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Report Number **C/21/51**

To: Cabinet
Date: 24 November 2021
Status: Key Decision
Responsible officer: Andy Blaszkwicz – Director Housing & Operations
Cabinet Members: Councillor John Collier, Cabinet Member for Property Management & Grounds Maintenance, Councillor David Monk, Leader of the Council

Subject: **Biggins Wood – Development Update**

SUMMARY: The report provides an update to Members regarding the current position of the Biggins Wood site. Following the last Cabinet report in July 2019 (C/19/12) the report updates on the sale of the housing land as previously agreed and asks Members to consider new offers made for the commercial element of the site. The report provides details of the Council's successful bid to One Public Estate's, Brownfield Sites Release Fund and outlines the forward programme for ecology, remediating the site, and delivering the associated infrastructure. Members are also asked to note that Officers will be publishing a tender for the remediation and infrastructure works in order to commence works as early as possible in 2022.

REASONS FOR RECOMMENDATIONS:

The council has received two new offers for the commercial element of the site which need to be considered by Members. The report also updates Members of the Council's success in obtaining funding from the Government's One Public Estate – Brownfield Land Release Fund and outlines a clear way forward including tendering a new Design and Build contract to bring forward a clean, serviced site ready for disposal to the Council's delivery partners.

RECOMMENDATIONS:

1. To receive and note report C/21/51.
2. To note that legal work has progressed with [REDACTED] for the disposal of the residential land as previously agreed by Cabinet in July 2019.
3. To agree that offer One 'A' from [REDACTED] for the commercial element of the site represents best value to the Council and provide delegated authority to the Director, Housing & Operations to commence legal work to conclude the deal.
4. To note acceptance of the Brownfield Land Release Fund of the sum of £1.15m.

5. To agree that the Council deliver the site via a Design & Build contract to bring forward a clean, serviced site ready for disposal and provide delegated authority to the Director, Housing & Operations in consultation with the Cabinet Member for Property Management and Grounds Maintenance to enter into the contract following appropriate procurement processes.
6. To agree that the funding in the existing Capital Programme totalling [REDACTED] (for Biggins Wood) is to be used with the Brownfield Land Release Fund of £1.15m to undertake the remediation and servicing of the site.
7. To seek Full Council approval to increase the budget for the scheme by [REDACTED] to [REDACTED] and to provide a further contingency budget of [REDACTED] to meet any further costs associated with remediating and servicing the site from the Business Rates Growth Fund held in the Economic Development Reserve.
8. To agree that the Director for Housing & Operations be authorised with the agreement of the Leader of the Council and the Cabinet Member for Property Management & Grounds Maintenance and in consultation with the Director for Corporate Services to undertake any further activity to conclude the agreements set out in this paper and dispose of the site.
9. To approve that [REDACTED] of the capital receipt from the anticipated sale of the overall site is used to reduce the Capital Financing Requirement to offset the prudential borrowing incurred for the General Fund element of the original acquisition costs and fees.

1 BACKGROUND

- 1.1 Members will recall that the Council purchased land at Biggins Wood on 21st December 2016. The price paid for the land was £1.5m. The land was purchased with existing planning permission for 77 homes, 54 light industrial units and one office building. The site comprises 4.43 hectares (10.95 acres) in all of which 1.6 hectares (3.95 acres) is the commercial land area and 2.3 hectares (5.68 acres) is the residential land area. The Access Road is 0.29 hectares (0.72 acres) and the ecological translocation area is a further 0.21 hectares (0.52 acres). The purchase cost was split with 70% being met by the General Fund and 30% from the Housing Revenue Account (HRA).
- 1.2 On 31 May 2017 Cabinet considered report C/17/06 and resolved:
1. *To receive and note report C/17/06.*
 2. *To note the necessary preliminary work required to undertake detailed delivery planning through to a procurement decision.*
 3. *To note that a further report is brought back to Cabinet when a delivery decision needs to be made. That report will:*
 - *Detail the issues around finance, risk profile and timelines of each option; and*
 - *to recommend a procurement route.*
- 1.3 On 20 February 2019 Cabinet received report C/18/70 on the outcome for grant funding made to Homes England under the Government's Accelerated Construction Programme to support remediation and other development costs for the site. The application was successful and the council was awarded approximately £1m. Cabinet resolved to accept the grant offered (minute 78) however, the grant was not drawn as the project was not able within the given timeframe to satisfy the associated contract requirements detailed in the grant offer.
- 1.4 Report C/19/12 was considered by Cabinet on 17th July 2019. The report set out the reasons for purchasing the site, what the Council's aims were, the process that was followed to seek interests in the site and made recommendations on the acceptance of two offers.

