

Forward Plan reference number: FP/313/02/22

Report title: Acquisition and disposal of land at Knowles Farm, Maldon	
Report to: Councillor Kevin Bentley – Leader of the Council	
Report author: Paul Crick - Director for Performance, Investment and Delivery, Place and Public Health	
Date: 28 February 2022	For: Decision
Enquiries to: Andrew Stirling, Head of Property: andrew.stirling@essex.gov.uk / Alistair Carter, Property Manager: alistair.carter@essex.gov.uk	
County Divisions affected: Maldon	

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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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

- 1.1 The proposed acquisition of land at Knowles Farm reflects the Everyone's Essex objectives with particular reference to the Strong, Inclusive and Sustainable Economy and Health and Wellbeing themes. The subsequent use and development of this land will enable the provision of highways infrastructure to serve 300 new housing units together with new employment, health and community sites.
- 1.2 The land allocated for health and community use may enable the provision of NHS services together with opportunities for a care home or independent living development and local facilities to support community well-being.
- 1.3 The future sale of the residential land will provide a capital receipt for the Council to reinvest in the Capital Programme which funds projects delivering outcomes across all the Everyone's Essex themes. Further capital receipts or revenue may be realisable from the future release of the employment, health and community land following completion of infrastructure.
- 1.4 The future development of the land at Knowles Farm will reflect national and local policies and obligations in respect of climate change, sustainable development and transport.

2 Recommendations

- 2.1 Agree to serve the Option Notice on the owner of land at Knowles Farm, Maldon in accordance with the terms of an Agreement dated 14th September 2002

between the Council and Angus William Bates and Alicia Charmain Bates (as varied by a Supplemental Agreement dated 3rd November 2003, a further Deed of Variation dated 8th May 2009 and a further Deed of Variation dated 23rd December 2014).

- 2.2 Agree that the Executive Director, Corporate Services is authorised to agree the price payable to Mr and Mrs Bates for such land or to refer the purchase price for determination if such price cannot be agreed on mutually agreeable terms between the Council, Mr and Mrs Bates and Dartmouth Park Estates Limited.
- 2.3 Agree that the Head of Property, on receipt of advice from Essex Legal Services, is authorised to agree the terms of the transfer of the Knowles Farm Land (as defined in paragraph 3.3 of this Report) in whole or in part to the Council including a deed of release of restrictive covenants.
- 2.4 Agree to retain the land at Knowles Farm allocated for community use and/or employment use subject to the Executive Director, Corporate Services considering it best value to do so.
- 2.5 Agree that the Head of Property, on receipt of advice from Essex Legal Services, is authorised to agree the terms of a variation to the Promotion Agreement in place between the Council and Dartmouth Park Estates Limited if required to facilitate the retention of the community use land and/or the employment land by the Council and/or such other changes that might be required to facilitate a sale of the residential land to a developer.
- 2.6 Agree that the Cabinet Member for Economic Renewal, Infrastructure and Planning is authorised to agree the terms of any conditional sale (including overage agreements and transfer documentation) with Dartmouth Park Estates Limited and/or the end developer/purchaser for the Knowles Farm Land in whole or in part.

3 Background and Proposal

Background

- 3.1 The Council sold land at Knowles Farm (the “Knowles Farm Land”) in 2002 to Mr and Mrs Bates with an option to repurchase some or all of the land if the land was allocated in the local plan for uses other than agriculture. The extent of the land sold is identified in a plan attached to the Sale Agreement that was entered into in 2002 (the “Sale Agreement”) and the extent of land was slightly varied pursuant to a Supplemental Agreement dated 3rd November 2003. The option period is valid for a period of 21 years until 14 May 2023.
- 3.2 In 2007, the Council appointed Dartmouth Park Estates (“DPE”) to promote the Knowles Farm Land for development. As part of this Promotion and Acquisition Agreement, which was varied on 23rd December 2014, (the “Promotion Agreement”), DPE were obliged to submit a planning application for the land to Maldon District Council. The planning application was submitted in December

2015 and has been approved, subject to the completion of a section 106 Agreement relating to various aspects including education, health, affordable housing, a new South Maldon Relief Road and land transfer.

