

Individual Cabinet Member Delegated Decision

Cabinet Member for Housing, Strategic Assets, Asset Transfer – Cllr Phil Alford

Service: Housing and Commercial

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Reference HSAAT-01-22

Title: Disposal of open space at Westwood Road / Leylands Road, Rudloe

Purpose of Report

1. (a) To consider:
 - the objectives of the original decision to dispose of land to GreenSquare (now GreenSquareAccord Limited) (GSA),
 - the objections received following advertisement of the potential disposals of open space under s123(2A) Local Government Act 1972
 - proposed mitigation to be put in place by the Council as landowner to address concerns raised by objectors
- (b) To determine whether the proposed disposal to GSA should continue.

Relevance to the Council's Business Plan

2. The opportunity to engage with GSA to deliver additional affordable housing is in line with the strategic objectives of the Council:
 - providing everyone with access to a decent, affordable home with emphasis on addressing affordable housing needs, and
 - to ensure a continuous supply of housing over the plan period.
3. This is underpinned by Core Policy 43 providing affordable homes.
4. The disposal of assets raises capital to assist and support the Council's medium term financial plan (MTFP) which subsequently supports the Council's Business Plan and its aims and targets. Specifically, the business plan describes taking a *commercial approach to managing assets* as part of the *Working with partners as an innovative and effective council priority*.

Background

5. The Council made a decision in June 2018 to engage with the strategic housing partner GreenSquare (now GSA) to deliver an increased number of affordable homes through regeneration of part of Rudloe, where GreenSquare (now GSA) have significant housing numbers.

6. Since the decision of Cabinet, GreenSquare have merged with Accord Housing Association to create GreenSquareAccord Limited (GSA).
7. The accepted proposals in the June 2018 report are:
 - To declare the Council's freehold land and property holding in Rudloe (See Annex 1 – Plan1) as surplus and for disposal either in its entirety or selectively. If a disposal of part only of the site transpires as the outcome, elements of the site would remain in Council ownership.
 - To support the recommendation on the preferred option to engage in negotiations with GreenSquare (now GSA) with a view to a transfer to GSA the Council's freehold interest required for their regeneration scheme within an agreed timescale, potentially at an under-value and on terms to be agreed.
 - To confirm disposal of part or the whole of the Council's freehold land and property in Rudloe on the open market if negotiations are unsuccessful with GSA.
8. Development of the site and working with GreenSquare (now GSA) in partnership has been a long-standing aspiration of the Council, dating back to 2012, with the objective of seeing a net increase in affordable housing in the area.
9. Negotiations have been held with GSA to determine the terms by which the Council will dispose of the land, including the financial consideration to be received by Wiltshire Council. The basic terms of the transfer before mitigation proposed in this report are:
 - Land value: GSA will pay £220,000 for the freehold of the land and buildings
 - Conditions: the freehold sale is conditional upon the planning being obtained by GSA for the development and GSA having grant funding confirmation.
 - Phasing: the transfer of the freehold will be in two phases to allow for a phased development and ensure that vacant possession of GSAs existing units to be obtained
 - Completion: GSA are obliged to complete the development within 3 years of the land being transferred to them, otherwise the land transfer may be considered void (see Legal Implications).
 - Community facilities: the Council have stated that GSA should include a replacement community facility in the scheme of not exceeding 150sqm and use reasonable endeavours to provide temporary facilities based on credible demand.
10. The Council have also established:
 - the statutory consent to be relied upon to enable the transaction;
 - the need for the open space disposal to be advertised; and
 - the need for a VEAT Notice to be issued (see Main Considerations and Procurement Implications).