2. REASONS FOR PURCHASING THE SITE

- 2.1 The report recommending the purchase of the site framed the reasons in the following way:-

"The reason for purchasing the site is to help meet the Council's vision.

Prosperous and ambitious – Working for more jobs and homes in an attractive district"

And in particular to implement proposals to meet the key objectives of the Council's Corporate Plan particularly:

- a) *To boost the local economy and increase job opportunities through the development of a major new employment offer;*
- b) *More homes; enable the construction of 77 new homes including 23 affordable homes;*
- c) *Support an attractive and vibrant place to live by ridding the area of a derelict and contaminated site and by creating new public open space.*
- d) *Deliver value for money..."*

2.2 It should be recalled that the last use of the site was in the late 1970s when the brickworks on it closed. It has remained unused therefore for approximately 40 years and without private sector interest. In the years of disuse the site has become overgrown and is unattractive. The main access to it is particularly poor from an aesthetic point of view.

2.3 Whilst the Corporate Plan has been updated and refreshed the vision for the site remains unchanged; bring a brown field site back into use, creating new homes and creating more employment opportunities. Additionally the new Corporate Plan 2030 'Creating Tomorrow Together' adopted in February 2021(C/20/77) is built on four service ambitions, two of which are directly relevant to this project, A Vibrant Economy and Quality Homes and Infrastructure. The three year more detailed delivery plan (Corporate Action Plan) was adopted in October (C/21/40) and made specific reference to this project as did the Corporate Plan itself.

3. PREVIOUS OFFERS RECEIVED

3.1 The site was offered for sale, freehold or leasehold in the Estates Gazette in February 2019. By way of reminder the planning permission is for:-

- 77 residential units, of which 30% (23 No.) will be affordable, and of those 60% (14 No.) will be for affordable rent and 40% (9 No.) will be shared ownership.
- 46 No. 2 bed 4 person houses.
- 31No, 3 bed 5 person houses.
- Commercial Office units – 660m².
- Light Industrial/Storage units – 5,142m².

3.2 Two offers were agreed by Cabinet:

3.3 **Residential Land;** A straight Freehold disposal based on the delivery of a clean site and one serviced to the boundary. This offer would deliver the homes outlined in 3.1 including the 23 affordable units.

3.4 **Commercial Land;** That the Council enter into a Joint Venture (JV) in which the Council would be an equal shareholder to bring forward the commercial land. This offer would bring forward phase 1 of the commercial development

comprising of 932m2 of commercial space (the “First Unit”), if the demand was present 371m2 would also be constructed. Further development of the site would be worked through depending on demand after phase one had been developed.

- 3.5 Members may recall that the high level financial detail of this arrangement was that the Council would put the commercial land into the JV plus capital of [REDACTED]. This would be matched by the JV partner who would put in [REDACTED]. [REDACTED] This would provide the operating capital for the JV to deliver phase one of the commercial development.

4. CURRENT POSITION - RESIDENTIAL

- 4.1 This report proposes no changes from the previously agreed position as detailed in report no. C/19/12. Conversations have been ongoing throughout the pandemic with [REDACTED], and legal work has progressed for the freehold disposal of the residential element of the site. The Council will enter into a conditional contract to deliver a serviced, remediated site. The value of the freehold sale [REDACTED].
- 4.2 It remains the intention of the Council to purchase the 23 affordable units from the residential developer to add to the HRA stock. This is both affordable within the HRA and any acquired properties will need to meet the agreed HRA housing standards.

