

A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

Cabinet Member for Jobs, Regeneration and Climate Change

20 December 2023

Name of Cabinet Member:

Cabinet Member for Jobs, Regeneration and Climate Change – Councillor J O’Boyle

Director approving submission of the report:

Director of Property Services and Development

Ward(s) affected:

Henley

Title:

Disposal of Land at Deedmore Road Required for Access to Facilitate the Delivery of Affordable Housing

Is this a key decision?

No

Executive summary:

The Moat House Community Trust (MHCT) own the freehold of a 1.39-acre site off Deedmore Road which was transferred to them in 2017. Their interest is outlined in red on the plan within Appendix 1 (“the Land”).

In March 2022, MHCT secured planning permission for a 100% affordable development scheme consisting of 21 dwellings, with the intention of delivering the housing themselves as part of a Community Housing Trust. It is binding under the Section 106 agreement that the Land must be developed as rented affordable housing.

Due to increased development risk, particularly regarding the cost of finance and current build cost inflationary pressures, MHCT made the decision to sell off the Land with the benefit of the planning permission.

Terms for a disposal to Keon Homes have been agreed by MHCT. Keon Homes, in turn, have an agreement with registered provider Citizen Housing to construct the affordable homes on a turnkey basis in return for a contract price.

During legal due diligence undertaken by Keon Homes they identified the land required to access the development site was not owned by MHCT. The land required for access is owned by the Council, as outlined in green within Appendix 1 of your report ("the Council's Access Land").

MHCT have approached the Council to seek agreement for the Council to transfer the Council's Access Land to Keon Homes so the housing development can be undertaken.

Pursuant to Section 123 of the Local Government Act 1972 the Council is required to obtain best consideration for the disposal of its assets and has taken independent external advice on the value attributable to the land. MHCT is asking the Council to forgo its capital receipt as this would reduce the MHCT's receipt for the sale of the Land to Keon Homes.

MHCT are seeking to use the proceeds of the sale of the Land to support their community activities which would include the further purchases of local residential properties to add to the number of existing houses they can let out as social rented affordable homes.

The social and economic benefits of promoting the scheme include:

- Delivery of much needed affordable homes.
- Promotes further regeneration of the area.
- The proposed development will enhance the existing community facilities in the area and encourage further investment in the area.

Recommendations:

The Cabinet Member for Jobs, Regeneration and Climate Change is recommended to:

1. Approve the transfer of the Council's Access Land (identified in Appendix 1) which is required to facilitate access for the development of the 100% affordable housing scheme at a nil consideration to Keon Homes upon completion of their purchase of the Land from MHCT, conditional upon the simultaneous onward sale to Citizen Housing. Such purchase being conditional on the delivery of the Land for the 100% consented affordable homes scheme and MHCT's future purchase of affordable homes.
2. Delegate authority to the Director of Property Services & Development, following consultation with the Chief Operating Officer (S151 Officer) and the Chief Legal Officer, to negotiate and finalise the terms, to undertake the necessary due diligence and complete all necessary legal documentation to facilitate the completion of the transaction and to ensure that the financial benefits forgone by the Council are applied to the purchase of property by MHCT and that the said properties are let on social rents.
3. Delegate authority to the Director of Property Services & Development, following consultation with the Cabinet Members for Jobs, Regeneration and Climate Change and the Cabinet Member for Strategic Finance and Resources, for any subsequent variation in terms.

List of Appendices included:

The following appendices are attached to the report:

Appendix 1: Site plan illustrating the freehold title areas relating to the Council and MHCT land ownership.

Appendix 2: A site layout showing the consented housing scheme.

Background papers:

N/A

Other useful documents

N/A

Has it or will it be considered by Scrutiny?

No

Has it or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Disposal of Land at Deedmore Road Required for Access to Facilitate the Delivery of Affordable Housing

