

Record of operational decision

Decision title:	Decision to withdraw from the Case B Arbitration relating to agricultural tenancy for the land adjoining the former Bromyard Depot
Date of decision:	21 January 2021
Decision maker:	Senior Solicitor, Major Projects
Authority for delegated decision:	<p>Herefordshire Council's constitution at Section 2. 10.8 states that the Solicitor to the Council is authorised to issue, defend, settle or take part in any legal proceedings on the Council's behalf where such action is necessary to give effect to decisions of the Council where they consider that such action is necessary to protect the Council's interests.</p> <p>Under the corporate support scheme of delegation – authority to act is given under item 42 where delegation is given by the solicitor to the council to issue, defend or take part in any legal proceedings on the council's behalf to the Senior Solicitor, Major Projects.</p>
Ward:	Bromyard West
Consultation:	<p>The Leader, Cabinet Member for Housing, Regulatory Services and Community Services, Cabinet Member for Commissioning, Procurement and assets, Cabinet Member for Finance and Corporate Services, Cabinet Member for Environment, Economy and Skills and Cabinet Support Member, Cllr Seldon, were briefed on the Case B arbitration and associated risks in a meeting on 20 January 2021. The Cabinet Members all agreed that withdrawing from the Case B arbitration was appropriate to allow the council to revisit its development priorities for the Bromyard Depot site.</p> <p>Consultation has also been undertaken with the Section 151 Officer, Solicitor to the Council and the Director of Economy and Place.</p>
Decision made:	Withdraw from the Case B Arbitration related to the land adjacent to Bromyard Depot site which is subject to an agricultural tenancy, on 21 January 2021.
Reasons for decision:	Withdrawing from the Case B arbitration relating to the agricultural tenancy at the Bromyard Depot site mitigates the potential financial liability associated with pursuing the arbitration and being unsuccessful and the potential reputational impact of being successful at arbitration and then not building out the site as the consented development scheme is no longer in accordance with the council's housing priorities.
Highlight any associated risks/finance/legal/equality considerations:	By withdrawing from the Case B arbitration it is felt that the Council is acting reasonably given the financial and reputational risks associated with pursuing the arbitration and will limit its risk of incurring costs (which would be a waste of tax payers' money) in the event that the arbitrator finds in favour of the agricultural tenant of the land adjoining the Bromyard Depot Site.
Details of any alternative options considered and rejected:	The Council could continue to seek vacant possession by continuing through the Case B arbitration, which if successful would provide vacant possession of the former Bromyard Depot site however if the Council were unsuccessful in the arbitration the council may be liable both for their own costs in pursuing the arbitration but also those of the tenant. This was not recommended by legal services having regard to the chances of success

	and the questions over the council's priorities for the site in light of the market data. The Council has sought to negotiate vacant possession of the site but the level of compensation requested by the tenant could not be justified and no budget for compensation could be identified particularly in light of the lack of the clear requirement to continue to deliver this development as consented under the existing planning permission.
Details of any declarations of interest made:	N/A

Signed...

Date: 27 January 2021