3.3 The Knowles Farm Land is made up of 3 different parts as identified in the plan appended to this Report (the “Plan”):

- the ‘Residential Land’ comprising the parts of the Knowles Farm Land expected to be consented for residential development and shown edged red on the Plan;
- the ‘Employment Land’ being the land allocated in the local plan for commercial use which is contiguous with land currently owned by Mr and Mrs Bates and shown edged blue and marked “employment area” on the Plan; and
- the ‘Community Use Land’ being the land allocated for community use in the Local Plan and shown edged blue and marked “community use land area” on the Plan.

Mr and Mrs Bates have the option to retain the Employment Land should they choose to do so.

3.4 Under the terms of the Promotion Agreement, DPE can direct that the Knowles Farm Land is sold to a developer and DPE have the right to exercise an option to purchase it.

3.5 The Promotion Agreement enables DPE to direct the Council to serve an option notice on Mr and Mrs Bates to trigger the buy-back of the Knowles Farm Land under the Sale Agreement (the “Option Notice”). The Promotion Agreement also allows DPE to serve a ‘Sales Notice’ which triggers the requirement for the land to then be sold to a nominated party (most likely a developer). There is also provision for DPE to fund the acquisition of the Knowles Farm Land from Mr and Mrs Bates once an Option Notice has been served.

3.6 In consideration for the services carried out under the Promotion Agreement, DPE are entitled to the payment of their promotion costs and a ‘Promoter’s Fee’.

3.7 It has generally been the intention of the Council and DPE that the buy-back of the Knowles Farm Land from Mr and Mrs Bates and any onward sale would happen on a back-to-back arrangement with the cost of the Knowles Farm Land, and the Promoter’s Fee and costs, being paid out of the proceeds of the onward sale of the land. Tax advice has been provided and it is understood that Stamp Duty Land Tax Relief can be obtained for that part of the purchase price payable to Mr and Mrs Bates that is sold on provided that the transfers are simultaneous.

3.8 It is the intention for the Council to opt to tax the land prior to completion of the Council’s purchase as VAT is required to be paid on the Promotion Fee.

Option Notice

3.9 The direction notice was served on the Council by DPE on 31 January 2022 thereby requiring the Council to serve the Option Notice on Mr and Mrs Bates.

- 3.10 In accordance with the terms of the Promotion Agreement, the Council must serve the Option Notice on Mr and Mrs Bates. A non-legally binding Memorandum of Understanding is in place between the Council and DPE and this requires the Option Notice to be served no later than 20 working days from the date of service of the direction notice which means that the notice should be served by 28 February 2022. Whilst this deadline is set out in a non-legally binding Memorandum of Understanding ("MoU"), the Option Notice should be served within a reasonable time period and therefore as close to this date as possible. The Council has requested a small extension to this deadline with DPE.

Purchase Price

- 3.11 Once the Option Notice has been served, the Promotion Agreement envisages that there will be negotiations in respect of the price that will be payable to Mr and Mrs Bates for the Knowles Farm Land (the "Purchase Price"). The Purchase Price is determined by a formula set out in the Sale Agreement.
- 3.12 The Promotion Agreement and the MoU both envisage DPE progressing negotiations over the Purchase Price with Mr and Mrs Bates directly, as the Council's agent. Whilst the documentation provides for negotiations to progress in that way, Mr and Mrs Bates are under no compulsion to negotiate with DPE and, as it is the Council that are party to the Sale Agreement, it is likely that the Council will have to lead those negotiations.
- 3.13 At the current time, the Purchase Price has not been agreed. Details of this are set out in the Confidential Appendix.
- 3.14 If the negotiations between DPE and Mr and Mrs Bates and/or the Council and Mr and Mrs Bates do not lead to the Purchase Price being agreed within a period of two months, the matter may be referred to arbitration in accordance with the Sale Agreement. Whilst the documentation provides for such matter to be determined by referral to arbitration, it is open to the Council (in consultation with DPE) and in agreement with Mr and Mrs Bates to agree a different dispute resolution mechanism such as mediation or expert determination. It is of course possible that Mr and Mrs Bates refer such matter to arbitration during this period in which case the Council will have to respond. It is proposed that agreement of the Purchase Price, or, alternatively, any decision by the Council to refer the matter for dispute resolution is delegated to the Executive Director, Corporate Services to determine at the appropriate time.

