Herefordshire Council

Meeting:	**Cabinet**
Meeting date:	**3 December 2015**
Title of report:	**The future of the council's smallholdings estate (county farms)**
Report by:	**Head of corporate asset management**

Classification

Open

Key Decision

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Wards Affected

Countywide

Purpose

To seek cabinet approval for future management arrangements for the council's small holdings estate.

Recommendation(s)

THAT:

(a) the council undertakes a structured sale of the entire smallholding estate taking into account expert legal advice as to achieving best value for the council and excluding land and/or buildings which are identified as having potential development value which should be retained for separate promotion and sale/development to maximise commercial/development value;

(b) the new smallholdings policy set out in appendix A be adopted; and

(c) the executive response to the recommendations of the general overview and

scrutiny committee (GOSC) be approved.

Alternative options

1 **Do nothing – business as usual**

This option has been shown to be not sustainable even in the medium term. The current policy and its management arrangements are not delivering on what are now outdated outcomes. There is a growing backlog maintenance liability and progression arrangements and development of the holdings has not taken place.

2 **The council undertakes a structured partial sale retaining a reduced estate of starter and progression farms.**

The reason for not pursuing this is that it would require the council to invest money it does not have, would reduce the opportunity to maximise the return on investment, and leave the council fulfilling a function (supporting farming) that is not a priority role for the council and one which it does not do for any other employment sector.

(see appendix b; executive response to recommendation number 1)

It would also require significant capital investment to remove backlog maintenance which is unlikely to result in any significant improvement in rate of return on the capital invested or achieve the objective of farm progression.

3 **The council undertakes a comprehensive investment programme to bring the estate properties up to modern standards and increases the rental charges to reflect the improvements.**

The cost of this work has been estimated at a minimum of £2.8m at 2014/15 prices. The annual prudential borrowing cost of investing £2.8m in the estate to clear the backlog maintenance would be £168k per annum which would not be recovered from increased rental. However this has not been identified as being a primary role of the council to undertake.

Reasons for recommendations

4 The provisions of the 2009 strategy did not enable the transformation of the estate which was hoped for to be realised. The low turnover of the tenancies has prevented the move to viable progression units being created.

5 The backlog of maintenance required to be undertaken by the council continues to grow despite a significant capital injection in the early years of the strategy. The ongoing investment needed to rectify the situation does not represent value for money or produce any significant improvement in the gross rate of return.

6 Although most of the land will continue to be afforded agricultural use following sale, there are significant areas of land that could be afforded alternative use value under the recently adopted core strategy. These sites could provide valuable residential, commercial or infrastructure creation opportunities and should be marketed independently of the core agricultural holdings which are likely to remain as current use in the open countryside.

7 The proposal for a structured sale reflects the need to seek best overall value for the asset. All options for disposal will be explored in order to optimise any capital receipt.

Key considerations

8 The county farms estate comprises approximately 4,800 acres (1942 hectares) dispersed throughout the county into 14 separate parcels of land, including woodland and comprising 45 holdings.

9 The council's estate is let through three types of tenancy subject to when the tenancy commenced:

- Pre 1984 – Agricultural Holdings Act (AHA 1986) life tenancy.
  These tenancies have no pre-determined end date.

- Post 1984 – AHA 1986 retirement tenancy.
  These tenancies have a fixed termination date through a contractual term of the tenant reaching the age of 65.

- Post 1995 – Agricultural Tenancies Act 1995.
  These tenancies are known as Farm Business Tenancies (FBT) and are for a fixed period. All agricultural tenancies are now let under this legislation.

10 The gross revenue income receivable from the total smallholdings estate is £400k per annum. However, when including the maintenance costs and the support cost of providing this service the net income value is negligible. This takes no account of the capital value of the estate. Furthermore, there exists a significant backlog maintenance liability of approximately £2.8m which takes into account liabilities on both farm buildings and residential accommodation (maintenance liability is structured over a number of years and prioritised as short, medium and long term). The statutory obligations and liabilities surrounding the building assets are growing and represent an additional cost liability in future years, including electrical inspections and remedial works, asbestos surveys and Legionella Inspections.

