

Forward Plan reference number: FP/800/09/20

Report title: Land at Hamberts Farm, South Woodham Ferrers – Residential Development	
Report to: Cabinet	
Report author: Councillor Tony Ball - Cabinet Member for Economic Development	
Date: 16 February 2021	For: Decision
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County Divisions affected: South Woodham Ferrers	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of Report

- 1.1 To seek approval to enter into negotiations with Countryside plc to agree an Option Agreement in favour of Essex County Council (ECC) in relation to ECC's Hamberts Farm site. The Option Agreement will set out the process and terms of development of a 116 acre site in South Woodham Ferrers for residential use. The proposals for development also include for the provision of a primary school, healthcare and recreational facilities for the benefit of the wider community together with road improvements, cycleways and footpaths.

2. Recommendations

- 2.1 Agree to enter into negotiation with Countryside PLC based on the Heads of Terms as set out in the confidential appendix in order to finalise the form of an Option Agreement.
- 2.2 Note that a further report will be brought back to Cabinet once there is a recommended final form of option agreement.

3. Summary of Issue

- 3.1 ECC own the freehold title to Hamberts Farm which extends to 116 acres (47 hectares) of land in South Woodham Ferrers (Site), of which approximately 40 acres of land is developable for housing. The Site is shown coloured blue on the plan at Appendix A (Plan). The Site includes three houses and a range of barns

which are currently let on an agricultural tenancy. The Council has not declared the land surplus to its requirements, although it has not been in the business of being a provider of rented agricultural property for many years.

- 3.2 The Site is adjacent to land controlled by Countryside Properties PLC (Countryside). The Countryside land is shown coloured red on the attached Plan. It is also adjacent to land owned by the Speakman Family which is shown coloured purple on the Plan.
- 3.3 ECC has considered bringing forward the Site for development for a number of years and agreed an Option Agreement with Croudace Homes which expired in 2010. Subsequently, Chelmsford City Council indicated that they would consider the allocating the relevant land for residential development. Initial discussions with Countryside commenced in 2016.
- 3.4 In 2018, ECC's property advisors Lambert Smith Hampton (LSH) carried out a market testing process to ascertain the appetite and potential terms for a new Option agreement with a number of larger residential developers and housebuilders including Countryside. The developers and housebuilders consulted are listed in the Confidential Appendix at Appendix B to this report.
- 3.5 After consultation with ECC officers, LSH have provided formal written advice to ECC that exclusive negotiations should be taken forward with Countryside. Heads of Terms for an option agreement were agreed by LSH in consultation with ECC officers to allow detailed negotiation to commence between the parties.
- 3.6 The key benefit of having an Option Agreement with Countryside is that they are also proposing to develop an adjoining site which they control. An agreement with Countryside would achieve:
 - Development of the site by a major developer with a good track record of delivering residential development schemes alongside an adjoining site.
 - Co-development with the adjoining land will mean that ECC can:
 - Agree a way of sharing the risks and benefits of development across landholdings. This arrangement has been detailed in the heads of terms and further set out in the Confidential Appendix to this report at Appendix B.
 - A way to share risk and cost of installing infrastructure which will provide economies of scale and enhance returns
 - The proposals for development also include for the provision of a primary school , healthcare and recreational facilities for the benefit of the wider community together with road improvements, cycleways and footpaths.
- 3.7 Chelmsford City Council formally adopted its Local Plan (Local Plan) at the end of May 2020. The Local Plan references an allocation north of South Woodham Ferrers for “around 1,000 dwellings plus necessary infrastructure” and this allocation includes the Site along with land controlled by Countryside and the Speakman family. South Woodham Ferrers Town Council have consulted on the emerging South Woodham Ferrers neighbourhood plan which also included the

proposed Chelmsford City Council allocation north of the town. The ECC and Countryside housing allocation in the Local Plan would see approximately 800 housing units being built across the combined ECC and Countryside site, with the balance being developed on land owned by the Speakman family.