5. CURRENT POSITION – COMMERCIAL

- 5.1 The option to enter into the JV as detailed in report no. C/19/12 is still a possibility. This would bring forward phase 1 of the commercial space as detailed in 3.4 above. The Council would be an equal shareholder and would receive an equal share of any profit / income. There is however uncertainty over the further delivery beyond phase 1 and remediation works will also need to be undertaken (most probably) outside of the JV.
- 5.2 Whilst the Council has not been actively seeking alternative offers for the site, offers from two separate companies have been received. Both are considered to be above market value as verified by Motis Estates (Valuation Report attached as Appendix A).
- 5.3 **Offer One** is from [REDACTED] and presents two options. An option to purchase the whole commercial area of the site (A) and an option where the Council could retain a portion of the site for its own future use (B). The offers are for a remediated site, serviced to the boundary.

Offer One A – Whole site 4.67 acres

This offer is for [REDACTED]

Offer One B – Site excluding area for Councils future use 3.26 acres

This offer is for [REDACTED]
[REDACTED]

- 5.4 It is understood that [REDACTED] propose to build out the commercial element of the site in accordance with the existing planning permission in a period of 12 months from completion of handing over the remediated, serviced site.
- 5.5 **Offer Two** is from [REDACTED] and are looking to expand their operation. Their offer for the whole site [REDACTED]
- 5.6 It is understood that [REDACTED] would submit a new planning application for the commercial element of the site as the existing planning permission would not be suitable for their expansion plans and a larger building, or series of larger buildings, would better suit their requirements.
- 5.7 Officers recommend that Cabinet accept Offer One A from [REDACTED] Whilst Offer Two is slightly higher in immediate financial terms, the offer is subject to planning which in itself creates a further element of delay and risk – potentially jeopardising the project timeline and the period in which the government grant must be spent.

Offer 'One A' provides financial certainty (to a greater extent than the original offer through the JV), and when combined with the residential land receipt and the external funding would provide a welcome capital surplus to the Council.

6. BROWNFIELD LAND RELEASE FUND

- 6.1 Funding of approximately £1m for the remediation of the site was previously awarded from Homes England under the Government's Accelerated Construction Programme. Despite the efforts of officers during the pandemic this funding fell away and was no longer available.
- 6.2 Earlier this year The Department for Levelling Up, Homes and Communities (formally MHCLG) released the Brownfield Land Release Fund (BLRF) through One Public Estate. Officers submitted a bid for £1.15m. The Council was notified in September 2021 that it had been successful with a formal announcement being made in October 2021. This funding will contribute to the remediation and servicing of the site.

7. DELIVERY OF REMEDIATED AND SERVICED SITE

- 7.1 All delivery options detailed in this report depend upon providing a remediated and serviced site. There are several elements to this which are time critical if development is to start on site in early 2022.
- 7.2 It is proposed that the Council deliver the site via a Design and Build (D&B) contract which will include, ecology works, site remediation, access road and associated works and services (water / electricity / Gas etc) to the access road boundary.
- 7.3 To allow ecology works to start on site in March 2022 procurement will need to be started before Christmas 2021 with contract award being by the end of January 2022, allowing two months for mobilisation. Any delay will risk missing the 2022 ecology window potentially delaying the start on site until 2023 and therefore delaying the delivery of finished homes for occupancy.
- 7.4 Officers have commissioned Idom Merebrook to carry out further detailed work around the site contamination to fully inform the remediation work required.
- 7.5 Officers have appointed a suitably qualified Quantity Surveyor / Employers Agent to write the full Design and Build specification and then oversee the works from contract award to completion.
- 7.6 It is critical that a decision is made around the disposal of the commercial element of the site. Both the residential and commercial developer will need to provide information around site levels, drainage and other site requirements to inform the specification for the D&B contract. Any delay in this poses a further significant risk in the ability to start on site in March 2022.
- 7.7 Work has been carried out on the potential value of the works outlined in section 7 of this report. Whilst further work needs to be completed to fully inform the scope of the D&B contract cost estimates have been provided that are in the region of [REDACTED]. It is hoped that this figure will reduce as the detail is worked through.