11 Whilst taking into account the revenue position and future maintenance obligations, the value of the estate over the last decade in particular has gained significantly as a result of capital appreciation. Other than through periodic rent reviews the increases have not significantly helped the council's revenue position.

12 At its meeting on 27 October 2015 the council's GOSC considered a report from the task and finish group review requested by the executive to inform a cabinet decision on the future of the smallholding estate. The following paragraphs 13-22 of the key considerations of this report summarise some of the more significant issues raised by the group and the reflections taken on those issues as contained in the minutes - the full report approved by GOSC is available at:

http://councillors.herefordshire.gov.uk/ieListDocuments.aspx?CId=809&MId=5529&Ver=4

13 The GOSC review considered the degree to which it was possible to maximise the potential benefits to the wider community of realising the capital value of the estate and directing the value towards statutory services and/or the reduction of debt.

14 Whilst there was divergence in the views of the GOSC task and finish group regarding any proposal to dispose of the entire estate to realise the full capital value, there was general agreement that some sales were justified and that any sales should be undertaken in a structured way so as to achieve the best value. This was considered important either in the case of full disposal or any rationalisation of the estate which would also lead to release of capital and beneficial reductions in the current and ongoing maintenance liabilities.

15 Agriculture contributes 9% to the county's economy. The county farms estate represents approximately 1% of the total farmed area of the county. This would suggest that it accounts for only a small part of the whole agricultural economy in Herefordshire.

16 Some participants in the GOSC review argued that county farms contribute to the agricultural economy and support local businesses only in the same way as any other small farm contributed and did not do so in any meaningful or unique sense. Against an intention of encouraging new businesses and creating economic growth other participants in the review doubted that the county farms, in their current form, delivered this objective and would have minimal impact on local employment and generation of income to the local area. Overall, there was no broad agreement about the extent to which the county farms uniquely supported agriculture in Herefordshire compared to any other small farms. This exposed an area where there was a divergence in the views of the task and finish group regarding the future of the county farms estate. In considering witness evidence that argued that the farming sector was moving towards larger scale, commercial farms to achieve economic viability some members of the task and finish group were increasingly of the view that the council should divest itself of the county farms estate.

17 The average age of lifetime tenants is 65, retirement tenants 56 and farm business tenancies 48. Only one tenant is under the age of 30. The average duration of current life tenancies and retirement tenancies is 27.5 and 23 years respectively. It is estimated that these tenancies have 8.5 and 7 years remaining on average respectively. The average duration of current FBT's is 14 years and the average remaining duration is less than two years. The task and finish group considered these facts in coming to the view that the county farms were currently not delivering the turnover of tenancies to meet the desire that county farms provide for the aspirations of young, prospective farmers, to progress within and beyond the estate. Specifically, only three new tenancies have been granted in the last five years with the average age of the incoming tenants being 32. Whilst views were expressed that the size of the county farms estate would not make any significant contribution to the corporate objective of 'balancing the county's age profile', the age of applicants for new farm tenancies has recently reduced compared to historic trends. However, due to the protections offered by Agricultural Holdings Act tenancies it would take some time to see sufficient turnover to make a significant change in the overall age profile. Evidence confirmed that in the last 10 years there had been only four new entrants

into the county farms estate. 13 holdings had expanded through the amalgamation of land which had enabled expansion for 13 tenants within the existing estate. However, no progressions beyond the estate had occurred since 2006. This suggested to the task and finish group that the county farm estate was not delivering a significant number of starter and progression outcomes.

18 In respect of the potential disposal of the estate, it is important to understand that there are different types of tenancies which will be subject to discounting arrangements depending upon the farm, age of tenant and details of the tenancy based on life expectancy tables. The discounting percentages against market value quoted below are for guidance purposes only.