- 3.8 It is anticipated that an option agreement would see ECC's entire landholding of 116 acres transferred to Countryside, other than the three farmhouses and some farm buildings. While only 40 acres are developable for housing, the remaining land will be used for development site assembly and fulfilling requirements for public open space and other planning agreement matters. There would be no benefit to ECC in transferring the housing development land only as the balance of the site will, at least in the short term, be a liability with ECC unable to derive any future financial return from the holding.
- 3.9 ECC would retain the ability to buy part of the Site from the agreement to allow for development of a social care / independent living facility. This retention of interest will be part of the negotiations for terms of the option agreement. Any development of a social care facility will be at the direction and decision of ECC.
- 3.10 ECC would also look to dispose of the three houses and barns and achieve a capital receipt for these once vacant possession has been obtained. These properties would sit outside of the scope of the option agreement. ECC would be responsible for ending the agricultural tenancy on the Site and would need to accept the risk of difficulties and timing to end the tenancy. ECC would seek to mitigate risks in the terms of the option agreement.
- 3.11 Countryside have already produced and brought forward Master Planning for their land and for the ECC site required by the Chelmsford City Council Local Plan at their own risk. This has been done in consultation and collaboration with ECC and have carried out consultation with key stakeholders and submitted to Chelmsford City Council a site wide master plan. The consultation process has included presentations and feedback to Chelmsford City Council and South Woodham Ferrers Town Council as well as Essex Highways. Key areas raised have included density of residential development, provision of non-residential infrastructure, cycle routes and road / crossing improvements in and around the proposed development site. A revised Masterplan was presented to CCC in January 2021.
- 3.12 Any development of the site will require infrastructure to be constructed on the site. The arrangements and requirements will be discussed and agreed as part of the option agreement with Countryside and will be subject to the conditions set out in a future planning consent. However, the risk and cost will be shared between ECC and Countryside through an equalisation mechanism. Details of this are set out in the Confidential Appendix.
- 3.13 Countryside have prepared a draft Option Agreement for ECC to consider. Essex Legal Services have been engaged to support ECC officers and LSH. Should the recommendation be approved, negotiation will commence on the draft option agreement with Countryside. It is intended that the draft Agreement will be brought to an agreed form as soon as practicably possible. Full details of the final

terms of the Option Agreement, will be brought back to Cabinet for approval. Once the Option Agreement is completed Countryside will look to submit a detailed planning application as soon as practicably possible.

- 3.14 The Council will ensure that the recommendations of the Climate Change Commission are considered and taken account as part of discussion and negotiation with Countryside and reflected in the final terms of the option agreement.

4. Options

- 4.1 A number of different options have been considered for ECC to bring forward development on the site. LSH's advice was to pursue the completion of an Option Agreement with an appropriate developer and the following alternative options were not recommended for adoption:
- 4.2 Option One - Do Nothing - Not recommended - ECC has the option to do nothing and retain the land for its current use and continue to receive the £11,700 per annum income. Given that the ECC land has been included in Chelmsford City's allocation for residential use in the new local plan, this would appear to be an appropriate time to seek to release the value in the site.
- 4.3 Option Two – Not recommended – Place the whole site on the open market for immediate disposal, not under an option agreement. This is a large site and to require an immediate capital receipt rather than taking money as the development progresses is likely to lead to considerably depressed bids as any purchaser will have to take a number of risks as well as finance the cost of purchase until income is received from sales. These bids would be unlikely to satisfy statutory requirements for best value for the disposal of ECC's land. Although this would lead to a short term capital receipt, such a receipt would be most unlikely to represent anything close to the achievable value of the site.
- 4.4 Option Three – Not recommended- Deliver infrastructure to the site and sell development parcels. A very significant level of investment would be required to provide infrastructure to the entirety of ECC's developable land (40 acres). ECC would require additional expertise (either internally or through consultants), and ECC would bear the risk of whether capital receipts exceeded expenditure. ECC would have limited control over the allocation of plots as between its own land and the Countryside and Speakman land and may well find that the number of developable parcels achievable balanced with related infrastructure costs may be reduced, significantly reducing financial returns.
- 4.5 Option Four – not recommended - Enter into a joint venture agreement with another developer in which ECC would form a special purpose vehicle for the development of the site. Although this could see ECC having a greater level of control over the development it would expose ECC to a significantly higher level of risk than a sale of land over an extended period of time to a developer through an Option Agreement and would require a high level of involvement by officers and consultants to input into and monitor such an arrangement. There would be

significant costs involved in setting up and administering a corporate Joint Venture (JV) entity.

