

Forward Plan reference number: FP/476/08/22

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| Report title: Option Agreement for land at Warren and Parker's Farm, Little Canfield | |
| Report to: Cabinet | |
| Report author: Councillor Chris Whitbread, Cabinet Member for Finance, Resources and Corporate Affairs | |
| Date: 17 January 2023 | For: Decision |
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| County Divisions affected: Dunmow | |

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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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 Everyone's Essex states the Council's ambition to deliver better outcomes for Essex residents including infrastructure which supports local economies to grow and thrive and residents to access work, school and leisure opportunities and have healthy places to live and grow.
- 1.2 Supporting local communities includes interventions that we can make to encourage growth in our county by using our own assets to create added value and the optimum conditions for development and growth. This decision proposes that we maximise the potential for income from land which ECC owns to create a capital receipt for reinvestment into services we deliver to residents.
- 1.3 The proposed grant of an option over land at Warren and Parker's Farm, Little Canfield, supports the 'Strong Inclusive and Sustainable Economy' and 'High-Quality Environment' outcomes from Everyone's Essex by allowing the local community to grow in a sustainable way where infrastructure supports healthy communities and the local economy.
- 1.4 In the event that the option is exercised, the future sale of the land with the benefit of planning permission will provide a capital receipt for the Council. This will support the Capital Programme funding for projects which will continue to deliver improved outcomes for the residents of Essex.
- 1.5 The future development of this land will reflect national and local policies including, for example, the commitments that ECC has made in response to the Essex Climate Action Commission, developing assets across Essex in a way

which supports our ambitions to be carbon neutral by 2030.

- 1.6 In the absence of a five-year supply of housing land in Uttlesford and with the emerging Local Plan now expected to be published in the summer of 2023, there is an opportunity for landowners and developers to promote sites, such as this, through the Local Plan to contribute to future housing needs.
- 1.7 As the site is located on the existing settlement boundaries there is considered to be strong potential for sustainable residential development and for ECC to collaborate with the proposed option holder to deliver a scheme which meets the ECC's wider environmental and transport objectives. The latter include local pedestrian and cycling links and existing public bus transport connectivity.

2 Recommendations

- 2.1 Agree the Council should enter into an option agreement with Hill Residential Ltd for the disposal of its interest in the land at Little Canfield shown outlined red on the plan at Appendix 1.
- 2.2 Agree that the Head of Property is authorised to agree the terms of the option agreement after taking advice from the Council's property advisor and the Monitoring Officer.

3 Background and Proposal

- 3.1 The site is located at Warren and Parker's Farm, north of the Stortford Road and lies to the east & northeast of a modern residential estate known as Priors Green. The site is formed of three principal land parcels and extends to 31.74 ha (78.45 acres) as shown on the plan in Appendix 1 (the "ECC Land"). Warren and Parker's Farm is currently let on a Farm Business Tenancy.
- 3.2 The site is well serviced by several access points which include: Stortford Road – notably the former haul road Bellmouth to the Priors Green development remains at this point. Jacks Lane runs through the site and provides access on foot to a local centre including shops and a primary school in the adjacent Priors Green development.
- 3.3 ECC has considered bringing forward the site for a number of years and previously agreed an Option Agreement with Countryside Properties PLC. This agreement expired in 2018 without a draft allocation having been secured through the previous emerging Local Plan.
- 3.4 In 2021, ECC's property advisors Lambert Smith Hampton (LSH) carried out a market testing process to determine the appetite and potential terms for a new Option Agreement. Nine offers were received, and five developers were short listed based upon their track record, financial standing and the financial offer made.

