Forward Plan reference: N/A

Report title: Management of Ongar Business Centre	
Report to: Mark Carroll, Executive Director for Place and Public Health	
Report author: Andrew Burgess, Interim Head of Economic Growth	
Date: Thursday, 8 October 2020	**For:** Decision
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County Divisions affected: Brentwood and Ongar	

1. Purpose of Report

1.1. This report details the proposed procurement for management services for Ongar Business Centre, a 15,000 sq ft office building owned by Essex County Council ("ECC") and let on flexible terms to over 25 business tenants, with effect from 1 May 2021.

2. Recommendations

2.1. To agree to undertake a fully compliant procurement process to appoint a provider to manage the Ongar Business Centre through a concession contract, with effect from 1 May 2021. The award of contract to be made under delegated authority by a Director of Sustainable Growth.

3. Summary of issue

3.1. Ongar Business Centre is a 15,000 sq ft office building owned by ECC and let on flexible terms to over 25 business tenants across 35 units. As well as being an income-generating asset, the Centre contributes to the action in ECC's Organisation Strategy 2017-21 to "enable Essex firms in high-growth sectors to consolidate and expand, by providing advice and increasing business space".

3.2. ECC currently has a contract with Let's Do Business Group Limited (LDBG) dated 24 May 2017, for the management of Ongar Business Centre (amongst other, unrelated services).

3.3. The contract for the current management arrangements expires on 30 April 2021. It is therefore necessary for the Council to prepare a fully compliant procurement exercise to procure a concessionaire in accordance with ECC's procurement rules as well as the principles of equality, transparency and non-discrimination for the management of Ongar Business Centre to ensure best value for money from the Council's asset.

3.4. Based on Early Market Engagement, a contract term of around 10 years would be considered sufficient for a contractor to: 'smooth out' impacts of shocks from the macroeconomic cycle – and the COVID-19 pandemic; offset potential maintenance liabilities, and; recoup benefits from new initiatives and investment. This would likely result in more competitive bids i.e. higher income to ECC; however, safeguards need to be in place to manage under-performance. It is therefore proposed that this contract have an initial duration of five years, with the option for three further extensions up to a maximum of five years (extensions of 2+1+1+1); a total possible contract length of 10 years.

3.5. Ongar Business Centre typically accommodates around 25 businesses across 35 units (with some businesses occupying more than one unit) providing around 200 jobs. Based on the typical annual churn rate, over 40 businesses and 340 jobs would be accommodated over the maximum contract duration of 10 years.

3.6. The concession contract will be structured to ensure a balance of risk and reward for the Council, achieved through a priority return from the management contract - where ECC retains the first £63,000 pa (index-linked at CPI) of any surplus each year, plus a share thereafter - rather than through the head lease. This would include supporting prosperity and productivity for Essex residents and businesses.

3.7. The procurement may require the TUPE transfer of the existing Centre Manager (and any other relevant staff at the end of the current contract). ECC will provide staffing information from the incumbent provider to the bidders as part of the procurement process, however responsibility with regards to TUPE and staffing is between the incoming provider and the incumbent provider and has no responsibility with regards to this as it will only facilitate the information as part of the procurement.

3.8. The following process is anticipated for the procurement:

- Advertised on the Contracts Finder portal
- Single-stage tender
- ITT published for at least 30 days, with at least 14 days for clarifications
- Evaluation based on price (60%), quality (40%)– as well as compliance
- Procurement decision made at ITT consensus meeting
- Standstill period of at least 10 days, subject to call-in
- Three-month transition / mobilisation period from contract start date
- Services start date 1 May 2021

3.9. As ECC is seeking to procure a concession contract, evaluation will be based on the following objective criteria that identify an overall economic advantage for the contracting authority:

- Relevant experience and proposed methodology for **maximising rental income** – realising synergies / managing potential conflicts of interest with other relevant centres
- Relevant experience and proposed methodology for **minimising operation and maintenance costs** – realising synergies / managing potential conflicts of interest with other relevant centres
- Relevant experience and proposed methodology for **supporting economic recovery and growth** – without having a material impact on rental income or operation and maintenance costs.
- Relevant experience and proposed methodology for **ensuring high levels of tenant satisfaction** – including arrangements for ensuring business continuity in the event of staff absence

4. Options

Option 1 – Take the management of the Centre back in-house from May 2021 (including TUPE transfer of current Centre Manager)

4.1. This option would see the Council's corporate functions assume responsibilities for the operation and maintenance of the Centre:

- ECC would need to handle tenant deposits, provide accounts payable and receivable services, provide payroll functions for at least two employees, recruit an additional employee to provide holiday and sick cover, and succession planning – and provide pensions and HR support
- ECC would need to manage marketing, contract renewals and maintenance of the Centre.

4.2. The economies of scale, management expertise and procurement flexibilities of the private sector would be unavailable. The Council would be liable for any financial deficit on lettings.

Option 2 (Recommended) – Procurement of standalone concession contract for management of Ongar Business Centre from May 2021

4.3. This option sees ECC let a long-term concession contract for the management of Ongar Business Centre on a commercial basis.

4.4. Early Market Engagement suggests that contractor mobilisation periods may range from two weeks to three months, potentially including a one-month overlap with the current provider. Approval to proceed with this option now will allow the procurement exercise to be prepared well in advance of the contract commencement date to allow for an orderly transition / mobilisation period.

4.5. The Economic Growth team therefore proposes to consider options and propose a forward programme of work for Trade and Investment services separately – and no later than six months prior to end of the LDBG contract extension period to avoid a gap in service.