1. Context (or background)

- 1.1 The Land lies off Deedmore Road in the Wood End area of Coventry to the northeast of the city centre, south of the M6 motorway and to the east of Hinckley Road. The land is on the east side of the Road adjacent to St. Patrick's Church and Primary School.
- 1.2 The Council, which originally owned the Land, sold the Land to Birmingham RC Archdiocese for a community centre and site services officer accommodation, a proposal which was later abandoned.
- 1.3 Subsequently, the Land was identified as a site suitable for a new youth, community & enterprise centre. The Council, with New Deal for Communities (NDC) funding, purchased the Land which was transferred to MHCT on 9 November 2017. Due to viability issues, the proposed revised development proposal also did not proceed.
- 1.4 MHCT consequently secured planning permission for 21 affordable homes in 2022 for a mixture of 2-, 3- and 4-bedroom houses.
- 1.5 The Land is being sold with the benefit of a full planning permission for 100% affordable dwellings, with the Section 106 agreement stipulating that the homes are affordable in nature.
- 1.6 MHCT have since made the decision to dispose of the Land due to the development risk and they have an agreement in place to sell the Land to Keon Homes who will develop the Land on turnkey basis for Citizen Housing.
- 1.7 The deal structure is as follows:-
 - Keon Homes will exchange contracts with MHCT simultaneously with Citizen Housing and Keon Homes will acquire the Land.
 - On completion, the Land will be transferred to Keon Homes and immediately transferred onwards to Citizen Housing.
 - Also on completion, Keon Homes will enter into a JCT (Joint Contracts Tribunal) Contract with Citizen Housing to build out the affordable housing in accordance with the approved permission as Citizen Housing will be the owner of the Land. As per the terms within the JCT, payments will be made monthly in line with the works completed to date.
 - The current build programme is estimated to be between 12-16 months to reach practical completion for all dwellings.
 - Keon Homes have identified an issue with access rights which are required over the Council's Access Land, otherwise this will prevent delivery of the development.
- 1.8 MHCT in conjunction with Keon Homes are seeking agreement with the Council to secure access over the Council's Access Land in order to facilitate the affordable housing development.

- 1.9 In terms of the valuation of the Council's Access Land, the 1961 legal precedent of Stokes v. Cambridge could be argued to apply to this situation. In this legal case, it was determined that if a parcel of land would allow access to develop a neighbouring property, in a compulsory purchase of the land, its owner is entitled to one-third of the resulting property value.
- 1.10 Officers have sought the view of property advisors Lambert Smith Hampton (LSH) as to the value of the Council's Access Land. LSH advise that the Council's Access Land under normal circumstances would only have a nominal value. As this is a special purchaser scenario, however, their advice is that Stokes v Cambridge would not apply. In the Stokes v Cambridge case, a figure of one third was settled on, but importantly there was an element of alternative access available. In the Ozanne v Hertfordshire County Council 1988 case the Lands Tribunal awarded 50% of the increase in value of the development land was on the basis that there was only one practicable access. This importantly, they advise, applies to Deedmore Road in that the Council's Access Land provides the only practicable means of access. Without the Council's Access Land, LSH argue that the development cannot be progressed in isolation and as such, a 50/50 split of the development land value would be equitable in this case.
 - 1.10.1 In the event the Council's Access Land was to be placed on the open market, the Council would not secure a higher capital receipt than the figure advised by LSH and it is envisaged that a significantly lower value would be achieved.
- 1.11 The alternative approach is that the Council forgo the value derived from the Council's Access Land in the interests of delivering affordable homes for the area. In return for forgoing this value it would be appropriate for the Council to ensure that this value is applied to the delivery of social aims by MHCT.
- 1.12 The Council's Access Land is not in the capital programme and will require general consent.

2. Options considered and recommended proposal

Option 1 – Transfer the Council's Access Land at nil consideration (Recommended)

- 2.1 MHCT in conjunction with Keon Homes have requested that the Council transfers the Council's Access Land for the required access to facilitate the affordable housing development at nil consideration.
- 2.2 The affordable housing development cannot progress without the Council's intervention and the affordable homes would not pass to Citizen Housing.
- 2.3 Forgoing the land value will permit the delivery of affordable housing which might not otherwise be delivered.
- 2.4 In addition, forgoing the land value will enable MHCT to acquire further affordable housing in the area.
- 2.5 It is proposed that the Council forgo the land value subject to reaching an agreement with MHCT securing that the financial benefit is spent on social benefits to be agreed between the MHCT and the Council.
- 2.6 It would be a requirement for MHCT/Keon Homes to pay the Council's reasonable legal fees and surveyors fees in documenting and completing the freehold land transfer.

Option - 2 Transfer the Council's Access Land required for access in return for a capital receipt.

- 2.7 In line with the advice from LSH, dispose of the Council's Access Land at a value equivalent to 50% of the agreed land figure between MHCT and Keon Homes. The capital receipt to be allocated to Corporate Resources.

