

Meeting:	Cabinet
Meeting date:	14 April 2016
Title of report:	Smallholdings disposal plan
Report by:	Cabinet member contracts and assets

Classification

Open

Key decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

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 approve the smallholdings disposal plan.

Recommendation(s)

THAT:

- (a) the procurement of an agent to provide professional services in connection with the disposal be undertaken through ESPO 2700 framework; and**
- (b) the identified sites at paragraph 15 be excluded from the disposal.**

Alternative options

- 1 Do nothing; this is not recommended as the policy decision to undertake a structured disposal of the smallholdings estate has already been taken and disposal receipts are essential to the delivery of the medium term financial strategy.
- 2 An open procurement could be undertaken; this is not recommended in view of the longer timescale required increasing the period of uncertainty for tenants, and the additional potential holding costs associated with this option.
- 3 An alternative framework could be used; this is not recommended as the recommended framework includes providers with the most relevant professional expertise combined with a presence in the county.
- 4 No sites could be excluded from the disposals programme; this is not recommended because the greater financial or economic benefits can be derived from development opportunities.

Reasons for recommendations

- 5 To implement the policy approved by cabinet on 3 December 2015.

Key considerations

- 6 On 3 December 2015 cabinet approved a new smallholdings policy which included the decision to undertake a structured disposal of the entire smallholding estate. The policy requires that the disposal involved, on a case by case basis, the consideration of all options and the commissioning of expert independent professional advice to ensure that best value is obtained for the tax payer.
- 7 Due to the size and complexity of the sale and the need to ensure that it is exposed to the widest possible market, the council will need to commission a specialist agricultural agent to carry out this work. There is no in-house capacity to undertake such an exercise.
- 8 Once appointed, the agent will be responsible for developing for cabinet consideration recommendations about the structure and timing of the disposals in order to achieve the aims of the policy. Thereafter the agents will be responsible for marketing the estate and implementing the disposals programme agreed by cabinet.
- 9 The value of the anticipated agent's fees is likely to exceed that of the current EU procurement threshold of £164k. There are two routes available to ensure compliance with these regulations. The first is an open procurement which is likely to take approximately four months and be highly resource intensive and the second to secure a pre-approved supplier from an appropriate professional services framework agreement via a mini competition. This route could reduce the procurement time frame by around two months and require less resource to deliver. It is therefore recommended that the shorter timescale option is followed. Appointment from a framework does not preclude those companies on the framework from working with local agents.
- 10 Two frameworks have been identified which are potentially suitable for Herefordshire Council's needs: Crown Commercial Services – estates professional services; and ESPO 2700 – estates management consultancy services. Both have been procured

with scope to provide the services required, both are available for Herefordshire Council to use. The ESPO framework is recommended as it provides a wider range (24 in total) of potential suppliers who have specifically stated that they have the capability to work in Herefordshire.

- 11 The mini competition will be run under the ESPO 2700 framework (<https://www.espo.org/Frameworks/Professional-services/Estates-Management-Consultancy>) by inviting suppliers to complete a short tender document. The tender document will describe the council's requirements and explain the evaluation process, including weighting between service delivery and price. The Public Procurement Regulations require that tenders are evaluated in accordance with the terms of the framework agreement. However, the council can vary the criteria weightings and service delivery criteria to suit our specific requirements, see below:

Criteria Type	Percentage Range (%)
Service delivery	20% to 60%
Price	40% to 80%

- 12 Subject to recommendation a) above being approved it is anticipated that an agent would be appointed by July and that a detailed disposals programme be prepared for cabinet consideration by October.
- 13 It is proposed that the following outcomes be taken into account by cabinet when deciding between disposal options to be brought forward by the agent:
- Maximise financial return
 - Supports the welfare of the council's tenants
 - Support the local economy (including the agricultural sector)
 - Minimise timescale
 - Community benefits
- 14 The policy recognised the need to exclude from sale certain sites with development potential. It is proposed that the following sites be excluded:
- Hospital Farm, Burghill, Hereford – potential for housing development site
 - Grafton farms, Hereford – on route of southern relief road
 - Model Farm, Hildersley, Ross-on-Wye - potential for economic development
 - Tow Tree Farm, Burghill, Hereford – identified in the core strategy as potentially on route of the by pass.
- 15 A further report on these and other potential development sites in the council's ownership will be presented to cabinet once a development partner has been secured.
- 16 Meetings have taken place with all 14 farm business tenants during January and February 2016. These meetings helped to formulate the tenant support package that was approved in early March, and which has been sent to each farm business tenant.
- 17 All tenants will be offered the opportunity to meet with a cabinet member and senior manager in the coming weeks. As part of those discussions an informal view from

tenants be taken as to their level of interest in purchasing their smallholdings or exercise flexibility to purchase part of the holding and releasing the remainder to the council for disposal. These issues would be further explored as part of negotiations to be undertaken by the agent once appointed.

