

Wiltshire Council

Cabinet Capital Assets Committee

2 August 2016

Subject: Approach to s106 negotiations relating to Hampton Country Park

**Cabinet member: Councillor Toby Sturgis
Strategic planning (strategic and development management) property, waste and strategic housing**

Key Decision: Yes/No (delete as appropriate)

Executive Summary

Wiltshire Council is in a position whereby it needs to be consider if and how it is to elect a nominee for the development and maintenance of the Hampton Park country park.

The original planning permission for the Hampton Park development in Laverstock and Ford/ Salisbury included a Section 106 agreement for the development and maintenance of the country park with associated contributions of:

- Country Park Contribution of up to £1.5m in respect of the Council's costs in laying out the Country Park
- Maintenance of open space contribution of £74,600
- Maintenance of play space contribution of £105,000

The agreement also included the possibility of electing a nominee to develop and maintain the country park on behalf of the council. Any nomination would be governed by a Nominee Agreement between the council and the nominee.

Laverstock and Ford Parish Council have approached the council to set out a desire to be the nominee; supported by the Land Trust and Riverbourne Community Farm as project and management partners respectively.

This right of election has not previously been exercised due to the creation of a spoil heap by the developer Barrett. The developer has submitted a planning application to regularise the unauthorised dumping of spoil and change the layout of the country park. The Parish Council has worked closely with the developer while they seek planning permission

This application is due to be considered by Southern Area Planning Committee in autumn. Following this, the council would need to reopen negotiations with the developer for a Deed of Variation to the Section 106 agreement or a new agreement entered into.

In order to inform the negotiations it is recommended that the council agrees to formally support Laverstock and Ford parish council as its nominee.

If this is agreed, then a decision in principle is required as to how best approach the negotiation. In broad terms there are two approaches,

Option one: renegotiate an agreement with the developer in a similar vein to the existing one which allows the transfer of land and funds to the council and for the council to nominate Laverstock and Ford parish council as the ultimate recipient. Under this option the council remains an intermediary both in terms of the land transaction and financial considerations.

Option two: Attempt to enter into a new agreement with the developer and make Laverstock and Ford parish council party to the agreement. Under this option the land and funds could be transferred directly to the parish council thus limiting Wiltshire council's involvement in the scheme and its overall risk.

Whichever approach is adopted further analysis and discussion would be required with all parties in order to confirm the financial contributions and items which will be carried out by the developer prior to transfer.

Residual risk remains as the intentions of the developer are unknown at this time and won't be known until the developer is formally engaged. The key mitigation measure for this is to ensure that the council's objectives for the negotiations are clear.

Proposal(s)

For members to...

- a. Confirm their support for Laverstock and Ford parish council's desire to own, deliver and maintain the Hampton Park Country Park and make them the council's nominee.
- b. Confirm their support to enter into a new s106 agreement with the developer and make Laverstock and Ford parish council party to that agreement.
- c. Confirm their support for approaching the negotiations on the basis that land and funds are transferred directly between the developer and Laverstock and Ford parish council, with Wiltshire council taking no intermediary role in terms of land ownership or financial risk.
- d. Delegate to the Associate Director for People and Business the ability to enter into and complete s106 negotiations with the developer and Laverstock and Ford parish council on the terms described above.

Reason for Proposal

Under the Section 106 agreement, for the 500-dwelling housing development at

land north, west and south of Bishopdown farm, provision has been made for the provision of a country park.

The Section 106 agreement makes provision for the Council to nominate a third party to construct and maintain the country park. Laverstock and Ford Parish Council have approached the Council's Strategic Assets & Facilities Management service with a desire to be the nominee.

The development of the country park now requires the Council to confirm or reject whether it is to proceed with the nomination Laverstock and Ford Parish Council.

Carlton Brand
Corporate Director

Wiltshire Council

Cabinet Capital Assets Committee

2 August 2016

Subject: Nomination of Laverstock and Ford Parish Council for the construction and maintenance of Hampton Country Park

**Cabinet member: Councillor Toby Sturgis
Strategic planning (strategic and development management) property, waste and strategic housing**

Key Decision: No

Purpose of Report

2. To confirm whether the council wants to nominate Laverstock and Ford Parish Council as nominee for Hampton Park Country Park. To confirm the approach the council wish offers to take in respect of negotiations with the developer in respect of the section 106.

Relevance to the Council's Business Plan

3. The proposed nomination of the Parish Council will facilitate the delivery of the Business Plan by supporting the delegation of cost neutral packages of land, services and assets to town and parish councils; as well as creating stronger and more resilient communities through people in Wiltshire working together to solve problems locally and participate in decisions that affect them, ensuring residents live in a high quality environment, and have healthy, active and high-quality lives.

Main Considerations for the Council

4. Barrett Homes are obligated via a Section 106 agreement (s106) to deliver a country park as part of their recent development at Hampton Park. Under the s106 there are various options which obligate the developer to build the country park and then transfer to the council. Alternatively the land and or funds could be transferred to the council so that it can deliver the country park or transferred to its nominee.
5. Laverstock and Ford Parish Council (LFPC) are keen to deliver, maintain and run the country park and act as the council's nominee. However, since the original s106 was signed the developer has subsequently created a spoil heap on the land meaning that the council was not in a position to exercise its nomination rights.
6. A planning application to regularise the situation has been made and is due to be considered by the southern area planning committee soon. Subject to

approval, this is the trigger to enter into negotiations with the developer to either revise and or update the s106 agreement.