Option 3 – Procurement of joint service contract for management of Ongar Business Centre alongside other Economic Growth services from May 2021

4.6. Under Rule 11 of the Procurement Policies & Procedures, re-procuring management of the Centre should follow the High-Risk procurement process due to its value and potential TUPE implications for the Centre Manager, requiring adequate time to carry out a fully compliant procurement exercise. Procurement of a joint service contract may result in delays, risking business continuity for the tenants at the Centre.

4.7. Other Economic Growth services lend themselves to a shorter-term service contract from a specialist provider – or provision in-house – rather than a long-term concession contract with a management company.

Option 4 – Disposal of Ongar Business Centre

4.8. Government guidance requires local authority land and property disposals to achieve best consideration, unless the wider benefits of a restricted sale clearly outweigh the impairment. If the property were disposed of on an unrestricted basis, there is no guarantee that it would be retained for office use – or whether any office use would continue to be for SME's. Indeed, valuation advice from LSH in July 2020 suggests that best consideration for the site might be over £3.175m as a care home development opportunity (subject to demand and planning), followed by larger floorplate office use, then residential refurbishment opportunity under Permitted Development Rights.

4.9. Disposal could be on a restricted basis for continued service office use, such as to a public / third sector organisation or specialist serviced office provider. In legal terms, ECC would likely grant a fixed-term lease with restricted use, retaining the option to lift the restrictions and realise additional value later. However, the valuation advice suggests that this could achieve 15% to 55% below best consideration in the short term.

4.10. The commercial property market is experiencing uncertainty due to the Covid-19 pandemic, which may result in a lower capital receipt being achievable compared to before the pandemic.

4.11. The disposal receipt would be capital income, offset by the reduction in asset value on the balance sheet (Depreciated Replacement Cost is more than twice the market value) and any marketing and transaction costs. The revenue income from the concession contract would no longer be available for the Economic Growth team commissioning budget.

4.12. We therefore do not propose to pursue this option currently. Any opportunity to re-provide the business centre provision as part of a mixed-use redevelopment – whilst ensuring business continuity for occupiers – could be explored further in future, potentially in partnership with EFDC.

Conclusion

4.13. Option 2 avoids the significant financial, legal and HR responsibilities and liabilities posed by Option 1. It is achievable, unlike Option 3. It provides better strategic fit and Value for Money than Option 4. It is therefore the Recommended Option.

5. Issues for consideration

5.1. Financial Implications

Option 1

(a) Prior to outsourcing running of Ongar Business Centre, ECC ran the service in house. Since then the Centre has been able to expand following ACL vacating part of the building. The costs and income from running the service prior to outsourcing are shown below. It is anticipated that both income and expenditure would increase from the centre expansion and these are not reflected.

	£'000
Direct Costs	140
Total Income	(203)
Net Income	**(63)**

The net income position shown above is built into the 2021/22 budget.

Option 2

(b) The value to the contract is determined by the income received by Essex CC, and is dependent upon market conditions; however, this is anticipated to be below £2m, which is the threshold for a cabinet member decision (£542,000 for the discounted priority return) during the maximum contract duration of 10 years.

(c) The concession contract for management of Ongar Business Centre from May 2021 will require the contractor to fund operation and maintenance costs from their cash reserves, or debt if necessary. Any surplus would be shared with Essex CC, whilst deficits would be the liability of the contractor.

(d) The first £63,000 pa (index-linked at CPI) of any surplus each year will be returned to Essex CC, with a share thereafter (to be determined through the procurement process) being retained in the Economic Growth team budget for commissioning service delivery. There is currently an income budget of £63,000 and should income received be less than this, the budget available for commissioning service delivery will also be reduced accordingly.

Option 3

(e) A jointly procured service would involve both Ongar Business Centre and other Economic Growth activity. The current contract provides both of these but recent experience has suggested that these are best procured separately as there aren't the necessary synergies. Also, Economic Growth activities lend themselves better to shorter contracts to enable ECC to respond quicker to changes in areas to be focussed on, which has been especially evident during the COVID pandemic. Therefore no financial implications have been quantified as these will come forward in a future decision.

Option 4

(f) The estimated capital receipt valuation following advice from LSH in July 2020 suggests that best consideration for the site might be over £3.175m as a care home development opportunity (subject to demand and planning).

5.2. <u>Legal Implications</u>

5.2.1 The contract is a concession however the value is under the financial threshold of the Concession Contracts Regulations 2016 so the procurement of this contract is not subject to the regulations. It is subject to ECC's procurement rules and the principles of equality, transparency and non-discrimination so, as set out in this report, a single-stage procurement that is open to the market will be undertaken.

5.2.2 A contract will be entered into between the Council and the successful provider that sets out that the provider has the right to use the services/works to recoup its investment and make a commercial return and how the concession fee due to the Council will be calculated. A concession contract should not exceed 5 years unless there is justification for it. As set out in this report, the concession is proposed to be more than 5 years as this is the timeframe that the provider could reasonably be expected to recoup its investment in operating the services.

6. Equality and Diversity implications

6.1. The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

(a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc on the grounds of a protected characteristic unlawful

(b) Advance equality of opportunity between people who share a protected characteristic and those who do not.

(c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

6.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that ‘marriage and civil partnership’ is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

6.3. Having fully considered the equality and diversity implications of this decision, the equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

List of appendices

- Appendix A – Equality Impact Assessment

List of background papers

- None

I approve the above recommendations set out above for the reasons set out in the report. **Mark Carroll, Executive Director for Place and Public Health**	**8 October 2020**

In consultation with:

Stephanie Mitchener on behalf of Nicole Wood, Executive Director for Finance and Technology (S151 Officer)	**7 October 2020**
Susan Moussa, on Behalf of the Monitoring Officer	**10 September 2020**
Councillor Tony Ball, Cabinet Member for Property	**8 October 2020**

Appendix A – Equality Impact Assessment