- 4.6 Option Five – not recommended - Self develop the site. A significant level of investment would be required. This option has been considered previously by Essex Housing for development by ECC and not pursued. Countryside have a significant head start in terms of their thinking and working with the planning authority, and whilst ECC would absolutely control the design of any scheme there would be every chance that Countryside dominate the allocation of developable plots within the allocation site thereby diminishing potential returns to ECC.
- 4.7 Option Six – Enter into a competition to select a developer to have an option agreement. This would duplicate work done in 2018 to soft market test the land and the advice of valuers at that time led to Countryside being considered most likely to give the best offer. The Head of Property does not believe that there is likely to be any more or better interest in the site than there was in 2018.
- 4.8 Option 7 – Recommended – Enter into negotiations with Countryside for an option Agreement. Key benefits of having an option agreement with Countryside are:
- Synergy with the development of Countryside's adjoining land.
 - A guarantee on the number of houses from which ECC can derive a financial return based on a 50-50 split with Countryside. This is something no other party has been able to offer.
 - Spread of risk in infrastructure costs to bring forward the development.
- 4.9 All options would enable ECC to
- Retain land for the development of a residential care facility should ECC wish to once service infrastructure has been installed (although this could be achieved with .
 - retain ability to dispose of existing farmhouse and two separate houses together with the farm buildings on the site which will all be out with the scope of the Option Agreement.
- 4.10 Further information about the valuation is in the confidential appendix.

5 Next Steps

- 5.1 Negotiate the draft option agreement with Countryside
- 5.2 Obtain a formal opinion from LSH

6 Issues for consideration

6.1 Financial implications

- 6.1.1 Further details are included within the Confidential Appendix.

- 6.1.2 The recommended Option involves entering into negotiations with Countryside to ultimately achieve a significant capital receipt value once ECC's current land holding is developed rather than a) selling ECC's interest now and b) retaining ECC's interest in case of higher future value. The evidence in 3.5 and 3.6 above, with LSH's recommendation, support the recommended Option of entering into negotiation with Countryside as potentially achieving the highest financial return for ECC's land holding
- 6.1.3 The capital receipt would be received in stages as various parcels of land are developed. An early payment, from Countryside, would be payable once the Option is agreed, as detailed in the confidential appendix.
- 6.1.4 The sale of the existing farm buildings is within ECC's gift regardless of which development option is pursued and so is not considered here.
- 6.1.5 There is a current use rental income stream that would be lost as the land is developed. The annual income is £11,700 as detailed above at 4.2 and in the appendix.
- 6.1.6 The final decision would be for Cabinet to consider when the negotiation process has concluded

6.2 Legal implications

- 6.2.1 The Heads of Terms with Countryside that are set out in the Confidential Appendix do not legally commit or bind ECC.
- 6.2.2 ECC have a duty to achieve best value when disposing of assets under s123 Local Government Act 1972. ECC will need to ensure that the final terms of the proposed option agreement with Countryside deliver best value for ECC.
- 6.2.3 Whilst the Public Contracts Regulations 2015 (PCR) do not apply to a straightforward disposal of land, ECC need to consider the application of the PCR in relation to delivery by Countryside for ECC of elements of the development such as public realm and the proposed social care facility. Such works could constitute public work under the PCR. The final terms of the option agreement will need to consider the PCR implications.

7. Equality and Diversity implications

- 7.1 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.

7.2 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).

7.3 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.

8. List of appendices

- Appendix A - Site Plan
- Appendix B – Confidential Appendix
- EQuIA

9. List of Background papers

None