7. In order to progress the matter the council needs to consider
 - a. Whether it supports LFPC as its nominee
 - b. What approach it should take to negotiations with the developer

Background

8. Barratt Homes have built a 500-dwelling housing development at Bishopdown farm. The original planning application (S/2009/1943) was appealed due to non-determination and the development was approved by the Secretary of State (appeal reference APP/Y3940/A/10/2143011/NWF).
9. As part of this permission a 55ha country park was required in order to mitigate the planning effects of the development. This is located mainly in the Laverstock and Ford Parish Council area. The delivery of the country park was secured as part of s106 agreement. The s106 makes provision for...
 - a. The development of the country park by Barretts and its transfer to the council or its nominee following construction.

or
 - b. The transfer of land and a financial sums for the council to build and maintain the country park
 - i. Country Park Contribution of *up to* £1.5m in respect of the Council's costs in laying out the Country Park
 - ii. Maintenance of open space contribution of £74,600
 - iii. Maintenance of play space contribution of £105,000
10. Should the council exercise the option to receive the land and financial sums (option b) from the developer the s106 agreement also makes provision for the council to nominate a third party. The nominee could receive the completed country park and maintenance contributions by way of a land transfer (either freehold or long lease). Alternatively the nominee could be involved in the construction of the country park as well as its ownership and maintenance.
11. The LFPC have approached the council and set out a desire to be the nominee. supported by the Land Trust and Riverbourne Community Farm as project and management partners respectively, LFPC aim to not only own and maintain the country park, but also lead the layout and construction of the park.
12. Working with the LFPC is consistent with the council's business plan objectives. Specifically by...
 - a. supporting the delegation of cost neutral packages of land, services and assets to town and parish councils

- b. creating stronger and more resilient communities through people in Wiltshire working together to solve problems locally and participate in decisions that affect them
 - c. ensuring residents live in a high quality environment, and have healthy, active and high-quality lives.
13. Furthermore, nomination of LFPC would seem consistent with the approach to community asset transfer for similar pieces of land elsewhere in the county.
 14. The nomination rights under the s106 have not previously been exercised due to the creation of a spoil heap on the land by the Barrett (the developer). While the spoil heap has been in place the site remains 'non-compliant' and it has not been possible to exercise the nomination rights. During this time the developer has continued to build out the hoses and the trigger point for the exercise of the s106 (construction of 100 houses on site) has passed.
 15. In order to regularise the unauthorised dumping of spoil and change the layout of the Country Park from that previously approved, the developer has submitted a planning application (16/00048/FUL). This application covers the country park only.
 16. The LFPC has worked closely with the developer while they seek planning permission on the assumption that it will be them who will ultimately deliver and maintain the country park. Through this process the parish council has identified that the maintenance funds included in the original s106 are insufficient. At the same time the Parish believes it can deliver the country park for less than the £1.5m identified.
 17. A desktop cost estimate was commissioned by the council on the scheme currently included in the planning application. This is estimated to construction cost of the country park to be £2.75m. Clearly this is over and above the £1.5m identified in the s106.
 18. LFPC have provided a view on the cost estimate and identified a number of items which reduce the overall build cost significantly. Some of the exclusions are where the parish has a lower quoted price than that in the estimate. Other exclusions relate to where the parish have had confirmation that works will be carried out by the developer prior to transfer of the country park. It should be noted however, that there is no formal agreement obligating the developer to carry out works prior to transfer. The parish council estimate for the construction is circa £900k.
 19. The assumption has been that if LFPC can deliver the build out of the country park for less than the £1.5m the difference can be kept and added to the maintenance funding. However the s106 does not explicitly allow this to happen and the developer could seek to claw back of these funds.
 20. The application for the revised country park layout is due to be considered by Southern Area Planning Committee in the autumn. Following this, the

council would be in a position to enter renegotiations with the developer in respect of the s106 or potentially negotiate a new agreement.

21. In order to facilitate this negotiation, the council needs to consider its approach and what it aims to achieve.

The negotiating position

22. There are a number of different options available to the council as to how it seeks to engage with the developer in a renegotiation of the s106. In the first instance, the council needs to confirm its overall objective for the negotiation.
23. Given the clear links with the business plan this should be to support LFPC as the nominee. If the council chose not to nominate LFPC then the country park would transfer to the ownership of the council. This would happen either after the developer lays out the country park or as a transfer of land and funds so that the council could build the country park.
24. If the council does support LFPC as its nominee, then a decision in principle is required as to how best approach any negotiation with the developer and the parish council. In broad terms there are two approaches,

Option one: renegotiate an agreement with the developer in a similar vein to the existing one which allows the transfer of land and funds to the council and for the council to nominate LFPC as the ultimate recipient.

