

Meeting:	Cabinet
Meeting date:	13 October 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 a detailed smallholdings disposals programme.

Recommendation(s)

THAT:

- (a) the disposals programme as set out in appendix 1 be approved and specifically:**
 - 1) the smallholdings estate be offered to the market by way of informal tender;**
 - 2) marketing of the portfolio commences in spring 2017;**
 - 3) the smallholdings estate be offered for sale as a whole, as sub estates and as individual farms;**
 - 4) smaller parcels of land or groups of buildings should be divided as sub-lots where premium prices are achievable to increase total sale**

receipts.

- 5) an overage clause be applied to all sales in relation to permitted development rights and otherwise on a case by case basis as indicated by development potential;
- 6) all farm business tenancies with a termination date in advance of 30 September 2017 be extended to that date; with the exception of a dairy tenancy which will be extended to 1 December 2017;
- 7) the contract for the legal services required to support the sales preparation and sales execution be awarded to Lidders LLP; at a target cost of no greater than £50K;
- 8) authority be given to the director for economy communities and corporate to take all operational decisions necessary to implement the above recommendations and, following consultation with the relevant cabinet member and section 151 officer, to conclude sales.

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 alternative programme and strategy be undertaken. The council has appointed Fisher German as its professional agent to give advice and undertake the disposal to meet the requirements of cabinet's brief to achieve the approved objectives of the sale.

Reasons for recommendations

- 3 To implement the policy approved by cabinet on 3 December 2015 and the disposals plan approved by cabinet on the 14 April 2016.

Key considerations

- 4 On 3 December 2015 cabinet approved a new smallholdings policy which included the decision to undertake a structured disposal of the entire smallholding estate (with the exception of four specified sites which were retained for future development potential). 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.
- 5 On 14 April 2016, cabinet approved the process to appoint an agent from the ESPO 2700 framework to develop for cabinet consideration recommendations about the structure and timing of the disposals and that on a case by case basis, all options are considered and ensure that best value is obtained for the tax-payer.
- 6 Following a procurement process, Fisher German were appointed by the council in July 2016 as its professional agent.

- 7 It was agreed that the following criteria, be used by cabinet to decide between disposal options to be brought forward by the agent:
- Maximise financial return
 - Support the local economy (including the agricultural sector)
 - Supports the welfare of the council's tenants
 - Minimise timescale
 - Community benefits
- 8 Meetings have taken place with all 14 farm business tenants during January and February 2016. All tenants were offered the opportunity to meet with a cabinet member and senior manager, 12 tenants took up the offer and these meetings took place during May and June. A tenants meeting took place in August to enable the council to introduce Fisher German to the tenants; this meeting was well attended by all tenants and helped facilitate some early engagement between the parties.
- 9 A tenant support package was approved in early March, specifically to assist farm business tenants. In June it was agreed that the support package be made available to all the smallholding tenants regardless of tenure. All tenants have been asked to put in writing any expression of interest to purchase all or part of their farm. All tenants on farm business tenancies, especially those due to terminate in 2017, have also put in writing any requests for extensions of their existing tenancies.
- 10 It is important when selling land and farms to present the holdings as properly farmed units which are managed and cultivated in accordance with the season of the year. This goes a long way towards optimising value, and can also add to the value with the opportunity to sell growing crops and harvested crops. Where farms are neglected or unkempt the downside can be that buyers discount bids to offset the cost of bringing land back into a proper state of cultivation. Having farmhouses and buildings occupied will also ensure they are maintained in a serviceable condition, which will add to the appeal from a buyers' perspective.
- 11 The council's agents advise that those tenancies due to terminate in 2017, should be extended to run to September 2017 which will coincide with the farming season and allow tenants farming arable land to harvest crops prior to any sale. There is one tenant on a dairy farm, who has requested an extension to December 2017 to allow for the maize harvest. On that basis it is anticipated to target the completion of sales following harvest, and this is unlikely to have any detrimental effect on the sale price achieved. Where there is any opportunity to complete sales earlier this can either be subject to a right of holdover for the tenant to complete the harvest after completion of the sale, or on the basis of the buyer purchasing the growing crop at the date of completion. Again this is unlikely to adversely affect the sale price, whichever option is followed.
- 12 The method of offering the estate to the market is recommended to be by way of informal tender. The informal tender process will allow the council to follow a selection process for purchasers based on optimum price bid for individual lots or combination of lots or the entire portfolio. This route gives tenant farmers the best opportunity to bid. Informal tender guidance notes to prospective purchasers will clearly set out the procedure for interested parties in submitting offers. By setting

these “rules of engagement” at the outset and encouraging all potential buyers to carefully comply with them, the council will be able to assess all offers on a fair and even basis and give due consideration to the best strategy for concluding the portfolio sale based on the agents recommendations on the projects objectives.

