for many years.

4.1.11 For these reasons it is recommended that the Council accept the Bidder A offer and appoint them as preferred bidder. Bidder A has provisionally accepted the conditions of sale and draft Heads of Terms in the tender documentation.

The draft heads of terms are as follows:

**Vendor**

Blackburn with Darwen Borough Council

**Purchaser**

Bidder A

**Description**

Council owned land at Lomond Gardens (see attached plan Appendix A)

**Method of Disposal**

Freehold subject to planning approval

### **Development Timescale**

Still to be finalised but confirmed full build within the required 3 years

### **Costs**

The purchaser will be responsible for the payment of the Council's surveyor's fees and legal costs to a maximum a cap.

### **Risk**

The sale will be subject to planning approval, the developer plans to submit a planning application Spring 2020.

#### **4.1.12 Reserve Bidder**

Bidder B's offer represents a very competitive price following full evaluation of conditions of offer. Bidder B also provided a good level of detail showing a scheme layout, house types, floor sizes and 'open space' proposals.

4.1.13 For these reasons it is recommended that the Council appoint Bidder B as reserve bidder, allowing the Council to appoint Bidder B if negotiations cannot be concluded with Bidder A.

#### **4.2 Appropriation**

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

4.2.2 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 former school playing field, has been declared surplus for redevelopment as it has not been used for this purpose since 1997. The land at Lomond Gardens site is included in the Council's Growth programme and has outline planning permission for up to 35 residential dwellings and so the proposed appropriation complements this permission and planning status. To expand on the process, which is stated briefly in the recommendations, any 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.

4.2.3 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, 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.

#### **4.3 Disposal of Open Space**

4.3.1 As the land at Lomond Gardens 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..

4.3.2 It is recommended that the council delegates authority to the Director of Growth and Development, in consultation with the Executive Member for Finance and Governance and

Executive Member for Growth and Development, to consider any objections or comments raised to the proposed disposal of 'open space' at Lomond Gardens and if appropriate approve the proposed disposal of 'open space' at Lomond Gardens for the proposed housing development.

## **5. POLICY IMPLICATIONS**

5.1 The disposal is in accordance with the Council's disposal policy and will meet the strategic aims of the Council's Growth Programme.

## **6. FINANCIAL IMPLICATIONS**

6.1 A purchase price will be received from the transaction. This purchase price consists of; s106 contributions to be received by the Council, a contribution towards the capital programme at St Bede's RC High School and a capital receipt to be received by the Council.

6.2 The Council will also receive Council Tax income and New Homes Bonus for 29 homes.

6.3 Section 204 of the Housing and Planning Act 2016 provides that compensation will be payable to those parties whose interests have been affected by any appropriation.

This is generally based on a diminution of property value bases. The primary liability for the compensation is the party interfering with the right and the Council can decide to take on that limited risk or seek an indemnity from the successful bidder before enabling the development to proceed should appropriation be approved.

## **7. LEGAL IMPLICATIONS**

7.1 The proposed development site has been owned by the Council or Lancashire County Council since 1967.

7.2 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, then various aspects of S123 of the Local Government Act 1972 ("the Act") are considered to apply.

7.3 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.

7.4 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.

7.5 "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.

7.6 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 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.

7.8 Section 122(2) of the 1972 Act requires the Council, prior to any appropriation, 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.

7.9 The land off Old Gates Drive is subject to an electricity substation long lease and so any developer will have to adhere to such covenants under that lease.

7.10 For completeness, this land is considered to be informal open space because the all-weather pitch ceased to be used over 20 years ago, it is not considered that the ambit of guidance on disposal of former playing fields is at all applicable here.

## **8. RESOURCE IMPLICATIONS**

8.1 Existing staff resources will be provided from the Council's Growth, Property, Planning and Legal teams.

## **9. EQUALITY AND HEALTH IMPLICATIONS**

The Human Rights Act 1998 (HRA) has been in force since late 2000.

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

Stakeholder consultations have been undertaken during the Outline Planning process for the development and further statutory stakeholder consultation will be undertaken during the reserve matters/full planning process.

## 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.

<b>CONTACT OFFICER:</b>	Simon Jones – Growth Programme Director
<b>DATE:</b>	13/02/2020
<b>BACKGROUND PAPER:</b>	Growth Programme 2019/20: Site Disposal & Development Projects – EBD March2019