Option 3 – Do Nothing

- 2.8 Neither agree to sell the Council's Access Land or transfer the said land at nil charge. This option would forgo a capital receipt and would not facilitate affordable housing for the area.

3. Results of consultation undertaken

- 3.1 No public consultation has been undertaken.

4. Timetable for implementing this decision

- 4.1 Subject to the approval of the recommendations contained in this report, it is advised that an agreement can be ready for signature within 8 weeks. This will be dependent on the other parties working to similar timescales.

5. Comments from Chief Operating Officer (Section 151 Officer) and Chief Legal Officer

5.1 Financial implications

The financial implications of this transaction are to be found in the private report.

5.2 Legal implications

Property

- 5.2.1 The Council has the power to dispose of land pursuant to section 123 of the Local Government Act 1972. This section provides that the Council can dispose of land in any manner it wishes, except it is not permitted to dispose of land at less than the best consideration that can reasonably be obtained without obtaining Secretary of State consent.
- 5.2.2 The Secretary of State has issued a General Consent for disposal of land at an undervalue 'The Local Government Act 1972: General Disposal Consent (England) 2003' which permits the Council to dispose of land at less than the best consideration reasonably obtainable at an undervalue of up to £2M where it considers that the purpose for which the land is to be disposed is likely to contribute to the promotion or improvement of economic well-being, social well-being or environmental well-being in respect of the whole or any part of its area, or of all or any persons resident or present in its area.

In view of the social value and benefits described under the executive summary of this Report, the Chief Legal Officer can confirm that the criteria in point 5.2.2 above are satisfied.

Officers will prepare and complete the necessary legal transfer of the Council's Access Land.

The Transfer of the Council's Access Land will be conditional upon the following:

- The sale of the Land from MHCT to Keon Homes
- The onward sale of the Land from Keon Homes to Citizen Housing; and

- Keon Homes and Citizen Housing entering into and completing a formal contract for the construction and development of the affordable housing.

The Council will seek to protect its position in the matter by:

- Including a restriction within the transfer of the Council's Access Land that the Council's Access Land can only be used to facilitate pedestrian and vehicular access to and from the adjoining Land upon which the affordable housing will be developed.
- The timing of the transfer of the Council's Access Land which will be transferred to Keon Homes and conditional upon the simultaneous onward sale to Citizen Housing.
- A restriction is included on the registered title that the Council's Access Land is not to be disposed of by the registered proprietor for the time being without having first obtained the Council's prior consent in writing.

6. Other implications

6.1. How will this contribute to the One Coventry Plan?

Working with partners to ensure the continued provision of high-quality affordable housing throughout the city.

Facilitating the development for affordable homes will help to realise the Council's ambitions for more affordable homes for the city. The key priorities are to enable new high quality housing development and ensure that affordable housing is developed of the right type and tenure to meet the needs of the City's households.

Working with registered providers, charities, and community organisations to deliver more social housing for those who need it most. We will explore options around community-led housing projects, putting meaningful community involvement at the heart of new housing development. Continuing to improve the city and develop projects that enable local neighbourhoods to play their part in our economic success.

Working with partners to ensure the continued provision of high-quality affordable housing throughout the city.

6.2. How is risk being managed?

There are risks attached to transferring the Council's Land in that the development site may not be developed for affordable homes under the planning permission and that MHCT will not use the proceeds from the land sale to fund the purchase of additional affordable homes.

These risks can be mitigated by the insertion of appropriate conditionality within the legal documentation, however, there is a particular risk surrounding MHCT's proposed acquisition of further affordable homes. We have been advised that currently this is the plan for the funds but legally the Council will not be able to control or guarantee that this will be forthcoming and it will be the trustees of the charity who will ultimately control the spend and purpose as to how the funds are utilised.

6.3. What is the impact on the organisation?

The impact is the loss of a capital receipt.

6.4. Equalities / EIA?

6.4.1 An Equality Impact Assessment (EIA) has not been undertaken as the proposal concerns the disposal of land for redevelopment and no Council service or group will be impacted.

6.4.2 An equality impact assessment is a process designed to ensure that a policy project or service does not discriminate against any disadvantaged or vulnerable people. Section 149 of the Equality Act 2010 imposes an obligation on Local Authorities to carry out an equality impact assessment when the local authority is exercising a public function.