¹ Reference to “Annex 1 – Plan” relates to the 2018 Cabinet report

Main Considerations for the Council

11. In the original Cabinet decision, it was acknowledged that to generate a net gain in affordable housing the disposal might need to be at an undervalue (less than market value). The Council is able to dispose of land in a manner it sees fit, but where a disposal is less than the best that can reasonably be obtained it must comply with applicable statutory provisions and consents. Under S25 of the Local Government Act 1988 (LGA 1988) any undervalue will be classed as the provision of financial assistance or gratuitous benefit and requires the consent of the Secretary of State unless a General Consent applies. In this particular case, it is deemed appropriate to use a General Consent under s25 of the LGA 1988 (S25 General Consent), as GSA, the proposed recipient of the land, are registered providers of social housing. More detail is available in in Legal Implications below.
12. In addition, the proposed disposal will be subject to S123 of the Local Government Act 1972 (LGA 1972). A disposal at an undervalue will be a disposal at a consideration less than the best that can reasonably be obtained and the provisions of the Local Government Act 1972: General Disposal Consent 2003 (2003 General Disposal Consent) will also have to be considered. More detail is available in in Legal Implications below.
13. The proposed disposal to GSA includes land that is considered to be Public Open Space. Under Section 123(2)(A) of the LGA 1972 any potential disposal of Public Open Space must follow the procedure as set out in that section. The Council, therefore, published notice of the the potential disposal in the Gazette & Herald on 7th October 2021 and 14th October 2021 (the Notice) seeking objections no later than 25th October 2021. To allow Box Parish Council to make a representation (due to dates of Parish Council meetings), their objection of the 29th October has also been considered as has a single objection that was received between 25th October and 29th October.
14. Appendix One details the approximately 0.64 ha of land included for the purpose of the Notice (the Rudloe Green Open Space), with Appendix Two setting out the total land proposed for transfer.
15. The legislation does not specifically state the way in which objections can be made, resulting in objections on process, loss of open space, loss of community facility, value for money, etc having been made to the Council.
16. The council received 72 representations as a result of the advertisement of the Council's intentions, a redacted copy (to remove identifying information) of each representation is attached in Appendix Three. The objections have been classified, assessed to determine if they are of a planning nature (to be considered by the Council as Local Planning Authority) and what mitigation the Council can take as landowner.
17. The mitigating actions available to the Council are as follows:

- a) Contract to provide requirement on GSA for reprovision of open space of no less area than the Rudloe Green Open Space (0.64 ha) – where objections were based on the loss of open space.
 - b) Contract to provide requirement on GSA for reprovision of community accommodation – where objections were based on the loss of community space.
 - c) Wiltshire Council to make a further decision, by way of a Single Cabinet Member Decision, considering objectives of the disposal and objections received to the potential disposal of open space following the publication of the Notice – where objections to the Notice have been received.
 - d) Valuation has been commissioned to show that the amount of the potential undervalue of the land is not beyond the thresholds as set out in the S25 General Consent and the 2003 General Disposal Consent (see Legal Implications)
18. To allow full transparency for a decision to proceed to be made (addressing paragraph 17.c.), this report sets out detail of the mitigation being proposed and seeks to confirm that the original intention is being met.
 19. An application to record land at Rudloe as a Town Village Green was made in April 2019 although this was rejected by the Council in its capacity of Commons Registration Authority.
 20. The mitigation referred to in paragraphs 25 to 42 below has been discussed with GSA and confirmed by Legal Services that it does not change the nature of the transaction from being a disposal of land to a development agreement between the parties.
 21. Whilst mitigation to a number of the objections can be considered by the Council as landowner, the disposal to GSA is subject to a satisfactory planning consent being obtained. If individuals are unsatisfied with the mitigation being put in place there will be an opportunity to participate in the statutory planning process; those providing comment in response to the Notice will be informed of this.
 22. Having considered all the objections the Council considers that there are none preventing the Council from entering into a conditional contract to dispose of the land to GSA. It is considered that the original objective of the Cabinet decision in June 2018 is still being met and the recommendation is to proceed.
 23. GSA have produced a statement supporting the continuation of discussions between the parties, see Appendix Four.
 24. Prior to making this decision, the Council have provided a response to the parties who submitted an objection explaining the decision making process, mitigation being proposed, inclusions in this report and setting out that they are entitled to participate in the statutory planning process should GSA submit a planning application.

