

Report to Cabinet

Subject: Sale of land at Teal Close, Netherfield

Date: 13 November 2014

Author: Estates Surveyor

Wards Affected

- 1 Netherfield

Purpose

- 2 To seek approval to enter into an agreement (Landowner Agreement) that sets out the terms on which the Council and the adjoining landowner (Midlands Land Portfolio Limited (MLPL)) and the promoter (Northern Trust (NT)) will jointly dispose of the residential element of land at Teal Close, Netherfield (the Residential Land) within planning permission 2013/0546 (Planning Permission) to include the local centre, school site, open space etc. The Residential Land is all land shown approximately hatched red and blue on the plan at Appendix 1 other than the employment use land which is shown approximately coloured green.
- 3 To seek approval to jointly market and sell the Residential Land of which the Council's land (Council's Land) forms part. The Council's Land is shown approximately edged red on the Plan at Appendix 1.
- 4 To seek approval to dispose of the Council's Land without utilising the tender process as set out in the Standing Orders for Dealings with Land.
- 5 To obtain delegated authority to enable the Corporate Director in consultation with the Portfolio Holder for the Environment to agree the final terms of a landowner agreement (Landowner Agreement); and
- 6 To obtain delegated authority to enable the Corporate Director in consultation with the Portfolio Holder for the Environment to agree the final sale price at no less than the minimum price (Minimum Price).

Key Decision

- 7 This is a Key Decision.
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Background

- 8 Some information relating to this report is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. Having regard to the circumstances, on balance, the public interest in disclosing the information does not outweigh the public interest in maintaining the exemption because divulging the information would significantly damage the Council's commercial interests. The exempt information is set out in the exempt appendix.
- 9 The Council's Land is currently used as football pitches and is let on licence set to expire on 31 August 2015 to Gedling Town Youth and Ladies Football Club.
- 10 The Council's Land forms a minority part of a larger area that has the benefit of Planning Permission for comprehensive mixed use development. The majority of the land within the consent is owned by MLPL – a joint venture company between Severn Trent Water and Northern Trust. The land owned by MLPL (MLPL Land) is shown approximately hatched blue on the plan at Appendix 1.
- 11 MLPL have funded and secured Planning Permission in respect of the Council's Land and MLPL Land for 830 dwellings, 8.41 hectares of employment land together with a local centre, community building, a school site and extensive areas of open space to include re-provision of the football pitches. The current masterplan for the overall scheme is shown at Appendix 2.
- 12 Currently there is no formal agreement in place between the Council and MLPL that sets out the way in which net sale proceeds are to be shared between the parties on the sale of the land; nor how promotion and sale costs are to be split. MLPL have forward funded the Council's share of the promotion costs to date at its risk.
- 13 Following the grant of Planning Permission MLPL approached the Council seeking to agree terms for the joint sale of the Residential Land - all land within the Planning Permission excluding that allocated for employment uses. The employment use land is shown coloured green on the plan at Appendix 1.
- 14 The Council has retained consultants to advise in respect of this approach.
- 15 Negotiations between the parties for the terms of a Landowner Agreement that covers the basis upon which the parties share eventual sale proceeds and contribute towards historic and ongoing costs of promotion and disposal are substantially complete.
- 16 The principal heads of terms for the agreement are contained within a separate Exempt Appendix. There are a small number of matters still being negotiated.
- 17 The current marketing strategy is to sell the Residential Land in one or more lots depending on the market's appetite for a development of this scale. The heads of

terms for the Landowner Agreement make provision for either party to terminate the agreement in the event that the overall gross value falls below a Minimum Price, details of which are set out in the Exempt Appendix.

18 Council Standing Orders for dealings with Land state:

The Executive shall consult with the Chairman of the Overview and Scrutiny Committee and ward members before making any decision to dispose of any land or property other than the sale of council houses to sitting tenants pursuant to the right to buy.

The Chairman of the Overview and Scrutiny Committee and ward members have been consulted in accordance with the above and no comments on the proposals have been received.

Council Standing Orders also state that:

In the case of the disposal of real property other than a house or houses and where the Corporate Director assesses the value of such property to be less than £20,000 he shall adopt such method of disposal as appears to him to be appropriate in the circumstances.

In the case of the disposal of any other real property the sale shall be effected by tender in accordance with the following tender procedure unless the relevant Cabinet member authorises a different method of disposal after consultation with the Chairman of the Overview and Scrutiny Committee.