8. FINANCE

- 8.1 The recommended course of action outlined above including the residential and commercial land sales and the external funding when taking into account the remediation and servicing costs and the original land purchase fee provides a significant capital receipt to the Council. The table at 8.2 shows a breakdown of the income and costs.

8.2

Funding Source / Cost	Funding Source / Income	Expenditure
Residential Disposal	██████████	
Commercial Disposal	██████████	
BLRF	£1,150,000	
Cost of land acquisition		£1,500,000
Estimated cost of remediation and servicing		██████████
TOTAL	██████████	██████████
ESTIMATED SURPLUS	██████████	

8.3 The capital budget position for the Biggins Wood development is shown in the table below:

Scheme Description	Available Budget	Capital Resources			Total
		Grant	Revenue	Capital Receipts	
Existing Budget	£'000	£'000	£'000	£'000	£'000
Land Remediation & Services	██████████	██████████	██████████	██████████	██████████
Commercial Development	██████████	██████████	██████████	██████████	██████████
Other Commercial Property Development	██████████	██████████	██████████	██████████	██████████
Total Existing Budget	██████████	██████████	██████████	██████████	██████████
Updated Budget – Land Remediation & Services	██████████	██████████	██████████	██████████	██████████
Change	██████████	██████████	██████████	-	-

8.4 The current approved General Fund Medium Term Capital Programme (MTCP) has a budget of ██████████ allocated against three individual items to meet further expenditure of the Biggins Wood development. It is proposed to consolidate these budgets to meet the cost of the land remediation and servicing works. The capital budget needs to be updated to reflect the actual BRLF grant awarded of £1.15m, an increase of £0.134m over the originally anticipated value, leaving a shortfall of ██████████ based on the estimated cost of ██████████. It is proposed to meet the shortfall and any further costs relating to this scheme (██████████ contingency budget) from the Business Rates Growth Fund held in the Economic Development Reserve, which currently has an unallocated balance of ██████████. Full Council approval is required for the proposed budget increase of ██████████ and the use of the Business Rates Growth Fund to provide the contingency budget of ██████████ to meet any further costs for this scheme.

8.5 The General Fund's share of the original purchase price and fees to progress the development of the overall site is ██████████ and this has been met from prudential borrowing. Statutory Guidance requires the Council to make

provision to offset the increase in its Capital Financing Requirement (CFR) incurred through the prudential borrowing. To date no provision has been made to offset the increase in the CFR and it is proposed to use part of the capital receipt from the sale of the overall site to achieve this.

- 8.6 Part of the anticipated capital receipts from the sale the residential land will be directly attributable to the HRA to offset its share of the original purchase cost, [REDACTED].

9. AGREEMENTS NECESSARY

- 9.1 To achieve the Council's objectives, in respect of both the residential and commercial parts of the Biggins Wood Development, detailed contractual agreements are necessary.

- 9.2 It is suggested that the Director, Housing & Operations be authorised with the agreement of the Leader of the Council and the Cabinet Member for Property Management and Grounds Maintenance, and in consultation with the Director for Corporate Services, to negotiate and conclude such agreements including the disposal contracts for the land and entering into the D&B contract for the remediation and servicing works and to take such other actions as are necessary to deliver the Biggins Wood development in accordance with the recommendations set out in this report. This is to include the use of the [REDACTED] contingency sum requested to be met from the Business Rates Growth Fund to fund any shortfall in remediation costs should this occur.

10. RISK MANAGEMENT ISSUES

- 10.1 The following risk management areas are highlighted.

Risk	Seriousness	Likelihood	Preventative Action
Remediation and servicing costs are higher than estimated	High	Medium	Employ qualified and experienced Quantity Surveyor to write specification and manage works contract
Severe slowdown of the housing market	High	Medium	Advice received that there is and will continue to be demand.
Not being ready to commence ecology works in March 2022	High	Medium	Ensure development partners are on board at earliest opportunity. D&B contract out to tender by Dec 2021

11. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

11.1 Legal Implications: (NM)

As the report notes, the Council are to enter into a conditional contract with [REDACTED]. Conditional contracts for the sale and purchase of land may be used by a developer when it wishes to secure an interest in land with potential for development but does not want to be obliged to acquire it until the condition is satisfied. Once the conditions in the contract (in this case the remediation of the land) have been satisfied the Council will proceed to complete the freehold sale and purchase to [REDACTED]. If the remediation does not take place before a longstop date (such date to be agreed) then the conditional contract falls away (as the condition will not have been satisfied) and the sale and purchase will not proceed.

