

Report to Cabinet

Title:	Granting of Long Leasehold on Site for Development in the South of the County
Date:	Monday 13 May 2019
Date can be implemented:	Tuesday 21 May 2019
Author:	Cabinet Member for Resources
Contact officer:	David Pearce Lead Contracts Officer 01296 383984
Local members affected:	Iver

For press enquiries concerning this report, please contact the media office on 01296 382444

[Guidance can be found on the intranet at the following link:

<https://intranet.buckscc.gov.uk/how-do-i/member-services/decision-making/>

Is the report confidential? Please contact Democratic Services.]

Summary

The Cabinet are asked to consider and approve a proposal (subject to detailed Heads of Terms being agreed), for a development in the south of the County on land owned by The County Council. Details of the land, location and terms are set out in the Confidential Annex at Part 2 of this agenda. It is proposed that if the Cabinet grants approval the Developer will enter into an Agreement for Lease. Once completed they will at their own expense, apply for all necessary consents and permissions, and if granted will, enter into, fund and carry out the agreed development and on practical completion (planned for 2024 but the plan may extend to 2025) enter into a long lease which will provide The Council with a valuable investment asset generating a revenue income.

Recommendations

Authorisation is given to the Director of Property and Assets in consultation and with the approval of the Cabinet Member for Resources, the Executive Director for Resources and the Director of Finance & Procurement

- 1. To finalise and agree any necessary amendments to the Heads of Terms for an Agreement for Lease and Lease as set out in the confidential report at part 2 of this agenda. Finalise any agreements permitting the developer to build (where necessary).**
- 2. To continue to administer and comply with the terms of the Council's non-disclosure agreement while it remains in force for two years from the 8th October 2018, whether or not this development proceeds.**
- 3. To appoint necessary Consultants on behalf of the Council to agree, review and report on progress of design works, surveys, Planning Application (s) or any other related plans, programmes or works associated with the development and in accordance with the Agreement for Lease and Lease.**
- 4. Upon satisfactory completion of all conditions attached to the Agreement for Lease to complete the Lease.**
- 5. To agree the Building Contract and Appointment of the Professional Team and ensure suitable contract protections are provided to the Council through Collateral Warranties etc.**
- 6. To administer the provisions of the Agreement to Lease and Lease and to report on the progress of the development to Cabinet on not less than an annual basis.**
- 7. To engage with the existing occupational Tenant and issue any required tenancy notices to facilitate the development as appropriate as set out in part 2 of this report appendix 1.**
- 8. To serve any other notices where required or considered prudent including, should it prove necessary, notices advising of any breach in any legal documentation entered into in this development scheme or to terminate any such legal documentation.**
- 9. To appoint and instruct Legal Services with specialist skills and experience in respect of the nature and scale of the Development proposed to act on the Council's behalf in preparing and agreeing the Agreement for Lease and Lease and any other necessary legal documentation.**

10. To instruct the insertion of any applicable Legal Mechanisms or covenants deemed necessary by the Council to restrict further development on Council owned land.
11. To, where considered necessary alone or in conjunction with the Developer to promote the site through the planning system
12. To participate where considered necessary or advisable to contribute toward the success of this project, participate in public or private consultations or engagement.
13. To arrange funding for the Consultancy fees necessary to conclude the Agreement for Lease and Lease as set out in the Part 2 report, considered later in this agenda.
14. To arrange to sign, seal and enter into any legal agreements and any other ancillary agreements or documents required to give effect to the disposal.

A. Narrative setting out the reasons for the decision

1. The Council has received an approach by a specialist Developer to progress an Agreement for Lease and Lease at the location which is the subject of this report for a Development which is specialist in nature. Details of the Terms agreed to date are set out in the Part 2 report.
2. The proposal contained in this report will uniquely address these issues and if successful will provide the Council with a significant income stream (the value of which has been appraised by reports from 3 separate independent surveyors prior to agreement of the detailed Heads of Terms) with the costs being met by the developer. Apart from monitoring and transactional fees in relation to the Agreement for Lease and Lease, there are no costs to the Council in promoting the site for planning purposes.
3. The Tenant is to obtain planning permission and all other consents at their own costs.
4. The Tenant will carry out the proposed development and fit out including any infrastructure works at their own cost.
5. The Parties will enter into an Agreement for Lease to govern the development elements of this transaction and the lease will commence upon practical completion of the proposed development.
6. The reason for accepting this proposal is that it represents a significant windfall opportunity for BCC to create a long term investment income, which will be used to support the wider services of the Council.

B. Other options available, and their pros and cons

1. Do Nothing. No improvement to the current situation will be enjoyed and the revenue windfall will not accrue to the Council.
2. Market the site for a similar development. This option is contrary to a confidentiality and lock out agreement before the end of the relevant period of exclusivity and even following such period in the short to medium term (if there is a breach of certain terms of the agreement), after which a successful determination for a planning application for a similar development is unlikely to be successful.
3. Proceed with the proposal set out in this report.

