

Cabinet	FP 900/08/12
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Country Parks Review

Report by Cabinet Member for Environment and Culture

Enquiries to Officer Julie Ellis, Ext 20277

1. Purpose of report

- 1.1 This report advises of the intention to advertise the opportunity of taking a commercial lease of Marsh Farm visitor attraction and separately, the opportunity to enter into a service or concession/partnership arrangement for the future operation of Cressing Temple Barns heritage site.

2. Recommendations

- 2.1 Agree to advertise for bids for a commercial lease of Marsh Farm visitor attraction to be run as a family visitor attraction in line with existing user rights.
- 2.2 Delegate authority to the Director of Property and Facilities, in consultation with the Deputy Leader and Cabinet Member for Customer Services, Environment and Culture to negotiate the final terms of the lease.
- 2.3 Agree that the land surrounding the visitor attraction, known as Marsh Farm Country Park, will remain under the management and in the ownership of ECC.
- 2.4 Agree to advertise opportunities for partnership working by way of a service contract or concession at Cressing Temple Barns heritage site.
- 2.5 Agree that the Cressing Temple Barns will remain under the management and in the ownership of ECC.
- 2.6 Agree that grant of the lease or award of any contract will be reported back to Cabinet for approval.

Background

Marsh Farm Visitor attraction and Cressing Temple Barns are two of nine sites in the Essex County Council (ECC) Country Parks estate. They provide different customer services and attractions when compared with the other country parks.

Marsh Farm visitor attraction has about 6 hectares which is visited by in excess of 110,000 visitors per year. The site consists of a small shop and tearoom and outdoor and indoor play areas; as it is a working farm there is a range of agricultural buildings housing pigs, sheep, poultry and cows. There is also specialist livestock including alpacas, llamas, goats, a pet barn and an aviary.

The attraction won the Farm Visitor Attraction of the Year Award 2011 (awarded by the National Farm Attractions Network in Feb 2012).

In 2010/11 ECC substantially invested in the visitor attraction to refresh the presentation of the site and improve the customer experience. This level of investment is needed on an on-going regular basis to provide value for money and to keep up with our competitors.

Cressing Temple Barns is a small scale visitor attraction, welcoming in excess of 47,000 people every year.

The site covers about 10 hectares, including the 11th century barns, walled garden, a conference room and meeting rooms, shop, tearoom and farm house. Cressing Temple is a scheduled monument and the barns are Grade I and II listed buildings.

Cressing Temple has various sources of income including hiring of rooms, "Tudor" event days for schools and public, larger scale events including Car Shows and Food Fairs, along with some private hires for weddings and other functions.

Compared to similar venues this site is not achieving its full potential.

Any proposals for the future management and operation of the site must be handled sensitively in line with the degree of protection the site is under.

The planning position on both sites is that they are "sui generis" which means that planning permission would be required for any other and there are no permitted rights to switch to another use class.

With regard to ownership ECC own the freehold of both sites. They are the subject of restrictive covenants but minor in nature and will not affect the proposals for either site.

Options/Proposals

The project has looked at the following options for each site.

a) Marsh Farm

- a lease option
- a service contract
- concessions

i) Lease option

Under the lease option, a lease of the visitor attraction will be granted to the successful bidder. The lease term is to form part of the negotiations once a successful bidder has been selected and subject to break and rent review clauses including an option to extend if the Council is satisfied that the lease should continue.

The lease will be a full repairing lease containing all the usual landlord and tenant covenants and restrictions. It is important to note that under a lease arrangement the new occupier can operate the site in the way they see fit provided it accords with planning, licensing and other statutory requirements and provided the lease covenants are met. There will be no requirement to retain the site exactly as it is now. The benefits of a lease are that risk is transferred to the new leaseholder. The disadvantage is that the Council relinquishes control over the use of the site other than to the extent provided for in the lease.

If, under this option, it is deemed there is a transfer of a legal entity to the new operator, TUPE will apply. The impact and cost of TUPE transfer will be assessed as part of the evaluation process.

ii) Service Contract

With a service contract, the contract would be advertised by way of OJEU notice and a European procurement exercise would be undertaken in line with European and domestic legislation. Tenders would be evaluated against a set of criteria. A contract would be entered into and the contractor would have to deliver the service against the prescribed specification. The Council would retain control of all aspects of the operation and delivery of the visitor attraction but would also retain all risks. There is a possibility of introducing a of profit share arrangement into the payment mechanism for the contract in order to incentivise the contractor. There would be a TUPE transfer of some staff.