- 13 The council is in the process of appointing an independent agent to negotiate and value tenant’s right compensation for end of tenancy, in line with nationally agreed guidelines, this appointment will have been made by the end of October 2016. It is essential that these figures are available at the launch of the sale.
- 14 All tenants will be given the opportunity to bid for individual lots, be it all or part of their current holding or another opportunity on reminder of the identified estate for disposal.
- 15 The council has undertaken a procurement exercise to secure additional legal specialist support to undertake the investigation of titles, preparation of sale packs and exchange and completion of sales to ensure that sales are able to be completed in a timely manner. The sale packs, searches and contracts will be available on an online data room at the launch of the sale to prevent delays in completion.
- 16 The work has been split into three stages: stage 1 is a rapid review of title information to identify any major issues; stage 2 is the development of the information packs to support the sales; and stage 3 is legal support for the transactions. Given the range of options available for the sales structure, it is difficult to precisely specify the amount of legal support that will be required at stage 2 and 3. The work was, therefore, tendered in the following way and the cost of the winning bid is:
 - a. Stage 1 - £5K (Fixed Fee)
 - b. Stage 2 - £10.5K (Fixed Fee – with provision within the contract for the legal firm to revise their pricing 14 days prior to the start of stage 2; the council has the option to cancel the contract and retender at that point)
 - c. Stage 3 – a blended hourly rate of £145 has been agreed and will be used to calculate the price when the exact scope of works can be determined. However, based on Fisher German advice regarding hours/scope for stage 3, it is expected that the majority of the work for the legal firm sits within Stage 2.
- 17 The overall cost of legal support for the sale is, therefore, estimated to be no greater than £50K.
- 18 The MTFS includes gross forecast receipts for all asset disposals, of which these are a part, of £60m over the four year strategy period. The smallholding disposals receipts (whether from this programme or from those sites reserved for development) will contribute to that overall total. Agricultural land values appear to have reduced following the EU referendum, and as a consequence the agents advise that the estimated sale value to be achieved through the proposed programme of disposals is lower than originally anticipated however is not sufficiently different to materially affect the business case. The MTFS will be updated to reflect the new assumptions.

- 19 To ensure that sales complete in a timely manner following submission and assessment of informal tenders, delegated authority is sought to enable the director for economy, communities and corporate to take such decisions as are necessary in order to achieve a prompt sale.

Community impact

- 20 The report and its recommendations support the following priorities as identified in the Councils corporate plan:

- support the growth of our economy, and
- secure better services, quality of life and value for money

- 21 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

- 22 The proposed sale of the estate is not expected to generate any negative impacts as identified under the council's public sector equality duty.
- 23 In general the rights of individual tenants will not be affected other than those which hold retirement tenancies which will revert to lifetime tenancies (and potential 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

- 24 The council's MTFS was approved in February 2016. Whilst the MTFS essentially sets out the future revenue plans for the council, it is also predicated upon the revenue implications of reducing historic debt and generating sufficient capital receipts to support the council's future capital investment priorities. Disposal of the smallholdings estate is anticipated to make a significant financial contribution.
- 25 The capital value of the estate would provide revenue savings through reduced debt payments. These savings are built into the approved savings plan for the MTFS period.

- 26 The agent fees, legal fees and other associated fees will be deducted from the gross value received, up to a maximum of 4%. Fees and services above 4% will need to be addressed from property services revenue budgets.
- 27 The agents fees established through a competitive exercise are based upon 0.88% of gross sales value.

Legal implications

- 28 Marketing the smallholdings estate in differing size parcels will introduce flexibility on the Council's part as vendor and should have the effect of increasing capital receipts as the potential market will be greater. This will also be the case where parcels of land or groups of buildings are divided into sub-lots where the Council's agents identify those sub-lots which should attract a premium for disposal.
- 29 Capital receipts can potentially increase further in the future by the imposition of overage.
- 30 Extending farm business tenancies will constitute a deemed surrender of the existing lease and the grant of a new one. If the original leases were excluded from sections 24 to 28 of the LTA 1954, the court order, or statutory notice procedure (depending on when the lease was entered into), will not apply to the regranted lease. It may be just easier to grant a new tenancy on the same terms, but for the longer period. Accordingly Legal recommend, upon expiry, converting these tenancies into periodic FBTs which run for periods of less than a year. FBTs of such short duration can be terminated in accordance with common law. At common law, notice to quit must be at least equal to the period of the tenancy (for example, a month's notice to end a monthly tenancy) and end at the end of the relevant period. However, it is possible for the parties to agree that a different notice period will apply. Such replacements will provide the Council with maximum flexibility as Landlord going forward.
- 31 All the legal work pertaining to this disposal has been outsourced to Loddors LLP and in doing so procurement has been complied with.

Risk management

- 32 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.
- 33 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.
- 34 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.

- 35 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

- 36 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.

- 37 The recommendations of GOSC task and finish group of October 2015 were only partially accepted:

2 were accepted in full.

3 were partially accepted with qualification

1 was rejected.

Appendices

Appendix 1 HC phase 1

Background papers

- None identified.