

Cheltenham Borough Council
Cabinet – 27th July 2010
Midwinter Area Improvement
Proposed Sale of Statutory Allotment Land

Accountable member	Leader of the Council
Accountable officer	Head of Property and Asset Management
Accountable scrutiny committee	Environment
Ward(s) affected	All

Executive summary

Cabinet Approval was obtained on 4th September 2007 (Decision No. 55/2007) to negotiate terms for the disposal of 5.47 Hectares (13.51 Acres) of former allotment land at Midwinter to Bloor Homes Limited – the preferred residential developer, and to subsequently report back to Cabinet for approval of the negotiated terms prior to entering into any binding commitments.

Following the 2007 Cabinet decision, negotiations stalled due to adverse market conditions and the inability to satisfactorily resolve the access road. However, negotiations with Bloor Homes resumed over 12 months ago and a progress briefing note was presented to Cabinet in April this year.

The negotiations required a number of actions in the light of previous requirements and changing circumstances, namely:

1. Secretary of State approval to release the allotments affected by the proposed development
2. The Environmental Agency regrading their indicative flood risk assessment
3. Re-alignment of the access road
4. A minimum sustainable homes code rating to level 3 across the whole site
5. Certain area wide improvements including the provision of new allotments and relocation of a playing field.

The principal heads of terms to the proposed disposal have been agreed subject to adjustments dependant on the final levels of Section 106 contributions and abnormal costs as detailed in Appendix 2.

The individual levels of the assumed abnormal costs are detailed in Appendix 3.

The sale price will be payable in five stages and in amounts as detailed in Appendix 4.

The details contained in Appendices 2,3 and 4 above are strictly confidential and not for publication by virtue of paragraph (3), part (1), schedule (12A) Local Government Act 1972.

Secretary of State approval to the release of the allotments was obtained on 18th February 2008. However, for the disposal to ultimately proceed it will be conditional upon written confirmation from the Environment Agency in relation to flood zone regrading and obtaining of planning permission.

Recommendation

That Cabinet authorises the Head of Property and Asset Management to finalise and agree the terms of the conditional contract for sale to Bloor Homes Ltd, and subsequently to dispose of the land, as set out in this report in consultation with The Leader of the Council.

<p>Financial implications</p>	<p>As a result of the proposed disposal, the Council will receive a capital receipt (currently exempt information) which will help towards funding priority Council initiatives e.g. Civic Pride or supporting the projected Medium Term Financial Strategy funding gap.</p> <p>Prior to deploying any net receipt, the Council will first need to ensure it has met its statutory obligations in respect of allotment provision and improvements. An updated assessment of the costs of fulfilling the Town's specific allotment needs is currently underway and likely to be finalised this Autumn.</p> <p>The use of any net receipt will be the subject of a future Council decision and is not the subject of this report.</p> <p>Contact officer: Mark Sheldon@cheltenham.gov.uk, 01242 264123</p>
<p>Legal implications</p>	<p>As the land comprised in the sale is statutory allotment land, the Council needed consent from the Secretary of State to sell it. This consent was obtained on 18 February 2008.</p> <p>The Council has an obligation under Section 32(2) of the Small Holdings and Allotments Act 1908 to use the proceeds of sale from statutory allotment land to acquire, adapt and improve other land for allotments. Any surplus money from the proceeds of sale may then be applied for other purposes for which capital money may be applied.</p> <p>Detailed legal advice has been provided to relevant officers about this duty.</p> <p>The Council needs to achieve the best consideration reasonably obtainable for the site by virtue of Section 123 Local Government Act 1972.</p> <p>Contact officer: Donna McFarlane@tewkesbury.gov.uk, 01242 775116</p>
<p>HR implications (including learning and organisational development)</p>	<p>None</p>
<p>Key risks</p>	<p>See Appendix 1 below.</p>

Corporate and community plan Implications	<p>The Midwinter area improvement should assist in meeting a number of corporate and community plan priorities including.</p> <ul style="list-style-type: none"> (a) Promoting sustainable living: (b) Improving environmental quality – through bringing into use derelict land: (c) Promoting housing choice – through the provision of affordable housing: (d) Community safety – through design and layout provide improved overlooking of allotments and public areas.
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1. Background

1.1 As outlined above, resumption of negotiations with Bloor Homes for the disposal of the Midwinter site were subject to a number of key requirements being satisfied :

- (a) Secretary of State Approval to the release of the allotments was obtained on 18th February.
- (b) The Environmental Agency (EA) in response to the floods of 2007 regraded their indicative flood risk categorisation from an understood flood Zone 1 to Zone 3b, which would have prohibited any form of development. After discussions between the developer's consultant engineers and production of a detailed flood risk assessment, the EA has verbally indicated that the flood risk should be amended back to Zone 1, but, to date, written confirmation of that position has not been received.
- (c) The access road from Tommy Taylors lane was originally planned to run across the training pitch of the rugby club. This is no longer an issue as the road has been realigned so as not to impact on the pitch.
- (d) The original requirement to develop the site to code for sustainable homes rating 4 would have potentially rendered the development uneconomic, thus, the negotiated proposal is to develop to a minimum code 3 rating with 25% of proposed dwellings to meet code 4. Code rating 3 is a level which is currently above minimum requirements for market housing.
- (e) The area wide improvements will include the provision of new allotments with the Midwinter Allotments Association on the Elmfield Road playing field, with the playing field being relocated to land adjoining Tommy Taylors Lane north of the Prince of Wales Stadium.

