

**CABINET
3 MARCH 2020**

**LAND AT FAVERDALE –
PROPOSED GRANT OF ACCESS AND PROPOSED ACQUISITION
OF ADJACENT LAND FOR POTENTIAL DEVELOPMENT**

**Responsible Cabinet Member –
Councillor Charles Johnson - Resources Portfolio
Councillor Alan Marshall - Economy Portfolio**

**Responsible Directors –
Paul Wildsmith, Managing Director
Ian Williams, Director of Economic Growth and Neighbourhood Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to:
 - (a) Inform Cabinet of the work undertaken by the Promoter for land at Burtree Garden Village, amounting to approximately 178 Ha (439 acres) as shown shaded grey on the plan at **Appendix 1**.
 - (b) Seek Cabinet approval to sign a Memorandum of Understanding to grant an option or access rights to Homes England for the construction and adoption of a road over the Council's land to facilitate the Burtree Garden Village Masterplan proposals as shown at **Appendix 2**.
 - (c) Seek approval to acquire 29.95 Ha (74 acres) of land shown hatched on the plan at **Appendix 3** to the east of Faverdale East Business Park (FEBP) for employment use.

Summary

2. At the meeting of Cabinet on the 11 July 2017, the Council's land at Faverdale amounting to approximately 27 Ha (67 acres) was declared surplus to requirements and delegated authority was obtained to enter into an Equalisation Agreement on terms and conditions to be agreed.
3. However, since the meeting of Cabinet there have been some changes in that Homes England are now working with the Promoter to help fund land acquisitions and provide and fund strategic infrastructure into the site, including access over Council owned land. The provision of infrastructure would accelerate the delivery of housing and the Council's capital receipts.

4. Before Homes England commit to acquiring land, they want to ensure that access is available over the Council's land. They have requested that the Council enter a Memorandum of Understanding (MOU) confirming the Council's intention to grant access rights. It is proposed that Homes England would fund the infrastructure to open up the site for development. The initial terms of the proposed MOU are set out in **Appendix 4**. They are to be agreed and will be considered in Part III of this report.
5. Since July 2017, a Masterplan Visioning Document at Appendix 2 has been completed and the site has been designated Garden Village Status and is known as Burtree Garden Village.
6. The area of land to the east of Faverdale East Business Park (FEBP) extending to 74 acres is shown hatched on the plan at Appendix 3. It is allocated for employment uses and has a pending outline planning permission for uses B1(c), B2 and B8 subject to a S106 agreement.
7. The land currently only has access that is suitable for agricultural use via Elm Tree Street or across the Darlington to Bishop Auckland branch railway line, however the Council owns land at FEBP which is considered suitable to provide access for development. The site also adjoins the Burtree Garden Village site to the North.

Recommendations

8. It is recommended that:
 - (a) Cabinet note the Masterplan work ongoing, and;
 - (b) Delegated Authority is given to the Director of Economic Growth in consultation with respective portfolio holders, to negotiate the MOU substantively in line with the terms set out in Appendix 4 (Part III), together with the necessary approvals and agreements required to facilitate the work covered by this report, and;
 - (c) The Assistant Director Law and Governance be authorised to document and complete the grant of a licence and legal rights of access/or option over its land as envisaged by the MOU at Appendix 4 (Part III);
 - (d) The Director of Economic Growth be authorised to complete negotiations for the acquisition of the land to the east of FEBP on the terms set out in **Appendix 5** (Part III) of this report with the final price being reported to a future meeting of Cabinet on the schedule of transactions;
 - (e) The acquisition of land to the east of FEBP be funded from the Capital Investment Fund with the borrowing costs funded from existing Economic Growth resources until a capital receipt is achieved to repay the debt;
 - (f) The Assistant Director Law and Governance be authorised to complete the Memorandum of Understanding and associated legal agreements for the acquisition of land.

Reasons

9. The recommendations are supported by the following reasons:

- (a) To promote new development and Economic Growth;
- (b) To enable a decision to be made now on the Council's position, so there is certainty on the direction of travel;
- (c) To facilitate future expansion of FEBP and ensure the availability of development land for employment related uses.

Paul Wildsmith
Director of Resources

Ian Williams
Director of Economic Growth

Background Papers

Part 1 Appendix 1 – Plan of Greater Faverdale

Part 1 Appendix 2 – Draft Masterplan Proposals

Part 1 Appendix 3 – Plan of land to the east of FEBP

Part 3 Appendix 4 – Memorandum of Understanding Terms and Conditions

Part 3 Appendix 5 – Terms and Conditions for acquisition of land adjacent to FEBP

Part 1 Appendix 6 – Land disposal plan

S17 Crime and Disorder	The report has no implications for crime and disorder
Health and Well Being	The report has no implications for health and well being
Carbon Impact	There is potential for any new Building to be easily accessible by sustainable transport modes which will help ensure the carbon footprint of the development is acceptable.
Diversity	No implications
Wards Affected	Brinkburn and Faverdale
Groups Affected	All
Budget and Policy Framework	The resolutions in this report will not make changes to the Budget and Policy framework.
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	Supports the Perfectly Placed priority by bringing jobs potentially to Darlington, and facilitating development
Efficiency	The workload resulting from the recommendations in this report assumes resources at existing levels.