The disadvantage of this is that a service contract would include terms and conditions which may limit the scope of the successful bidder's mode of operation on site and the procurement would lengthen the process meaning that hand over would be longer than that of the lease option. For these reasons this option is not being recommended.

iii) Concession and Partnership Option

A concession is a business operating on another property under a contract, for example a coffee shop or food and beverage operator. A partnership is a contractual agreement between two parties agreeing to undertake a common goal but in this context not a traditional arrangement where profits and losses are shared proportionally. ECC do not wish to be involved in the day to day operation of the site which the concession or partnership option would necessitate and this view has been reinforced through analysis of the soft market testing exercise where there was interest in managing the attraction as a whole. The advantage of a concession or partnership is that ECC would retain some control over the running of the site. However, it is recommended that ECC might prefer to see a single supplier managing the attraction thereby alleviating the need for costly management involvement.

Accordingly, the lease option is the recommended option for Marsh Farm. It is proposed:

- That ECC will proceed to lease Marsh Farm by way of a commercial lease, which will contain appropriate rent review and break clauses.
- The final terms of the lease are to be agreed around Marsh Farm be delegated to the Director of Property and Facilities, in consultation with the Deputy Leader and Cabinet Member for Customer Services, Environment and Culture.
- ECC will retain ownership and operational management of the adjoining Country Park.

b) Cressing Temple Barns

The options are as described above for Marsh farm.

The option to grant a lease will not allow ECC to maintain the level of management and control required in running the site particularly in respect of ECC branding. Unlike Marsh Farm, Cressing Temple is regarded as a viable option for events such as weddings, medieval banquets and Tudor days, particularly relating to education if ECC is able to work with a partner willing to invest capital as required.

The Concession or Service Contract options are favoured on the basis that ECC would prefer to retain some control over operational matters including branding. This view was reinforced through analysis of the soft market testing exercise and will be investigated through the Pre-Qualification Questionnaire process, including consideration of these options via lots or a complete bid.

Due to the diverse nature of the site, including historic barns, the café, gardens and conference centre facilities, it is felt that it might be best to engage a concession for this site but other options can be explored through the EU process. Whichever form of contract is entered into it will contain adequate safeguards for ECC, for example, the ability to terminate the contract due to breach or under performance by the contractor. Soft Market Testing also identified that the market was limited in terms of the delivery of the whole site however there was significant interest by multiple organisations who could deliver one or more individual parts of the service.

The Service or Concession Contract option is recommended for Cressing Temple Barns as it would allow ECC to retain legal ownership of the barns and some control over the management of the site and the type of activities available whilst at the same time providing an opportunity for ECC to develop a partnership with an external operator who would bring in commercial or specialist expertise.

Next Steps

Following Agreement to proceed, ECC will enter into a procurement phase which will include placing a lease advert through ECC agents (Lambert Smith Hampton and Whirledge and Nott) for Marsh Farm visitor attraction and also in a separate stage commence an OJEU (Official Journal of the European Union) procurement process to advertise for a Service or Concession contract for Cressing Temple Barns thus providing a transparent and robust solution

Relevance to ECC's corporate plan and other Strategic Plans

This project supports one of the key priorities of the ECC Vision Statement to improve public health and wellbeing by helping deliver the following outcomes:

- Helping Essex residents to live full and independent lives
- Encouraging healthy and active lifestyles and tackling the wider causes of ill health
- Protecting and enhancing the environment in Essex

Internal and External Consultation

Since the start of the project we have engaged in internal and external consultation through:

- A Scrutiny task and finish group is engaged, Members have visited Marsh Farm, Cressing Temple and Great Notley sites. Councillor Lucas has presented updates to the group.
- Staff engagement; the Country Parks staff have received regular updates and frequent meetings and communication have been provided to staff at Marsh Farm and Cressing Temple. The plan is to provide regular updates through weekly management meetings and monthly staff forums.
- To understand the level of interest and possible engagement in this offer the project undertook a short "Soft Market Test", this was carried out through Lambert Smith Hampton and lasted 6 weeks. The advert received expressions of interest from over 30 companies with a further third providing more details. This confirmed that the project would identify suitable partners.
- The project team includes representatives from several areas in ECC including Property, Legal Services, Human Resources, Procurement, Internal Audit, Finance as well as Internal and External Communications.
- Councillor Lucas has written to South Woodham Town Council, Witham Town Council and local members to highlight plans and seek comment and has met with members of Chelmsford City Council/South Woodham Town Council to discuss plans.

Legal Implications (Monitoring Officer)

Marsh Farm

The basis for the disposal of Marsh Farm is to be by way of a commercial lease. The terms are to be negotiated following the selection of a suitable bidder and will contain appropriate protection for ECC. As it is proposed the lease will be at a full market rent consent of the Secretary of State for a disposal is not required. ECC will comply with its statutory obligations per S123 of the Local Government Act 1972 and amending legislation and guidance.

Consideration will need to be given to assignment of existing contracts for hired plant and machinery as well as the care of existing livestock on the site.