Agricultural Holdings Act life tenancies – this is estimated at between 15 – 50%. It is calculated upon the average ages of our tenants and is currently estimated to be between 30-40%. It is possible for a life tenancy to convert to a succession tenancy, but it is not anticipated that any of the council's tenancies would qualify . This reversion would result in a reduction of 50%+, bearing in mind that it could be in excess of 50 years before vacant possession could be obtained.

Retirement tenancies – these are only retirement tenancies whilst the respective farms are in council ownership, once they are moved out of council ownership they revert to lifelong tenancies. These cannot be converted to succession tenancies.

Farm business tenancies – these are fixed term tenancies, the tenants being the younger ones who have taken tenancies since 1995, the majority of these come terminate 2017. If sold with a farm business tenancy to 1-3 years in place, there is likely to be a small discount on value up to 10%. It is anticipated that these may be offered to the tenants at open market value or placed on the open market and the tenants could bid either at auction or by tender.

19 In considering the evidence gathered from consultations, the main barriers to progression were identified as being the lack of availability of larger farms to rent, including progression units within the county farms estate. Whilst the management of the estate has enabled the amalgamation of a number of farms to create some larger smallholdings there remains an imbalance in the proportion of smaller farms compared to larger. Furthermore, difficulties in obtaining finance/capital to progress to larger farms emerged as a barrier in the responses from both tenants and stakeholders. A more general point highlighted by stakeholders, referred to the changing scale and intensiveness of farming in the UK, which required farmers to possess significant business skills as well as practical skills. Furthermore, it was apparent from the responses to the tenant questionnaires that a number of tenants had to supplement their incomes by working, part-time, off the smallholding. However, a significant number of these tenants, who were working part-time, were working within the agricultural industry.

20 The current composition of the estate is based upon historical factors that leads to two third of the holdings being 100 acres or less. This reflects the time when farms of

such scale were more common and economically viable. The county farms are not structured in a way which provides for the right balance between starter and progression tenancies. It is possible that this could be rectified by the review of county farms policy, the existing tenancies and the rationalisation of the estate. Such a review would however require some very fundamental changes to tenancies and an appetite to terminate/not renew to achieve the progression needed to make this achievable. This would not be popular and require a level of investment that is unlikely to be recouped over anything but the long term.

21 Consideration was given at GOSC to offering existing tenants the opportunity to purchase their holdings at full market value on the basis that this would not detract from any marriage value of adjacent land. Each proposal should be considered on a case by case basis. Whatever option selected for disposal, the rights of any existing tenant would be protected and transfer to any new landlord in accordance with legislation.

22 The summary of recommendations and executive responses of the task and finish group are attached as appendix B.

23 Through the disposal of the estate, significant opportunities will be created to enable the stimulation of the economy of the county as a whole. Some elements of the estate that possess the potential for commercial/development value through alternative use can be used to provide vital infrastructure and housing growth opportunities. The resultant business rates and council tax income created will be retained in the county in perpetuity and the multiplier impact of the investment in terms of jobs and services created will be secured to the local economy.

24 Having regard to the recommendations of the general overview and scrutiny committee and taking account of the priorities of the council and the opportunities to maximise the economic benefits of council investment, a revised policy is attached at appendix A. Subject to approval of the policy by cabinet a master disposal plan will be developed by April 2015, which will be subject to executive approval. It will be updated on a regular basis and will be monitored as part of the council's performance management framework.

Community impact

25 The vast majority of the farms will continue to exist in their current form with very little changes to the land or farm buildings. As little or no development will be permitted in the open countryside, the principal change is likely to be the change of landlord to the existing tenants.

26 A new landlord is likely to be in a better position to invest in the farm infrastructure than the council would be in future years. There is a general consensus among both tenants and wider stakeholders that the tenants and councils interests are not best served by the council retaining the management and ownership of the estate.