Option two: Attempt to enter into a new agreement with the developer and make Laverstock and Ford parish council party to the agreement. Use this as an opportunity to limit the council's involvement by facilitating the direct transfer of land and funds between the developer and LFPC.

25. Option one would place the council in a position of acting as '*competent authority*'. The nomination of the Parish Council would need to be controlled by way of a nomination agreement and a gateway panel on respect of funds. This would be designed to control the flow of funds between the council and the Parish council. This option would carry a residual risk to the council if the project to deliver the county park failed. If this were the case, there is potential for the developer to seek to recoup funds from the council.
26. Option two would offer the opportunity for the funds and land to be directly transferred between the developer and the parish. This would mean that the council does not need to act as an intermediary in terms of land transactions or administering funds. Given that the parish would be party to the agreement the claw back provision could be modified so that the Council is not held accountable should the parish council not expend the money as agreed.

27. Under both options, further analysis and discussion would be required in respect of the financial contributions and the items which will be carried out by the developer prior to transfer.
28. Clearly the outcome of any negotiation will be the dependant on the approach the developer wishes to take. While the developers position is unknown at this time, the contact between LFPC and the developer during the planning application suggests they (the developer) support the LFPC's involvement.
29. Nominating Laverstock and Ford Parish Council and approaching the negotiations as per option two offer the best opportunity to deliver the country park and manage future financial risk to the council.

Overview & Scrutiny Engagement

Safeguarding Implications

30. There are no safeguarding implications directly associated with the business case.

Public Health Implications

31. Improving access and use of outside areas may have a positive effect on public health by encouraging residents to partake in exercise.

Procurement Implications

32. If option one is taken the project development and delivery works will be procured from relevant parties by the Parish Council in line with its regulations and process pertaining to corporate procurement. Advice and guidance has been sought and will continue to be sought from the Corporate Procurement Unit prior to embarking on any procurement activities.

33. If option two is taken, funds would be commented directly from the developer to the parish and would not be the responsibility of the council.

Equalities Impact of the Proposal

34. As the project develops, Wiltshire Council officers will continue to consider the equality implications locally and ensure that there are no negative impacts. This will be done via a local Equalities Impact Assessment and will be consulted throughout the lifetime of its development and delivery.

Environmental and Climate Change Considerations

35. Environmental and climate change considerations associated with the project have been covered by the planning process.

Risk Assessment

- 36. Risks that may arise if the proposed decision and related work is not taken**

- If option one is taken Wiltshire Council would need to underwrite the development costs of the park to ensure the project went ahead. Establishment of a Gateway Panel to ensure that foreseeable issues are avoided as set out in the Nominee Agreement.
- Barratt Homes may decide to withdraw the second planning application or from negotiations which would then force the council into a position enforcement of the planning non-compliance of the spoil heap, which could take in the region of a year to resolve through the courts.
- Viability of the project is adversely affected as increasing costs within a defined budget leads to decreasing provision.
- A negative impact on the council's reputation due to delays in the creation of the country park.
- A negative impact on the council's reputation due to delays in the resolution of drainage issues following the creation of the housing development.
- If for some reason the Parish Council wishes to discontinue the establishment of the Country Park (e.g. because of cost over-runs/unforeseen difficulties) before the planning obligations are met how does Wiltshire Council gain access to the land to complete the planning obligations
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37. Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

38. The key risk in respect of the negotiation on a revised s106 relates to the approach taken by the developer Barret's. At this stage their position is unknown and won't be known until the developer is formally engaged. The key mitigation measure for this is to ensure that the councils objectives for the negotiations are clear.

Financial Implications

39. To be written by a member of the Accountancy team.

Legal Implications

40. To be written by a member of the Legal team.

Options Considered

41. As well as the two approaches identified in the main report other options
- 1) Do nothing / advise Barratt Homes that the Council will not be exercising the election by nominating Laverstock and Ford. This is not the preferred option since there has already been a lot of co-operation

between the Parish Council and the developer in the design of the country park and the submission of the revised planning application.

- 2) Construction and maintenance of the country park by Wiltshire Council. This is not the preferred option since the Council has not developed its own plan for the delivery and maintenance of the country park. Staff and financial resource have not been assigned to the project from the the Capital Build team (in Strategic Asset and Facilities Management) or the Highways and Streetscene service, which are currently engaged in other priorities.

Conclusions

42. Members are requested to...
 - a. Confirm their support for Laverstock and Ford parish council's desire to own, deliver and maintain the Hampton Park Country Park and make them the council's nominee.
 - b. Confirm their support to enter into a new s106 agreement with the developer and make Laverstock and Ford parish council party to that agreement.
 - c. Confirm their support for approaching the negotiations on the basis that land and funds are transferred directly between the developer and Laverstock and Ford parish council, with Wiltshire council taking no intermediary role in terms of land ownership or financial risk.
 - d. Delegate to the Associate Director for People and Business the ability to enter into and complete s106 negotiations with the developer and Laverstock and Ford parish council on the terms described above.

Carlton Brand
Corporate Director

Report Author:

Vincent Albano
Asset Portfolio Manager
Vincent.albano@wilthisre.gov.uk
01225 756198

Appendices