6.5. Implications for (or impact on) climate change and the environment?

The Council's facilitation of the development of the Land will produce environmentally efficient affordable homes.

6.6. Implications for partner organisations?

There are no implications for any partner organisations.

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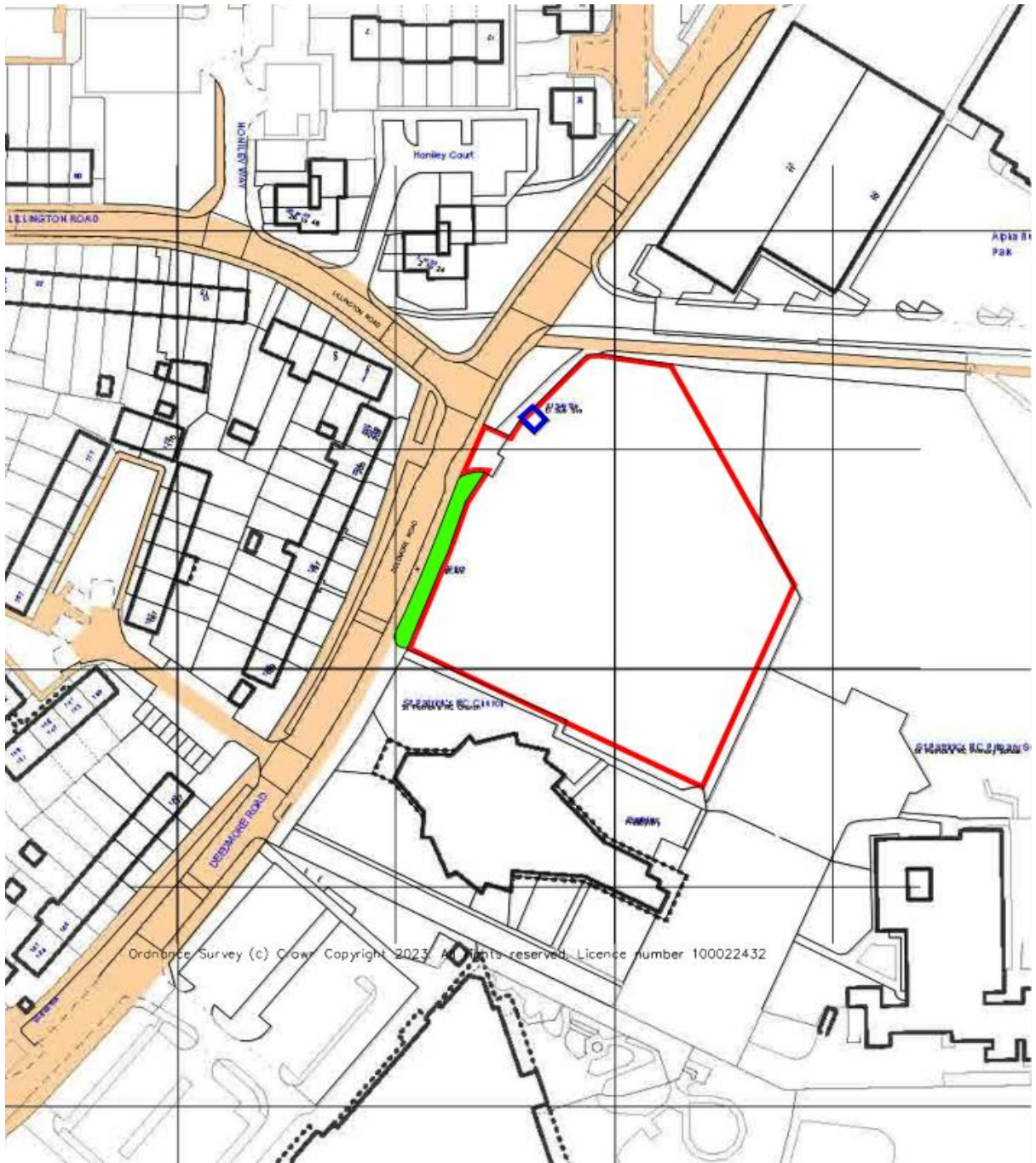
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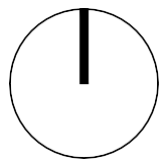
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APPENDIX 1



DEEDMORE ROAD
LEGAL PLAN
1:1250@A4

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APPENDIX 2

