

<b>DECISION-MAKER:</b>	CABINET
<b>SUBJECT:</b>	PHASE 2 ESTATE REGENERATION PROGRAMME – CUMBRIAN WAY
<b>DATE OF DECISION:</b>	11 APRIL 2011
<b>REPORT OF:</b>	CABINET MEMBER FOR RESOURCES, LEISURE AND CULTURE

#### **STATEMENT OF CONFIDENTIALITY**

Confidential Appendix 3 to this report contains information deemed to be exempt from general publication based on Category 3 of Paragraph 10.4 of the Council's Access to Information Procedure Rules. The appendix includes details of a proposed transaction which, if disclosed prior to entering into a Legal contract, could put the Council at a Commercial disadvantage in the future, in the event of the proposed sale not completing.

Confidential Appendix 4 to this report contains information deemed to be exempt from general publication based on Category 5 of Paragraph 10.4 of the Council's Access to Information Procedure Rules. The Appendix includes information contains Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

#### **BRIEF SUMMARY**

Southampton City Council has embarked on a major Estate Regeneration Programme that is seen as playing an essential part in the wider commitment of delivering sustained economic growth on Southampton's council estates.

Phase 2 of the Estate Regeneration Programme comprised Lot 1, Exford Avenue Shopping Parade, Lot 2, Cumbrian Way Shopping Parade; Lot 3, 5 – 92 Laxton Close and Lot 4, 222-252 Meggeson Avenue.

Cabinet approved the proposal to proceed with the preferred bidder for Lots 1, 3 and 4 on 22nd November 2010.

For Lot 2 Cumbrian Way, none of the bids met the council or community's aspirations and it was recommended not to award a development agreement as a result of that tender process. Cabinet approved this recommendation on 22<sup>nd</sup> November 2010.

Alternative procurement options were to be investigated by officers to enable this site to be redeveloped within a timely manner.

Following the outcome of those considerations, this Report seeks authority to proceed with a disposal of the site. The aim is to ensure that the redevelopment intentions of the purchaser following the sale are consistent with the terms of the funding agreement with the HCA which means that as long as the purchaser delivers the redevelopment as stated there would be no repayment of grant to the HCA. However there is no legally enforceable contract with the purchaser which means there is a risk that the grant funding for Cumbrian Way of £787,000 could have to be repaid to the HCA if the site was not redeveloped as intended. It may also be necessary to negotiate amendments to the funding agreement with the HCA to ensure that there are no repayment liabilities in relation to the other 3 sites in phase 2.

This report also seeks authority to make a Compulsory Purchase Order (CPO) in order to acquire land and any new rights, should the need arise.

## RECOMMENDATIONS:

- (i) To approve the principle of the sale of Cumbrian Way Parade to Radian Group.
- (ii) To delegate authority to the Executive Director for Neighbourhoods, in consultation with the Solicitor to the Council, Head of Finance and Head of Property and Procurement, to agree the terms of the land sale conditional on planning permission being obtained for the proposed scheme and to make any consequential amendments to the terms of the Council's Funding Agreement with the Homes and Community Agency (HCA) and specifically to ensure that:
  - The intentions of the purchaser with regard to the subsequent redevelopment of the site are consistent with the terms of the Funding Agreement with the HCA such that, as long as the purchaser delivers on those non-binding intentions there would be no repayment to the HCA but if they were not delivered, the financial exposure is limited to the sums received from the HCA in relation to Cumbrian Way.
  - The disposal represents best consideration and
  - The Council secures vacant possession of the site
- (iii) Delegate authority to the Solicitor to the Council to amend, finalise and sign the land disposal documents
- (iv) Delegate authority to the Head of Property and Procurement to negotiate and agree the purchase of the parcel of land shown edged red on Appendix 1 (being Cumbrian Way Shopping Parade)
- (v) (a) That subject to reasonable attempts to negotiate the acquisition of the parcel of land referred to in paragraph (iv) above having failed, that the Solicitor to the Council be authorised to make a Compulsory Purchase Order to acquire the parcel of land and any necessary rights for the parcel of land at Cumbrian Way Shopping Parade as shown edged red on the map in Appendix 1, being within the Council's Phase 2 Estate Regeneration Programme, under Section 226(1) (a) Town and Country Planning Act 1990 for the purpose of facilitating the carrying out of redevelopment and improvement of the land.
  - (b) The Solicitor to the Council be authorised to approve the basis of each Statement of Reasons for making the Compulsory Purchase Order as set out in Appendix 2.
- (vi) The Solicitor to the Council be authorised:
  - (a) To make, advertise and secure confirmation and implementation of the Compulsory Purchase Order referred to in paragraph (iv) above.
  - (b) To acquire interests in or rights over the land shown edged red on Appendix 1 either by agreement or compulsorily.
  - (c) To amend the Statements of Reasons referred to in Appendix 2 above as required.
  - (d) To approve agreements with land owners setting out the terms for