C. Resource implications

- Internal costs for monitoring the project to Practical Completion of the project are estimated to be 500 hours. These costs would be capitalised once the Agreement for Lease and Lease have been signed. External Consultancy support will be used to monitor all the phases of the project.
- If the development is forthcoming the proposed rental income would create a substantial revenue income to the Council.
- Initial costs to the Council are minimal and limited in the main to the cost of monitoring the project. Other transactional costs such as the initial Legal and Professional fees are to be met by the Developer.
- Following the Initial stages, anticipated commercial fees are set out in the report to be considered in Part 2 of this agenda.
- Following the initial stages, we recommend the appointment of Legal Services with specialist skills and experience in respect of the nature and scale of the development proposed, to act on the Council's behalf.

D. Value for Money (VfM) Self Assessment

The transaction is almost 100% financially positive. The Council is currently represented by Carter Jonas as lead surveyor and three appointed appraisal surveyors working toward achieving the best overall value possible for the Council whilst securing the Council's interest for any future value uplifts. Details are set out in the Part 2 report.

E. Legal implications

HB Public Law, the Council's in house legal service has been consulted with regard to the preparation of this report and asked particularly to ensure that the delegations contained in this report mirror or flow from the Constitution and in particular the scheme of delegation.

There is a confidential appendix to this report, which is exempt by virtue of paragraph 3 of Schedule 12A of Part 1 of Schedule 12a of the Local Government Act 1972 because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)

The Council has a range of powers to enter the agreements envisaged by this report, including the general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals can do subject to any specific restrictions contained in legislation. The Council also has the power to acquire, appropriate and dispose of land in accordance with Sections 120-123 of the Local Government Act 1972 subject to obtaining all appropriate consents and approvals and ensuring that any disposals are for a consideration that is the best that can reasonably be obtained.

Under Section 123 of the Local Government Act 1972 the Council has power to dispose of any land held by them in any manner they wish but cannot dispose of it for less than the best consideration than can reasonably be obtained unless they have the consent of the Secretary of State to do so.

Accordingly the Council would have power to lease the site for the best rent that can reasonably be obtained without the need to obtain the Secretary of State's consent or for less than best consideration with his specific consent.

If the best rent that can be reasonably be obtained is not proposed to be obtained, then the Secretary of State has issued a General Consent (The Local Government Act 1972: General Disposal Consent (England) 2003) under which Council's may dispose of land for less than best consideration if the Council consider that that the purpose for which the land is to be disposed of is likely to contribute to the economic, social or environmental well-being of the whole or any part of their area or of all or any persons resident or present in their area subject to certain provisos.

The Council has to give due regard to its Equalities Duties, in particular with regard to general duties arising from the Equality Act 2010, section 149 and for the purposes of this report, section 20, Part 2 of the Equality Act. The latter provision creates a duty on

public and private organisations to make adjustments for disabled people. Having due regard to the need to advance equality also involves, in particular, the need to remove or minimise disadvantages suffered by persons.

An equality impact analysis has not been carried out at this stage as it is not considered that anyone with a protected characteristic: Age; Disability; Gender Reassignment; Pregnancy and maternity; Race; Religion or belief; Sex and Sexual Orientation will be adversely affected by the proposals within this report.

The envisaged disposition remains subject to an agreement for lease and any subsequent lease to be entered into between the council and the developer.

F. Property implications

Any implications to property are as laid out in the stage 2 confidential appendices 1 and 4.

G. Unitary Council

Any agreement entered into will require to be complied with by the Unitary Council going forward.

H. Other implications/issues

1. A number of competing development sites are lining up and The Council will need to progress at pace if it is decided to progress to the next stage.
2. Any other relevant Implications are addressed in the stage 2 confidential appendices.

I. Feedback from Local Member

The Local Member was briefed on Thursday the 25th April and commented on the proposal with a request to have some questions answered including the possibility of the proposal impacting on other local schemes and whether a specific other location could provide a viable alternative site. These comments have been addressed in the stage 2 confidential report summary

J. Communication issues

The Cabinet Member for Resources and the Director for Property and Assets will develop and continually monitor a Communications Action Plan to support any decision of the Council to promote the Development.

K. Progress Monitoring

Progress will be monitored by way of the Property Board Progress Tracker and regular Highlight reports.

L. Review

N/A

Background Papers

Stage 2 Confidential report comprising index and confidential appendices 1 – 12

Your questions and views

If you have any questions about the matters contained in this paper please get in touch with the Contact Officer whose telephone number is given at the head of the paper.

If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on Friday 10 May 2019. This can be done by telephone (to 01296 382343), or e-mail to democracy@buckscc.gov.uk