As this is a disposal of real property other than a house for a value higher than £20,000 and the method of sale is one that does not strictly follow the Council's tender procedure, the Chairman of the Overview and Scrutiny Committee has been consulted about the method of disposal and has made no comment.

Proposal

19 It is proposed:

- (a) that the Council enters into a Landowner's Agreement with MLPL to jointly sell the Residential Land. The reasons for taking this approach are set out in the Exempt Appendix.
- (b) that the Council's Land be sold on the open market as part of the Residential Land for a price at or in excess of the Minimum Price and the Corporate Director in consultation with the Portfolio Holder for Environment will agree the final sale price.

- (c) that the disposal is carried out by a marketing agent appointed jointly by the Council and MLPL instead of following the tender process set out in the Standing Orders for Dealings with Land.

A strict adherence to the Standing Orders is considered impractical in the current circumstances where Council land is being disposed of in conjunction with third party land – particularly when the Council's land is the minority holding. The Landowner Agreement, however, is based on a marketing strategy that is consistent with the ethos of the Standing Orders and envisages the parties jointly appointing a marketing agent, agreeing a marketing strategy and it provides the Council with the ability to appoint a monitoring agent to oversee the marketing process on their behalf. That monitoring agent will be present when the offers for the land are opened. The Corporate Director will agree an appropriate marketing agent with MLPL and will be responsible for the appointment of the agent on behalf of the Council.

- (d) that the terms upon which the Council enters into the Landowner Agreement are broadly as set out in the Heads of Terms documents contained within the Exempt Appendix
- (e) that the Corporate Director in consultation with the Portfolio Holder for the Environment be authorised to agree the final terms for the Landowner Agreement

20 The basic terms of the Landowner Agreement are

- joint sale of the Residential Land only through a jointly appointed marketing agent
- net sale proceeds (after deduction of promotion and disposal costs) to be shared according to each party's contribution to the net developable area of the Residential Land
- the Council's share of net sale proceeds to be discounted to reflect a number of issues including potential ransom and a return to the promoter for taking the risk of promoting the Council's Land through the planning process

Alternative Options

21 An alternative option would be to not sell the Council's Land and continue its use as football pitches. As there is going to be alternative provision within the overall development proposals and the current pitches will not be decommissioned until the alternative pitches are ready for use, it is considered that there is no sound reason not to sell on this basis.

22 Further alternatives are explored in the Exempt Appendix.

Financial Implications

- 23 The costs associated with negotiating and completing the proposed Landowners Agreement are provisionally estimated at £25,000 plus VAT
- 24 There is only a nominal income stream from the Land at present by way of a licence fee from Gedling Town Youth and Ladies Football Club
- 25 Further financial implications are set out in the Exempt Appendix

Appendices

- Appendix 1 Plan showing the Council's Land hatched red, the MLPL Land hatched blue, the Residential Land hatched red and blue but excluding that coloured green
- Appendix 2 Current masterplan of the development proposals
- Appendix 3 Exempt Appendix NOT FOR PUBLICATION

Background Papers

None identified.

Recommendation

- 26 **THAT:**
- (a) the Council enters into a Landowners Agreement with MLPL/NT to facilitate the sale of the Residential Land and sets out the way in which the net sale proceeds are shared between the parties and the historic and current costs of promotion and disposal are split
 - (b) the Council's Land is marketed as part of the Residential Land by a marketing agent appointed jointly by the Council and MLPL instead of following the tender process set out in the Council's Standing Orders for Dealings with Land. The corporate Director be authorised to agree the appointment of the said agent on behalf of the Council.
 - (c) the Corporate Director in consultation with the Portfolio Holder for the Environment be authorised to agree the final Heads of Terms for the Landowner Agreement
 - (d) the Corporate Director in consultation with the Portfolio Holder for the Environment be authorised to agree the final sale price at no less than the Minimum Price

Reasons for Recommendations

27 The reasons for these recommendations are as follows:

- (a) the proposed Landowner Agreement is considered to offer the most practical way of securing development value for the Council Land and maximising the return for its asset
- (b) in situations where land is jointly disposed of, strict adherence to the Council's Standing Orders can be impractical but the proposed marketing process is consistent with the ethos of those Standing Orders
- (c) the Heads of Terms are not yet finalised and it is possible that some negotiated variations will prove necessary during the process of agreeing the drafting of the Legal Agreement
- (d) the final sale price will be the result of the marketing strategy envisaged by the Landowner Agreement and agreed between the parties. Provided the gross sale price exceeds the Minimum Price the Council will be required to sell the Council's Land
- (e) a sale will contribute to the Council's building new houses target