- 3.5 Following evaluation of the proposals by LSH and ECC officers, LSH have formally recommended that negotiations should be progressed with Hill Residential Ltd (the "Buyer"). Initial Heads of Terms for an Option Agreement were agreed by LSH in consultation with ECC officers and allow for detailed negotiations to commence between the parties.
- 3.6 It is proposed that the Council enters into an Option Agreement with the Buyer. The terms of the Option Agreement will require the Buyer to use reasonable endeavours to obtain the full inclusion of the ECC Land in any application for residential development purposes, to obtain a viable planning permission and to enter any relevant s106 agreement and any other necessary agreements required by the local planning authority or other statutory bodies. All promotion, design and planning costs will be met by the Buyer, such costs to be an approved deductible in the calculation of the Purchase Price.
- 3.7 The Option Agreement will enable the Buyer to acquire the entirety of the ECC Land once a satisfactory planning permission for redevelopment has been obtained by the Buyer in relation to the ECC Land. The Buyer can acquire the land from ECC in tranches. Depending on the final quantum of land consented for residential development, the Buyer may acquire the land in tranches to enable the phasing of any development.
- 3.8 The term of the proposed option is seven years, extendable by the Buyer for a further seven years on payment of an additional premium as set out in the Confidential Appendix.
- 3.9 The Option will not be assignable or transferable to a third party, with the exception of a company within the Hill Group.
- 3.10 The details of the Purchase Price and method of calculating any additional payments due to ECC are set out in the Confidential Appendix.
- 3.11 Uttlesford District Council (UDC) are preparing a new Local Plan for their District. ECC has informally reviewed a range of spatial options presented by UDC so that UDC can identify "preferred options for growth". UDC have yet to agree a "preferred option" for growth locations. ECC will work with UDC officers to progress their Local Plan and assess options once UDC agrees their preferred approach.
- 3.12 On 13 September Uttlesford DC announced that the local plan preparation timetable had been revised with the publication of the consultation draft Local Plan planned for Summer of 2023. UDC agreed a revised a Local Development Scheme timetable at their Cabinet meeting on 20 October 2022. The Draft Plan, evidence and spatial options are under further review and the next round of consultation is expected to take place after the local elections in May 2023.
- 3.13 There is a desire to see part of the site being developed to enhance the provision locally for people with a learning disability and also to ensure that the development has a low carbon impact. However, the development is likely to take place so far into the future that we cannot be certain of what will be required

by the time development takes place and it is proposed to see the delivery of this being controlled via the local planning process. No specific requirements were included when the site was marketed.

4 Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision:

- Enjoy life into old age
- Strengthen communities through participation
- Develop our County sustainably
- Share prosperity with everyone

4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- The creation of an environmentally friendly and sustainable development providing to the wellbeing and enjoyment of all users.
- Hill Residential Ltd have been clear in their commitment to both improvements in biodiversity and achieving Net Zero compatible homes by 2030 in their submission for this site. The former will be drawn out through the Masterplanning process to significantly enhance the existing biodiversity on the site. Both of these are evidenced through their development, in conjunction with the University of Cambridge, at Knights Park, Eddington. In order to achieve their Net Zero 'carbon ready' homes objective they propose targeting a 75 to 80% improvement over existing building regulations and achieving this through a 'fabric first' approach linked to use of air source heat pumps and Photovoltaic and battery technologies.

4.3 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

5 Options

5.1 Option 1 – Enter into the Option Agreement

This option is the recommended option.

There are no viable alternative service uses that ECC has identified for the ECC land. Leaving the ECC land vacant creates a management and maintenance liability to ECC, with a potential risk of fly tipping, unlawful trespass, or contamination by a third party although it should be noted that this risk will need

to be managed until the proposed option is exercised.

The proposed consideration for the sale is reflective of a site with the benefit of the necessary planning permissions and will result in a capital receipt for ECC.

5.2 Option 2 – ECC undertake the promotion and obtain planning permission

The option for ECC to undertake the promotion and obtain planning permission for development of the site would see ECC whether directly or through its housing delivery vehicle, Essex Housing LLP, holding the cost and delivery risks as against the preferred option to transfer that risk to a third party through the Option Agreement.