MAIN REPORT

Information and Analysis

10. The feasibility work for the Masterplan Framework is considerable, and the Promoter wanted to de-risk the process and ensure that as part of the Local Plan process, the Planning Inspector would have certainty of delivery i.e. the land could be readily accessed and brought forward for development. Therefore, the Promoter requested that the Council is contractually bound to an Equalisation Agreement.
11. However, since the last report to Cabinet in July 2017, the site has been granted Garden Village Status and Homes England are now working with the Promoter to try and accelerate delivery of housing. They are helping fund land acquisitions through Option Agreements and to fund infrastructure to open up the site. The development of the site would be accelerated once the strategic infrastructure is in place. This means the sites would be ready for development, also accelerating the delivery of the Council's capital receipts.
12. The Masterplanning Visioning Document, as shown at Appendix 2 provides for a mixed-use site of circa 2,000 homes and circa 200,000 sq. metres of employment space. The first phase proposals are for circa 700 dwellings and mixed uses to include retail, school, community facilities, employment and office space.
13. Homes England are seeking to negotiate with the Council to secure access rights/ or option over part of the Council's land and for the Council to enter into a MOU on the terms and conditions detailed in Appendix 4 attached and to be considered in Part III of the report.
14. Homes England have advised there is a deadline of 31st March 2020 to acquire land from third parties and for this reason they require certainty from the Council (before they commit finances) that they can access land for development be a legal easement or option.
15. The Masterplan Visioning Document as shown at Appendix 2 shows residential and employment use on the Council's land. Officers are aware that the Council is identifying sites to build affordable housing and it is proposed that the infrastructure provided by Homes England would also open up the Council's land for development.

Proposed acquisition of adjacent land to the east of FEBP

16. The 74 acres of land are situated between FEBP and the Darlington to Bishop Auckland Branch railway line. It is bounded by the Honeypot Lane travellers' site to the south and Argos and the proposed Burtree Garden Village site to the north.
17. It is considered that bio-diversity issues may prevent development on part of the site but it is envisaged circa 49 acres of land would be suitable for development for employment use, subject to planning permission.

18. The site is the subject of a planning approval for B1(c), B2 and B8 uses, subject to a Section 106 Agreement and planning conditions. The Section 106 Agreement process has not been completed and the planning permission has not been issued. Notwithstanding this, it is considered access to the land across the Council's adjacent land will be acceptable in principle.

Proposed Terms

19. Proposed terms and valuation details for the proposed acquisition are set out in Appendix 5 attached and will be considered in Part III of this report.

Finance Comments

20. The acquisition of land to the east of FEBP will initially be funded from the Capital Investment Fund with any borrowing costs paid in the short to medium term from existing Economic Growth revenue resources. Further details of the acquisition can be found in Appendix 5 (Part III).
21. Capital receipts arising from the sale of land either at High Faverdale or those associated with the land east of the FEBP will be used to repay the Capital Investment Fund.

Legal Implications

22. Initial title reports and due diligence for the land proposed for acquisition and disposal do not indicate any issues with the proposed uses and, subject to approval of the recommendations in this report, further due diligence will be carried out as part of the relevant disposal / acquisition.
23. The Council has the relevant powers to enter into the disposal of access rights and acquisitions as described in the appendices under the general local government legislation and the Localism Act 2011.
24. There are no open space areas or assets of community value included in either of the parcels of land concerned which require consideration by Cabinet.
25. For the land acquisition a valuation has been carried out on the land to be acquired which confirms the purchase price to be no more than market value.
26. Section 123 of the Local Government Act 1972 deals with the statutory requirements for a Local Authority in relevant disposals of land. A grant of legal rights such as the grant of an easement (or equivalent option) is a relevant disposal. In general, the Council is required to achieve the 'best consideration reasonably obtainable' for such disposals.
27. If the Council seeks to dispose of land at less than the market value, then it has to obtain the consent of the Secretary of State for Communities and Local Government. However, the Secretary of State has issued a number of 'general consents' i.e. a set of conditions which, if they apply to a particular transfer, means that the Council does not need to obtain specific permission to transfer at an 'undervalue'.

28. The relevant consent is the General Disposal Consent 2003 ('the General Consent') which permits the Council to dispose of land at less than its market value, without the need to seek specific permission from the Secretary of State, provided that two tests are met:
29. Firstly, the purpose for which the land is to be transferred is likely to contribute to the 'promotion or improvement' of the economic, social, or environmental well-being of the area; and
30. Secondly, the difference between the market value of the land and the actual price paid for the disposal (if any), is not more than £2,000,000.
31. Noting the outputs of the Masterplan schemes being the significant increase in housing and associated facilities as well as the generation of employment the Council's contribution of access rights land is likely to contribute to the promotion of the economic, social, or environmental well-being of the area; and as to the second test the Councils disposal of land will be subject to an independent valuation by a valuer qualified by the Royal Institution of Chartered Surveyors which are the recognised professional body for the land valuation.
32. Cabinet authority to the disposal is sought on the basis that the land disposal will represent the 'best consideration reasonably obtainable'. However, to the extent that there is any prospective undervalue (subject to the outcome of the Masterplan process) then the valuation will need to confirm that any undervalue will be well within the terms of the General Disposal Consent Order as described above.
33. As detailed above a valuation will be carried out on the proposed disposal to ensure that the disposal meets the requirements of the General Disposal Consent Order and Cabinet are asked to delegate to the Director of Economic Growth on consultation with the relevant portfolio holders that the provisions of the GDCO are met.
34. On the basis of the disposal and acquisition at market value there are no state aid or competition issues arising as there is no transfer of value from the public sector to an undertaking.
35. Members are asked to note that subject to the construction of the road by Homes England (shown on the plan at **Appendix 6**) to adoptable standard that the road be adopted on its usual terms under the existing scheme of delegation by Assistant Director Capital Projects, Transport and Highways Planning.