The Council will need to comply with all procurement laws in relation to the procurement of the D&B contract. The D&B contract needs to be put in place to remediate the land so that the conditions in the conditional contract with [REDACTED] can be satisfied and the sale of the commercial land can proceed. External legal advice will be obtained as and when required in relation to the negotiation and completion of the D&B contract.

The Council have powers under Sections 123 and 127 of the Local Government Act 1972 to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease and granting of easements. The only restriction is that a disposal must be for the best consideration reasonably obtained otherwise consent is required from the Secretary of State.

In ascertaining 'best consideration' the Council is recommended to obtain a realistic valuation at open market so that it can determine whether the proposed price is the best consideration which can be reasonably obtained for the land.

The Council has obtained an independent valuation of the land from Motis Estates which has valued the land in the region of [REDACTED] per acre (with no reports undertaken on the site and the unknown certainties of contamination, ecology and section 106/CIL costs). Both offers exceed the independent valuer's valuation.

11.2 Financial Implications: (LW)

The key financial implications are covered in the body of the report, being:-

- i) The Business Rates Growth Fund held as part of the Economic Development Reserve be used (up to [REDACTED] contingency) should there be a shortfall in the funding of the proposed remediation works for the site. The Fund currently has unallocated balance of [REDACTED] to support further expenditure.

- ii) The current approved General Fund Capital Programme includes provision of [REDACTED] for the capital works identified in the body of the report. Full Council are required to approve the proposed increase to the capital budget of [REDACTED] and the further use of the Economic Development Reserve should the actual cost of the scheme exceed [REDACTED]
- iii) [REDACTED] of the anticipated capital receipt from the overall sale of the site is required to reduce the Capital Financing Requirement in lieu of the prudential borrowing incurred for the General Fund element of the original acquisition cost and subsequent fees.
- iv) The remaining capital receipt of up to [REDACTED] would be available to support the Council's future capital investment plans with at least [REDACTED] attributable to the HRA.
- v) The existing HRA Business Plan provides for the purchase of 23 properties for affordable housing / shared ownership.

11.3 Diversities and equalities implications:

There are no diversity or equalities issues arising from this report.

11.4 Environmental Implications: (AT)

The proposal in this paper is to help finance the development of the Biggins Wood site, an area of brownfield land, either through the existing planning permission or through submission of a new scheme.

Greenhouse gas emissions from travel, construction or the operation of buildings will depend on the details of the planning permission (as already approved or that will be approved through a future scheme), such as through any travel plan or materials used in the construction. The impact on water consumption and conservation and wildlife will also depend on the details of the development, as approved through the existing permission or that will be approved through a new scheme. Any new scheme would be assessed against the planning policies in the council's adopted development plan, including those regarding sustainable construction and the natural environment.

Whether the existing planning permission is implemented or a new planning permission is granted, remediation will need to be undertaken before development commences to remove the contamination that is present on site. This is likely to have a positive impact on human health, ecosystems and the water environment, in line with the Council's draft Contaminated Land Strategy 2021-2026.

The proposal in this paper, as it facilitates the existing planning permission, will help deliver the provision of light industrial units and office space and the residential component will contribute 23 affordable homes. The site is located close to several areas of high deprivation in the Indices of Multiple Deprivation 2019. The proposal set out in the report would therefore be likely to have a beneficial social and economic impacts, through making additional affordable homes available to local people and through offering new employment opportunities close to where they live.

12. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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The following background documents have been relied upon in the preparation of this report: None.

Appendices:

Appendix 1: Appraisal for Bigginswood
Appendix 2: Unredacted report.