The estimated costs of promotion, appearing at the Local Plan Inquiry and subsequently obtaining planning permission are estimated between £1m and £1.5m for a strategic site of this size and nature.

If successful, those costs would be offset against any capital receipts that ECC secured for the subsequent disposal for all or part of the land. However, if unsuccessful, those costs would be irrecoverable in the event that the site is not allocated for development and planning permission not obtained.

In the preferred option the promotion and planning costs would be deducted from the value of land to be acquired by the Option holder but if they were not successful those costs would be borne by the Option holder and are a commercial risk on their part.

This option is not recommended on the basis of the financial risk to ECC.

5.3 Option 3 - Continue to let the ECC Land for agricultural purposes

This option is to continue to let the ECC Land for agricultural purposes and generate an annual income of £8,500, subject to periodic rent reviews.

This option would likely result in a small annual income for ECC which would not be as attractive to ECC as a substantial capital receipt.

This option is not recommended.

5.4 Option 4 – Bring the ECC Land back into use for ECC purposes

There is no identified ECC service that is currently considered appropriate to operate from Warren and Parker's Farm.

Holding the land indefinitely until such time as an ECC service might be identified is not without the risk of incursion and does not represent value for money.

Leaving the ECC land vacant creates a management and possible maintenance liability to ECC, with a potential risk of fly tipping, unlawful trespass, or contamination by a third party although this risk will need to be managed for a

period of time with the proposed option.

This option is not recommended.

5.5 Option 5 – Market the ECC Land for disposal now

This option involves openly marketing the ECC Land for any purpose, seeking unconditional offers. This is a large site and to require an immediate capital receipt rather than taking the monies 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 an income is received from disposals.

This option is not recommended.

5.6 Option 6 - Commercial Development

Deliver infrastructure to the site and sell development parcels.

A very significant level of additional investment, beyond that already required to promote the site for development and obtain planning approval would be required to provide infrastructure to the entirety of the developable areas and would require additional expertise. Besides the risks outlined in Option 2 above, ECC would bear the additional delivery and cost risks of the infrastructure and whether the capital receipts exceeded the expenditure.

This option is not recommended.

6 Issues for consideration

6.1 Financial implications

6.1.1 The recommended Option involves entering into negotiations with Hill Residential to ultimately achieve a significant capital receipt once planning consent for residential development on ECC's current land holding at both Warren & Parker's Farm is obtained, rather than selling ECC's interest now or retaining ECC's interest in case of some higher future value.

6.1.2 The details of the purchase price and method of calculating any additional payment due to ECC are set out in the Confidential Appendix. All promotion, design and planning costs would be borne by the purchaser.

6.1.3 Proceeds from the future sale of the site would be used to contribute towards the funding of ECC's Capital Programme.

6.2 Legal implications

6.2.1 The proposed heads of terms for the Option Agreement with the Buyer, the details of which are set out in the Confidential Appendix, will legally commit ECC

into a long-term relationship with the Buyer. ECC will be prevented from dealing with the ECC Land during the seven plus seven year option period and there is no guarantee that the option will be exercised. This will tie up the land for a long time in the future and the value we obtain will largely depend on the quality of the drafting and the ability we have at the time to assert our rights with the developer to get a good price.

6.2.2 The Council has a duty to achieve the best consideration reasonably obtainable when disposing of assets under s123 of the Local Government Act 1972. The Council will need to ensure that the grant of any option represents the best consideration reasonably obtainable.

6.2.3 The formula for agreeing the purchase price should be clear to prevent potential disputes in the future.

6.2.4 If the land is acquired in tranches, ECC should ensure that it is only obliged to enter into a Section 106 Agreement as landowner if there is an indemnity from the Buyer.

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, sex, 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 Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 Appendices

8.1 Appendix 1 – Plan of land at Warren and Parker's Farm

8.2 Appendix 2 - Confidential Appendix

8.3 Appendix 3 - Equalities Comprehensive Impact Assessment

9 Background Papers

None