Onward Sale of the Land

- 3.15 The Promotion Agreement gives DPE the right to serve notice on the Council to sell the Knowles Farm Land to a nominated party or for DPE to exercise an option to buy back the Knowles Farm Land. Details of this are set out in the Confidential Appendix.
- 3.16 It is proposed that the Council retain ownership of the Community Land and the Employment Land for community or residential care use if the Employment Land is not retained by Mr and Mrs Bates and/or this land does not form part of the

sale to a developer or is acquired by DPE. Retention of this land by the Council is subject to understanding the value of this land and its impact on the wider transactions including any conditional sale to a developer. The value of this land remains to be agreed with DPE as part of any confirmation of the overall land value and determination of the Purchase Price. It is proposed that this land is retained by the Council subject to the Executive Director, Corporate Services agreeing that it is best value to do so.

Next Steps

3.17 Following service of the Option Notice, it will be necessary for:

- the Council and DPE to agree how best to progress the purchase of the land from Mr and Mrs Bates and agree the Purchase Price. The Purchase Price needs to be agreed within two months of service of the Option Notice with completion of the land transfer being no later than six months after service of the Option Notice;
- changes to the Promotion Agreement (as amended) may be required to facilitate the future transactions including retention of the Employment Land and/or the Community Use Land by the Council. It is proposed that the Head of Property, on receipt of advice from Essex Legal Services, is authorised to agree the terms of a variation to the Promotion Agreement to facilitate this and/or such other changes that might be required to facilitate a sale of the residential land to a developer;
- the Council and DPE to work up detailed proposals for the subsequent sale of all or part of the Knowles Farm Land. The potential options for progressing these transactions are set out in the Confidential Appendix; and
- the Council to take a decision on the potential sale of all or part of the Knowles Farm Land once the detailed proposals have been worked up. It is proposed that the Cabinet Member for Economic Renewal, Infrastructure and Planning is authorised to agree the terms of any conditional sale (including overage agreements and transfer documentation) with DPE and/or the end developer/purchaser for the Knowles Farm Land in whole or in part once a recommended option is available.

4 Links to our Strategic Ambitions

4.1 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

- 4.2 The Knowles Farm site will in due course provide housing employment, health and community facilities and transport infrastructure. The release of the land with consent for housing will provide additional housing for Maldon. The employment and health and community sites will provide jobs and local facilities to support the resilience and wellbeing of residents of Maldon and the local area.
- 4.3 The acquisition of this land will facilitate the construction of the South Maldon Relief Road, which forms part of the transport infrastructure strategy and enables the future growth of Maldon. The opportunity exists to provide a high quality environment through national and local policies and obligations, either by way of the planning process or other statutory requirements.

5 Options

5.1 Option 1 – Do not serve the Option Notice and do not make the recommendations set out in this report

This option is not recommended.

The Promotion Agreement that is in place between the Council and DPE creates the intention of an obligation to serve an Option Notice if the Council receive a written direction from DPE which is reasonable. If the Option Notice is not served, DPE could bring a claim for specific enforcement seeking an order that the Council serve the Option Notice which may have cost consequences for the Council. This would create risk in terms of legal action and uncertainty to the delivery of the housing, employment, community facilities and transport infrastructure by delaying the acquisition process.

5.2 Serve the Option Notice and make the recommendations set out in this report – recommended option

This option is recommended.

The Promotion Agreement that is in place between the Council and DPE creates an obligation to serve an Option Notice if the Council receive a written direction from DPE which is reasonable. The Option Notice should therefore be served in order to comply with the terms of the Promotion Agreement.

There are however a number of outstanding matters in relation to the Purchase Price payable to Mr and Mrs Bates for all or part of the Knowles Farm Land and the potential onward sale of all or part of the land to a developer or DPE. It is possible that, if the Council, DPE and Mr and Mrs Bates cannot agree the Purchase Price, the matter may need to be referred for dispute resolution. It is not possible to confirm the Purchase Price or whether the matter should be referred for determination at this stage and therefore it is proposed that such decision, is agreed by the Executive Director, Corporate Services when further information is available.

The service of the Option Notice is an incremental step in acquiring the land. It is proposed that the Cabinet Member for Economic Renewal, Infrastructure and Planning is authorised to agree any conditional sale of all or part of the Knowles Farm Land to facilitate a capital receipt.