Mitigation proposed

Reprovision of open space (17.a)

25. The current heads of terms do not include an obligation to replace the open space as part of the scheme. The intention of GSA is to replace the open space within their scheme, as set out in the consultation document in Appendix Five.
26. Due to the strength of feeling and number of objections received to the Notice, it is recommended that the terms of the sale be changed to include an obligation that if GSA choose to commence development then they must replace equivalent open space no smaller than as advertised under the open space notice (0.64 ha).
27. This will apply to the initial development only, assuming planning is obtained, and will be considered as discharged on completion of the development. This obligation changes the basic Heads of Terms set out in paragraph 9 above to include the reprovision of open space.
28. The regeneration will include changes to other green spaces within the development area, much of which is already in the ownership of GSA. It is not felt appropriate to add up all the green spaces (including verges, GSA amenity land) and seek that GSA reprovides this amount, as much of this is currently outside the control of WC. In addition, the loss of such will be considered through the statutory planning process.
29. It should be noted that the need to reprovide open space will be a material consideration for any planning application and objectors to the disposal of open space will be able to participate in the statutory planning process.
30. There will be a period of time that the open space is not available however this is mitigated as the contract obliges GSA, should they decide to commence development, to complete the development within three years of completion of the land transaction in accordance with paragraph A2(c) of the S25 General Consent; thus limiting the amount of time that open space might be unavailable for. Failure to comply with the timescale results in the land transfer becoming void, although the S25 General Consent does allow for extensions in extenuating circumstances.

Reprovision of community building (17.b)

31. The current heads of terms do not include an obligation to replace the community building as part of the scheme but allows GSA to provide a community facility at their discretion, including as may be required through the planning application.
32. In response to objections received to the Notice, it is recommended that the Council will make it an obligation that if GSA chose to carry out the development then they must replace the community space building with either a shop or community building (or both) of no smaller than 150 sqm gross internal area.

33. This will apply to the initial development only, assuming planning is obtained, and will be considered as discharged on completion of the development. This changes the basic Heads of Terms set out in paragraph 9 above to include the re-provision of community space.
34. The intention of GSA is to replace the community building within their scheme, as set out in the consultation document in Appendix Five, and the size of the minimum obligation allows for minor amendments through the planning process.
35. To maximise the ability to generate additional affordable homes and create a scheme that is considered viable, GSA have confirmed that retaining or replacing the community building in its current scale (525 sqm approx) would not be possible. It would be inappropriate to place obligations on GSA that are too burdensome and create an unviable scheme.
36. Whilst any objections to the disposal of the community building are not within the scope of the Notice, the need to re-provide a community building is likely to be a material consideration for any planning application and objectors to the disposal of the current community building will be able to participate in the statutory planning process.

Potential undervalue of Council land (17.d)

37. Through negotiation with GSA, it has been established that the scheme can support a capital value for the land being paid at £220,000.
38. The Cabinet approval in 2018 allowed for sale of land at an undervalue, the amount of the undervalue is determined through a RICS Red Book Valuation of the Council's interests. The decision in June 2018 included details of the financial implications of not disposing of its land on the open market, although was not available to the public at the time as negotiations with GSA had not formally commenced. Now terms are agreed a valuation of the Council land has been undertaken to quantify the level of undervalue.
39. The S25 Consent under The Local Government Act 1988: The Open Sale Value is considered to be £255,000, and the sale price is £220,000 so the financial assistance or gratuitous benefit provided in connection with this matter (given by way of undervalue of the land) is £35,000, see Appendix Six. At the point of the disposal a certificate is to be provided by the Council's chief executive or chief financial officer or by a qualified valuer employed or engaged by the Council that the aggregate value of the financial assistance or gratuitous benefit provided previously under the S25 Consent in the same financial year does not exceed £10 million.
40. In addition, for the purposes of S123 of The Local Government Act 1972 the market value is considered to be £255,000 and the sale price is £220,000 so the undervalue is £35,000, see Appendix Six. This is less than the £2m threshold referred to in the 2003 General Disposal Consent relating to S123.