Community impact

- 18 The proposed actions are designed to ensure that the financial return is maximised to repay debt or used for investment in the county in lieu of further borrowing, eg schools, vital infrastructure or housing growth.

Equality duty

- 19 There are no negative impacts identified from the approval of the recommendations.

Financial implications

- 20 The £4k cost of scoping of requirements for the external legal support is being met from existing revenue budgets. This will identify the costs of any further legal work and will be subject to a further officer report as necessary.
- 21 The cost of the agent to provide professional services in connection with the disposal will be met from the receipts generated.

Legal implications

- 22 It should be noted that 12 farm business tenancies end in 2017 and notice to quit has already been served on those tenants whose leases expire between February 2016 and September 2017. The timescale for the entire sales process may result in these sites being vacant as a result of those terminations. Further short term farm business tenancies could be offered to commence on expiry of the notices to quit which will give tenants a further period of certainty and occupation whilst this process continues. As tenants will have had to make arrangements to leave well before the termination of their tenancies, any such offer will need to be made well in advance and be mindful of individual arrangements.
- 23 Before the procurement procedure commences, there is a legal duty on the council to comply with The Public Services (Social Value) Act 2012 which requires contracting authorities to consider at the pre-procurement stage of any services contract:
- How what is proposed to be procured may improve the economic, social and environmental well-being of their areas.
 - How the contracting authority may act with a view to securing that improvement in conducting the process of procurement.
- 24 The Act applies to all services contracts and services framework agreements (including goods and works contracts procured in combination with services where the value of the goods is less than the services, and where the works are incidental to the services) to which the Public Contracts Regulations 2015 (SI 2015/102) apply. The Cabinet Office in its Procurement Policy Note 10/12 provides guidance on compliance with the Act.
- 25 A framework is a legal agreement between one or more suppliers and one or more authorities enabling the choice of supplier to take place without an initial open

Further information on the subject of this report is available from
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procurement exercise as that has already taken place. It is possible through the framework to undertake a mini competition which then allows the contracting authority to retain a competitive element throughout the term of the framework and to achieve best value for money without the need to repeat a full competitive tendering process. The use of a framework does limit choice of suppliers to those who are party to it. It is recommended that the specification for the procurement is outcome based focusing the supplier on demonstrating what they propose to do to achieve best value for the council.

- 26 The legal title to each of the sites will need to be investigated and reported upon to help inform the decision as to sales and as initial steps in the preparation of sales packs it is intended to commission external solicitors to carry out this work. Work is underway to scope the requirements for legal support, which will include provision for independent dispute resolution, and a further report will be brought forward in due course.

Risk management

- 27 Risk: the appointment of a professional advisor may be challenged; Response: The procurement of a professional advisor will be undertaken from the ESPO 2700 framework via mini competition in accordance with the public procurement regulations to minimise the risk of legal challenge.
- 28 Risk: The timetable for capital receipts assumed in the MTFS is not met; Response: A robust plan and timetable for delivery of the sales will be developed and validated with our professional advisors in order to minimise this risk.
- 29 Risk: 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; Response: the council is procuring a development partnership that aims to maximise the returns from the development of sites with potential. The management of the portfolio of related major projects, including infrastructure and development projects will be done in a coordinated way. The specification for the agents will include a requirement to advise on how individual sites may be disposed of in such a way as to maximise the return.
- 30 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. A tenant support package has been developed, and tenants are being offered the opportunity for further meetings.
- 31 Risk: Land values may decrease; Response: the appointment of an agent to advise on the structure and timing of disposals will ensure the programme mitigates the risk.

Consultees

- 32 Ongoing dialogue with tenants will be afforded throughout the process and regular communications updating tenants on the progress of the disposal process have been promised.

Appendices

Appendix A - Suppliers on the ESPO 2700 framework

Background papers

- None identified.