6 Issues for consideration

6.1 Financial implications

- 6.1.1 The direction notice received by ECC on 31 January 2022 under the Promotion Agreement between ECC and DPE requires the Council to serve an Option Notice on the current landowners (Mr and Mrs Bates) to trigger the buy back of the Knowles Farm Land.
- 6.1.2 At the current time, the Purchase Price for the land has not been agreed and this will need to be negotiated after the Option Notice has been served. If no price is agreed within a period of two months, the matter is likely to be referred to arbitration.
- 6.1.3 Following the service of the Option Notice, ECC will have a number of options as to how to progress the purchase of Knowles Farm Land and any subsequent sale. These options are set out in the Confidential Appendix.
- 6.1.4 A section 106 agreement will need to be completed in order to obtain planning permission. The section 106 agreement will not be completed prior to the service of the Option Notice and the Purchase Price therefore could be calculated on the basis that the land has been allocated for development in the statutory local plan, as opposed to being calculated on the basis that it has the benefit of planning permission.
- 6.1.5 The Promotion Agreement entitles DPE to the payment of promoter's costs plus a 'Promoter's Fee'. This is set out in the Confidential Appendix, however the amount of the Promoter's Fee cannot be determined until the sales price has been agreed.
- 6.1.6 It has generally been the intention of the Council and DPE that the buy-back of the Knowles Farm Land from Mr and Mrs Bates and any onward sale would happen on a back-to-back arrangement with the cost of the Knowles Farm Land, and the Promoter's Fee payable to DPE, being paid out of the proceeds of the onward sale of the land. It is understood that Stamp Duty Land Tax Relief can be obtained for that part of the purchase price payable to Mr and Mrs Bates that is sold on provided that the transfers are simultaneous.
- 6.1.7 Should it not be possible to enter into a back to back arrangement for the purchase and sale of the land, ECC would have to purchase the land from Mr and Mrs Bates and hold it until a future sale can be agreed although it is anticipated that DPE would exercise their option to purchase the land in this scenario. The cost of purchasing the land from Mr and Mrs Bates will be funded from the overall sales receipt from these transactions.

6.2 Legal implications

- 6.2.1 In accordance with the terms of the Promotion Agreement that is in place between the Council and DPE, the Council must serve the Option Notice on Mr and Mrs Bates to exercise the option to purchase the Bates Land. Whilst the deadline to serve the Option Notice within 20 business days of receipt of the Direction Notice is a deadline set out in a non-legally binding MOU between the parties, it is recommended that the Option Notice is served within a reasonable period and therefore as close to the 20-day period as possible unless agreed otherwise with DPE.
- 6.2.2 Given that the Purchase Price is not yet determined, it is likely that either the Council will need to refer such matter for determination or Mr and Mrs Bates will refer such matter to determination. The Sale Agreement provides that any disagreement will be determined by referring the matter to arbitration, but it is open to the parties to agree an alternative dispute resolution procedure such as expert determination or mediation. If Mr and Mrs Bates refer the matter to arbitration, the Council will need to respond.
- 6.2.3 There are a number of options relating to the onward sale of the land which are also dependent on the exercise, or not, of contractual rights of DPE. These are set out in the Confidential Appendix.
- 6.2.4 Once the Option Notice has been served, the Council will need to liaise with DPE to agree next steps. This will need to happen quickly as the Sale Agreement provides that completion should take place no later than six months after service of the Option Notice or determination of the Purchase Price (whichever is later). In order to determine how to proceed, the Council will need to consider whether a simultaneous sale can be agreed, how the Knowles Farm Price will be determined, calculation of anticipated receipts and the form of the suite of documents required in connection with the purchase from Mr and Mrs Bates and onward sale to include any ancillary documents.
- 6.2.5 The Council has a duty to achieve best value when disposing of assets under s123 of the Local Government Act 1972. The Council will need to ensure that any conditional sale delivers best value for the Council.

7 Equality and Diversity Considerations

- 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

8.1 Equality Impact Assessment

8.2 Plan of Knowles Farm Land

8.3 Confidential Appendix

9 List of Background papers

9.1 None declared.

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Kevin Bentley, Leader of the Council	9.3.22

In consultation with:

Role	Date
Councillor Lesley Wagland OBE, Cabinet Member for Economic Renewal, Infrastructure and Planning	9.3.22
Executive Director, Corporate Services (S151 Officer) Nicole Wood	4.3.22
Director, Legal and Assurance (Monitoring Officer) Katie Bray on behalf of Paul Turner	2.3.22