41. The scheme proposed by GSA will produce an anticipated net gain of 33 affordable housing, through replacement of GSA stock that will be removed through the regeneration process and units being brought back into affordable use from private ownership. Should the Council realise the full market value of the site and use this money to pay for new affordable homes on Council land elsewhere, it would not be able to replace with as many new homes without incurring additional borrowings and making use of other development funds (commuted sums and Right to Buy receipts).
42. As such, it is considered value for money to forgo £35,000 to generate an additional 33 affordable units.

Overview and Scrutiny Engagement

43. The Council's Overview and Scrutiny function have been consulted through the drafting of this report and it has been confirmed that the report does not need to be considered by Overview and Scrutiny Management Committee

Safeguarding Implications

44. Any safeguarding implications associated with the regeneration will be considered through the statutory planning process.

Public Health Implications

45. Any public health implications associated with the regeneration will be considered through the statutory planning process.

Procurement Implications

46. The transaction is considered to be a land deal meaning that there are no direct procurement implications. Through due diligence it has been established that none of the terms of the transaction result in a public works contract being created. The revised terms to mitigate objections received are not considered to change the nature of the transaction, although confirmation will be obtained prior to contracts being entered into.
47. In light of the reliance of General Consents to enable the transaction to take place, Counsel's opinion was sought to confirm our position. The advice received suggested that it would be prudent to issue a VEAT Notice (Voluntary Ex-Ante Transparency Notice) setting out the Council's intentions to transfer the land directly to GSA. The issue of such VEAT Notice will occur should the proposals in this report be accepted.

Equalities Impact of the Proposal

48. The transfer of assets and devolution of service raises no issues in respect of equalities impact.

Environmental and Climate Change Considerations

49. The regeneration will result in an improvement to the climate impact of the affordable housing and community facilities. GSA intend to use modular construction to deliver the scheme delivering carbon zero accommodation for residents and families. GSA have confirmed that this is their intention – see Appendix Four.

Risks that may arise if the proposed decision and related work is not taken

50. If the proposal in this report is not agreed, the regeneration proposals of GSA will not occur leaving the inefficient housing stock owned by GSA in need of improvements to reduce environmental impact, which may be some time to achieve.
51. The Council will not have the benefit of a capital receipt for the land and will have both the community centre and retail premises remaining vacant whilst their future is determined.
52. The Council could fall back on the decision made in June 2018 and dispose of part or all of its interests on the open market.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

53. It is not anticipated there are any direct risks associated with this decision. The requirement to advertise the disposal of open space has been discharged, together with the requirement to consider any objections received please see Appendix Three of this report. The transaction remains subject to GSA obtaining a satisfactory planning permission and the terms of the transaction will be finalised with GSA to enable them to make a planning application.

Financial Implications

54. The Council will receive £220,000 for disposal of the land, assuming the planning consent is obtained by GSA, the realisation of capital from the sale of assets is used to support the MTFP and Council Business Plan.

Legal Implications

55. The proposed disposal is at an undervalue so the consent of the Secretary of State is required unless the disposal falls within an appropriate General Consent. These include the S25 General Consent (specifically relating to the provision of financial assistance or gratuitous benefit to registered providers of privately let housing), and the 2003 General Disposal Consent relating to s123 of the Local Government Act 1972 (specifically relating to the disposal of council owned land at a consideration less than the best that can reasonably be obtained).
56. Counsel has advised that as the proposed disposal is to a registered provider for the purposes of the provision of privately let housing the General Consent most applicable to the proposed disposal is the General Consent under section 25 of

the Local Government Act 1988 (LGA 1988) for the disposal of land to registered providers of social housing 2010 (as amended) (“the S25 Consent”). The disposal at an undervalue would be seen as providing financial assistance or gratuitous benefit to GSA under Sections 24 and 25 of the LGA 1988.