1.2 Key Heads of Terms

- 1.2.1 It is currently estimated that the proposed development will provide not less than 170 new units (subject to planning), 40% of the new homes will be affordable housing units of which 70% will be Social Rented and 30% Intermediate Housing. Various categories of "affordable" housing units have been agreed ranging from one bed flats to four bed houses. Of these units, 75% will have a minimum sustainable homes code rating 3, with the remaining 25% at code rating 4.
- 1.2.2 A sustainability fund to meet the costs of providing the units to code rating 4 will be taken from the net receipt and held in a separate account. The level of that fund is specified in Appendix 2.
- 1.2.3 Negotiations have been concluded with regard to the gross value of the site from which will be deducted Section 106 costs along with abnormal costs to leave a net sale receipt as specified in Appendix 2.
- 1.2.4 The final net receipt may vary dependant upon the final levels of Section 106 costs, which may be

above or below the “assumed” best estimate levels set out in the Appendix 2 .

- 1.2.5** In addition the “assumed” abnormal costs (which are based on worst case estimates), as detailed in Appendix 3, may be lower than anticipated thereby having a positive impact and improving the net sale receipt.
- 1.2.6** The sale price will be payable in five stages as outlined in Appendix 3.
- (a) Deposit (5% of sale price) on exchange of conditional contracts:
 - (b) 1st stage payment once planning approval obtained and legal completion effected:
 - (c) 2nd stage payment on material commencement of the residential development:
 - (d) 3rd stage payment twelve months from date of material commencement:
 - (e) Remainder (less deposit, sustainability costs, any area wide improvements and adjustments for abnormal costs), eighteen months from date of material commencement.
- 1.2.7** An overage provision has been negotiated whereby the Council will obtain 50% of the receipts over and above actual sale prices of completed units (less indexation and incentives) as compared with anticipated prices if units were being sold now.

1.3 Area Wide Improvements

- 1.3.1** Area wide improvements will be required including:
- (a) Conditional to the development proceeding is the provision of a number of new allotments on the Elmfield Road Playing field and re-location of that playing field onto land adjoining Tommy Taylors Lane to the north of the Prince of Wales Stadium, all at an estimated cost as detailed in Appendix 2.
 - (b) As the access road cuts through the Prince of Wales Stadium an allowance for the improvement of the car park has been made, which will enhance the facility and allow better use of car spaces. The estimated costs are outlined in Appendix 2.
 - (c) Additional allotment provision in Cheltenham will be the subject of a separate allotment strategy that will be presented to Cabinet later in the year. However, funds from the disposal of the Midwinter development site will be used to ensure the Council meets it’s obligations towards allotment provision.

1.4 Professional Fees

- 1.4.1** Professional fees have been incurred for the provision of specialist valuation advice, and for the legal work associated with the development agreement and contract for sale. The Council’s estimated consultancy fees are also set out in Appendix 2 and will be deducted from the net sale proceeds based on actual costs incurred.

2. Reasons for recommendations

- 2.1** Provision of a sustainable residential development to help meet housing need, including affordable housing provision and realising a net capital receipt providing the opportunity for funding other Council initiatives, including improved allotment provision.

3. Alternative options considered

3.1 N/A

4. Consultation and feedback

4.1 Original consultation occurred in 2007, with recent updates to CAG, AMWG and Cabinet this year.

5. Performance management –monitoring and review

5.1 N/A

Report author: Norman Ashworth

Appendices :

1. Risk assessment

2. Key Figures of the sale negotiations (Exempt)

3. Assumed abnormal costs breakdown (Exempt)

4 Staged payment schedule. (Exempt)

Background information: None

APPENDIX 1

Cabinet Report risk template

The risk				Original risk score (impact x likelihood)			Managing risk					
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register	
	The Environment Agency does not provide written confirmation revising the flood risk assessment for the site from 3b (high risk) to 1, enabling the scheme to proceed.	DR	2007	4	1	4	3 rd party	Close contact with the EA is being maintained in order to speed up receipt of written confirmation.	ASAP	DR	Yes	
	Following an ecology survey, there appear to be slow worms on site. These need moving at the right time of the year to enable development to take place.	DR	Spring 2010	3	1	3	A	Adam Reynolds is liaising with the relevant third parties to ensure this happens.	TBA	AR	Yes	
	The sale will be conditional upon Bloor Homes obtaining planning consent for the development.	DR	Summer 2010	4	1	4	A	Developers currently in discussion with the Council's planning department. An application to be submitted in the near future.	ASAP	WT	Yes	