In respect of Marsh Farm Country Park the land is designated as a Public Open Space. It is not entirely clear whether the visitor attraction part of the site would be caught by the requirement to advertise under section 123 of the Local Government Act 1972 but it is recommended that the disposal be advertised under section 123 to reduce the risk of challenge. Before deciding whether to dispose of the site by way of lease the decision maker would need to take into account the responses to any consultation.

Cressing Temple

Cressing Temple will be the subject of an OJEU process enabling ECC to evaluate the technical and business standing of interested providers and to evaluate their proposals for the future operation of the site in accordance with Part A of the Public Contracts Regulations 2006.

Finance and Resources Implications

The costs of this proposal are estimated as follows:

- Professional fees of £58,000
- TUPE actuary estimates of £8,000
- Legal expenses of £46,000
- Total costs £112,000

Based on current forecast outturn estimates, this can be met from within the 2012/13 service budget. There are estimated opportunity costs to be applied to this project totalling £198,000.

The financial data shown in the matrix below reflects the income and expenditure for Marsh Farm and Cressing Temple.

Key financial Data for 2011-12

	Marsh Farm £000	Cressing Temple £000
Gross Income	(1,049)	(236)
Gross Expenditure	1,115	277
Of which, Salary Costs	681	210
Controllable Net Expenditure	66	41
Centrally controlled Expenditure*:		
Essential Building Maintenance	-	55
Asset Charges	24	4
Legionella / Asbestos Surveys		
Net Expenditure (incl. centrally controlled)	90	100

** This excludes IAS19 technical adjustments and holiday pay accruals. Neither does it include any recharges from Strategic Support Services such as Finance, HR, IS and Business Services.*

From this table it can be seen that for 2011-12 Marsh Farm incurred an expenditure of £90,000 and Cressing Temple a figure of £100,000 for 2011-12.

Income Figures for Previous 3 Years

	2008-09 £000	2009-10 £000	2010-11 £000
Marsh Farm	740	719	876
Cressing Temple	237	262	241

Project Benefits

Marsh Farm

It is estimated that the leasing of Marsh Farm could realise an income which will benefit the Country Park service.

Cressing Temple

The 2011/12 net expenditure for Cressing Temple was £100,000. If a partnership is considered, a proportion of staff expense would be saved, estimated at £50,000. In addition, if concessions are agreed, a profit share and/or an annual lease would be considered.

The final agreements and values are not possible to estimate at this time, and will need to consider any staff affected by TUPE. The final figures will inform the final lease/contract decision to be taken.

Risks and Constraints

It is expected that staff will transfer to an alternative employer under TUPE based on initial discussions. In the event that TUPE does not apply, the additional costs of redundancy would need to be considered.

The following constraints have been identified:

- Should no acceptable offers occur, ECC will need to consider other options.
- Liabilities (leases, contracts, and other existing commitments such as wedding bookings) may impact the overall cost and payback.
- For Cressing Temple, bidders may be put off by the lengthy, costly and involved OJEU process.
- Costs and liabilities surrounding the TUPE process may deter bidders
- Service Occupancy Agreements

The lease must include reference to the Service Occupancy Agreements associated with tied houses of four Marsh Farm and one Cressing Temple members of staff. This may deter bidders as they will not wish to have the additional level of management. The right to occupancy of the house will TUPE with the service; therefore the preferred bidder will be required to undertake the management of these houses, but ECC will remain as landlord and retain ownership of the properties.

The preferred bidder may attempt to undertake changes to employees' contracts that impact the Service Occupancy Agreement. To avoid this it is proposed that a clause be placed in the contract to state that any change to the employee contract or the Service Occupancy Agreement must be passed through the legal representatives of ECC before any agreement is reached.

Human Resources Implications

The Human Resources team associated with this project have provided a timeline for TUPE of staff attached to Marsh Farm visitor attraction and Cressing Temple. Pension costs have been identified for both sites; these will be supplied to inform any interested supplier of the expected costs involved. This includes a requirement of the preferred bidder to lodge a pension bond to cover future pension entitlements. If the supplier becomes an admission body then the initial on-going contribution rate to be paid by the new employer is 20.8% of payroll for a closed agreement.

Several staff at the sites benefit from tied houses through a service occupancy agreement; this has been discussed with property and legal representatives and form part of the negotiations with the successful bidder.

Staff will be consulted in line with legal requirements and good practice in relation to the proposed transfer and their response to consultation will be taken into account in the decision making process.

Equality Impact Assessment

The Equality Impact Assessment has been completed and is held by the appropriate department within Environment Sustainability and Highways as well as with the Diversity and Equality team. Although the service already meets the needs of the equality strands positive actions have already been undertaken taken to address possible inequality including changes to accessibility and concessionary arrangements.

Background papers;

1. Soft Market Test Briefing Pack
2. Equality Impact Assessment