57. In light of Counsel’s opinion, it was decided that the S25 Consent can be relied on.
58. Reliance on the S25 Consent means that the transfer of land is conditional upon GSA completing the proposed development within three years of the date of the land transfer. The Act sets out that failure to comply with this timescale may result in the land transaction being void, unless a period of extension is agreed between the parties due to unforeseen circumstances. The threat associated with the obligation should be seen as additional incentive to complete the development in a timely fashion.
59. The 2003 General Consent relating to S123 of the LGA 1972 also needs to be considered, as set out in paragraph 63.
60. Irrespective of the general consent relied upon, under s123(2)(A) of the LGA 1972 the Council is obliged to advertise the disposal of any open space and consider any objections to its disposal. The land does contain open space and the Council has discharged that duty by placing a Notice for two consecutive weeks in a local newspaper circulating in the area.
61. Whilst S123(2)(A) requires the Council to consider any objections, it is not obliged to act on them. As set out in this report the council has considered all objections to the proposed disposal and therefore discharged its legal obligation.
62. An independent external valuation has been commissioned from valuers Carter Jonas dated 12th January 2022 (see Appendix Six for the valuation certificate extract) to support the disposal of the land under Sections 24 and 25 of the Local Government Act 1988. The valuation has been used to calculate the value of the financial assistance or gratuitous benefit provided to GSA under the S25 General Consent; which will apply provided that the aggregate value of the financial assistance or gratuitous benefit provided by the Council in the same financial year shall not exceed £10 million.
63. The valuation can also be used in connection with S123 of the LGA 1972 and the 2003 General Disposal Consent to show that the undervalue, does not exceed £2m as prescribed by the 2003 General Disposal Consent.
64. Research has been undertaken to determine the purpose by which the Council holds the land, with officers concluding that the majority of the land is retained amenity land held following an LSVT (Housing Stock transfer) and therefore to the best of our understanding the holding power is a Housing Act one. There is no evidence of an appropriation of holding powers. This supports the Council’s approach to rely on the general consent specific to the disposal to housing providers.

Workforce Implications

65. There are no workforce implications of this decision.

Options Considered

66. Not to proceed with the disposal of land – this will result in the area not having the benefit of an increased number of affordable homes and the future of the community centre undecided. The Council and GSA have invested time and resource into the scheme and this would be lost through withdrawal. The option is not being considered as the disposal remains subject to enhanced conditions (in direct response to the objections received) and is subject to planning consent (allowing for engagement by the public through the planning process).

Proposal

67. The proposals in this report seek to:
- confirm that legal work to conclude the conditional contract between the Council and GSA can continue subject to:
 - i. the terms include mitigation to reprovide a minimum of 0.64 hectares of open space in the new scheme
 - ii. the terms include mitigation to reprovision of community facilities no smaller than 150 sqm gross internal area.
 - confirm the VEAT Notice can be issued
 - confirm the provision of the Certificate referred to in 39 above at the appropriate time.

Reason for Proposal

68. To realise the opportunity to deliver a net gain in affordable housing, to enable the regeneration of the area including the removal of energy inefficient housing stock and to allow the statutory planning process to consider the scheme, including any objections lodged, based on the merits of the proposed regeneration.

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25 January 2022

Appendices

Appendix One – Plan of open space owned by Wiltshire Council

Appendix Two – Wiltshire Council land to be transferred to GreenSquareAccord

Appendix Three – Objections received and proposed mitigation

Appendix Four – Statement from GreenSquareAccord

Appendix Five – GreenSquareAccord consultation document

Appendix Six – Valuation extract from Carter Jonas

Background Papers

Cabinet Report of 12 June 2018 titled “Disposal of Council Land in Rudloe”