

Meeting:	Cabinet member contracts and assets
Meeting date:	Thursday 16 August 2018
Title of report:	Additional legal spend to conclude the smallholdings sale
Report by:	Senior Estate Manager (Temporary)

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose and summary

To approve the additional legal expenditure of £25k to facilitate the disposal of the council's smallholdings.

The council had previously undertaken a procurement exercise to secure legal specialist support to ensure that sales are able to be completed in a timely manner. This recommendation supports this.

Recommendation(s)

That:

- (a) additional legal work to a value not exceeding £25k be commissioned from Weightmans solicitors to complete the disposal of the council's smallholdings.**

Alternative options

1. Do nothing: this is not recommended as the extra expenditure is essential for the disposal of the smallholdings.
2. Re-procure external legal support: this is not recommended because Weightmans have already undertaken the majority of the background work on these contracts and the timescales associated with tendering for and briefing of a new supplier would adversely impact the ability to complete the sales in a timely manner and add to the costs.
3. Complete the outstanding work in house; this is not recommended because there is insufficient capacity within the in-house team to ensure the completion of contracts in a timely manner.

Key considerations

4. The council had previously undertaken a procurement exercise to secure legal specialist support to facilitate the disposal of the smallholdings estate. The work had been split into three stages: stage 1 was a rapid review of title information to identify any major issues; stage 2 was the development of the information packs to support the sales; and stage 3 was legal support for the transactions through to completion of the sales. Stage 1 and Stage 2 have been completed.
5. Legal support funding of £150k for the disposal of the smallholdings estate has been authorised to date in decisions taken by cabinet and cabinet member for contracts and assets on 13 October 2016 and 7 April 2017 respectively. Those approvals were informed by estimated costs based on lotting arrangements for the sale
6. In the interests of assuring that costs were monitored and controlled, a very comprehensive specification for stage 3 was put together for re-tendering which included and grouped all the transactional requirements for the whole life of stage 3. This was then tendered and was costed accordingly. Weightmans were awarded the totality of the Phase 3 work and the costs were on a per lot basis. The terms of the contract were based on the information that was available as a result of Stage 2 and additional work outside of that would be on a per hour basis.
7. As the sale has progressed in almost all cases purchasers were reliant on lenders to provide the funds to completion; this has resulted in contracts having to be amended and in some cases split. Where contracts have been amended, this work was charged on the tendered hourly rate and equates to approximately £12k over the original tendered amount. Where contracts have been split, and the amendments to those additional contracts, that cost has been charged directly to the purchaser.
8. In relation to the separate nine transactions referred to in the decisions of 8 February and 22 May 2017 two of the surrender and sale transactions amounted to an increase in costs due to practical difficulties on the ground. Three of the surrenders were delayed in their completions scheduled for the 30 September. In these cases this was as a result of the purchaser entering into communication with the tenants for the tenants to continue in their houses under a residential tenancy once the sale had completed. As a result of the complexities and dealing with lenders and the council working with these tenants involved, the original surrender documents had to be amended as well as increased communication to enable three transactions to complete on the same day, i.e. completion of the surrender, completion of the sale and new tenancy between the purchaser and tenant. As a result of the above this has resulted in an additional cost of approximately £8k from the original provider. This work had been originally quoted for on an hourly basis not on a fixed cost basis.

9. The sale at lot 9a did not complete after the original selected purchaser withdrew from the sale; the lot has now been remarketed. The estimated additional legal spend as a result of a remarketing exercise is £3.5k on the same terms as the Stage 3 contract and will remain with the current provider
10. The council also had a pre-emption agreement on some land on the Westbrook Estate. This was not part of the land that was marketed and originally this was not thought to be taking place until late October 2018 when the tenancy on the land terminated. The beneficiary of the pre-emption agreement subsequently communicated that he did wish to proceed with the sale subject to tenancy. For ease of transaction, the tenant is happy to now surrender the tenancy which in turn will amount to an anticipated additional legal cost of £3k.that has been costed separately with the current provider.
11. There are also two very small areas of woodland that were also not marketed with the main sale due to some legal title issues that needed to be resolved. The council is currently exploring options of disposal around these sites and the result will be recorded in a separate record of officer decision. Based on the costs above, this is anticipated not to exceed £3k.
12. As a result of the complexities and the different elements of the smallholdings sale, the council requires a further £25k to complete the transactions. This is within the 4% fee cap originally set when the decision to sell the estate was decided by cabinet.
13. When the procurement exercise was undertaken the precise sales structure had yet to be determined. It was therefore not possible to quantify with any level of accuracy the extent of legal work required to support this disposal. The council has made every effort to monitor and control legal costs in a very complex project dealing with a number of different transactions. Unfortunately without increasing the budget for the conveyancing costs these transactions will not be completed.

Community impact

14. The report and its recommendations support the following priorities as identified in the council's corporate plan:
 - support the growth of our economy, and
 - secure better services, quality of life and value for money
15. More specifically, the actions supported include:
 - supporting economic growth and connectivity (including broadband, local infrastructure and economic development)
 - making the best use of existing land and identifying new opportunities to enable existing businesses to stay and expand and for new businesses to locate to the area.
 - securing the highest possible levels of efficiency savings and value for money to maximise investment in front line services and minimise council tax increases.
 - reviewing the management of our assets in order to generate ongoing revenue savings, focusing on reducing the cost of ownership of our operational property by rationalising the estate and by improving the quality of the buildings that are retained.

Equality duty

16. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

15. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.
16. The proposed sale of the estate is not expected to generate any negative impacts as identified under the council's public sector equality duty. As of the date of this decision, there are no tenants involved in the completion of the remaining sales. In respect of being open and transparent, the sales have been subject to formal marketing and all interested parties have been given equal opportunity to review the documentation available and submit an offer.

Resource implications

17. The cost incurred so far equates to £152.5k and the further work required to take all sales to completion is estimated to be £25k.
18. Disposal of the smallholdings estate is anticipated to make a significant financial contribution to the medium term financial strategy (MTFS)
19. The legal fees and other associated fees will be deducted from the gross value received, up to a maximum of 4%. There is no evidence to suggest that this threshold will be exceeded.

Legal implications

20 There are no significant legal implications arising from this report.

Risk management

21 Risk: if the legal support is not in place, transactions will not complete on the remaining sales. Response: the legal spend be approved.

22 Risk: If the recommendations are not implemented in a visible and transparent manner and communications are not handled sensitively, then there is a risk of significant reputational loss to the council. Response: communications, any further consultation, and stakeholder management will be a key part of the project and will need to be appropriately resourced. This aspect of the project will be managed by the council's corporate communications team.

Consultees

23 None

Appendices

None

Background papers

None identified