27 The main principle for the disposal of the estate is that the revenue savings created from reduction in capital borrowing servicing can be more appropriately applied to corporate priorities. The disposal of the council farms was the single most supported option for savings as identified in the 2016/17 budget consultation with approximately

1/3 of the respondents favouring this option.

28 The estate currently has 45 tenants which represents a very small proportion of the total population of the county.

Equality duty

29 The proposed sale of the estate is not expected to generate any negative impacts as identified under the council's public sector equality duty.

30 In general the rights of the individual tenants will not be affected other than those which hold retirement tenancies which will revert to lifetime tenancies (and potentially succession tenancies subject to a legal test). This will provide greater security to any affected tenants and therefore impact in a positive way.

Financial implications

31 The gross revenue income from the smallholdings estate is £400k per annum However, when including the maintenance costs and the support cost of providing this service net income is negligible. This takes no account of the capital value of the estate.

32 The value of the receipts realised could be used to repay debt or used for investment in the county in lieu of further borrowing, eg schools, vital infrastructure or housing growth. The annual value of the receipt in reduced debt charges or savings in borrowing costs equate to approximately £2.5m per annum

33 The annual prudential borrowing cost of investing £2.8m in the estate to clear the backlog maintenance would be an additional £168k per annum which would not be recovered from increased rental.

Legal implications

34 The council's general overview & scrutiny committee (GOSC) has the power pursuant to section 9f (2) of the Local Government Act 2000 to review/scrutinise decisions or actions relating to the discharge of functions, make recommendations as to the discharge of functions and on matters affecting the council's area or inhabitants. In this instance recommendations have been made by the GOSC which have been considered. The cabinet is not required to follow those recommendations.

35 A principal council cannot dispose of its land for a consideration less than the best that can be reasonably obtained in the market, except with the express consent of the Secretary of State (section 123(1), Local Government Act 1972 (LGA 1972)) unless certain criteria are satisfied in accordance with the General Consent Order 2003.

36 The council will therefore need to be able to evidence that it will in any sales achieve the best price for the site(s) which will require in order to demonstrate that it has achieved the best consideration possible that it:

- markets the property(ies);
- obtaining an appropriate independent valuation; or
- Both of the above.

37 Agricultural Holdings Act 1986 tenants have legal security of tenure such that on the contractual expiry of their lease they have the right to continue to occupy unless the council is able to satisfy certain statutory criteria following statutory process. Such tenants also have succession rights. Tenants occupying pursuant to farm business tenancies (under the Agricultural Tenancies Act 1995) do not have security of tenure but unless their tenancies fall within exceptions including short term leases of a year, statutory period of notice to quit is required. Any sites sold subject to tenancies will include in the sale documentation that the buyer fully complies with its obligations to the tenants and indemnifies the council in relation to the same.

Risk management

38 If the council does not proceed with the sale, then it will face considerable financial pressures in respect of unavoidable backlog maintenance demands especially where these relate to statutory compliance issues.

39 If the council does not depart from the current 2009 policy framework, then there will be little scope to make any improvements to the viability of the holdings and create progression opportunities.

40 If the sale and projected receipts are not realised, then there will be a significant impact upon the delivery of the medium term financial strategy and this could result in revised savings targets that could impact upon critical services.

41 If some of the sites with development potential are not able to be brought forward, then the ability to support infrastructure schemes and derive enhanced value from the holdings will be lost.

42 If the recommendations are not implemented in a visible and transparent manner and communications are not handled sensitively, then there is the risk of significant reputations loss to the council.

Consultees

43 At the request of the executive general overview and scrutiny committee undertook a review of the policy and made a number of recommendations as set out at appendix B. In the course of their review the committee consulted with a number of stakeholders (these are outlined in detail in the GOSC report).

44 Of the six recommendations made two have been accepted in full and three in part. The reasons for rejection are set out in appendix B.

Appendices

Appendix A – New Smallholdings Policy

Appendix B - Executive response to the recommendations of GOSC

Background papers

None.