withdrawal of any objections to any of the Compulsory Purchase Order (to include payment of compensation), including where appropriate seeking exclusion of land from any Order.

- (e) To represent the Council in any Inquiry into the confirmation of the Compulsory Purchase Order.
- (f) To approve (once vacant possession and planning permission has been obtained) the service of a Final Demolition Notice and the demolition of the buildings and structures on the land edged red in Appendix 1.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. The Council's estates offer the potential for the development of new and better homes and to benefit from more mixed tenure communities. This Report proposes a way forward for the delivery of regeneration on the final phase 2 site.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. The option of doing nothing would not achieve the Council's objectives for the Estate Regeneration Programme and not taking the steps identified within this Report increases the risk of delay to the projects.
3. If the decision is taken not to dispose of the site subject to planning permission and vacant possession, then there are realistically only two other alternatives.
  - a) Retender the site to identify and appoint a developer possibly via the accelerated restricted procedure. This would not only delay the regeneration of the site, but, considering the previous procurement option did not realise a preferred developer which the Council considered had made a development offer capable of acceptance, is not guaranteed to result in an award, albeit that if an award was capable of being made, the developer would be contractually bound to undertake the development works in contrast to a pure land sale contemplated by this report.. Also, the necessary time to retender would increase the risk of not meeting the timescales set out in the Funding Agreement with the HCA.
  - b) For the Council to be the lead developer, similar to the LA New Build sites. Whilst a budget has been set aside for this, this would be a significant financial commitment from the Council.
4. Not to proceed with the redevelopment of this site would fail to deliver the Council's regeneration ambitions and mean residents and businesses within this site have been significantly disrupted with no improvements to their homes and neighbourhood.

### **DETAIL (Including consultation carried out)**

5. The Cabinet decision on 28<sup>th</sup> September 2009 commenced the procurement process to procure a development partner(s) to redevelop the Phase 2 sites identified and enter into a Development Agreements to deliver the redevelopment of the Phase 2 schemes. Selection of a developer for these projects was governed by the OJEU (Restricted Procedure) procurement process which commenced with a notice advertised in the OJEU on the 11<sup>th</sup>

December 2009 (Ref: 342028 – 2009). Additional national advertising was placed in the Estates Gazette on the 12<sup>th</sup> December 2009.

6. The decision to follow the OJEU (Restricted Procedure) procurement process, followed legal advice that this was, at the time, considered to be the most appropriate procedure to meet the council's objectives for procurement of a developer(s), in the context that development agreements fall under public procurement law.
7. This process, whilst successful for three out of four phase 2 Lots, has not delivered an appropriate scheme on Cumbrian Way which meets the community's or councils aspirations for the site. That said excellent progress has been made to prepare Cumbrian Way for regeneration (particularly decanting residents and retail units) and community expectations have been raised. Work has also already started on a separate part of the Cumbrian Way Parade site to provide Local authority new build homes. There is now a need to identify a way forward for this part of the site, as addressed by this Report.
8. The following options have been investigated to take forward this site:
  - a) Retender the site through an OJEU process for a disposal under a development agreement approach.
  - b) Appoint a contractor to build and the Council then part dispose/ part rent the homes.
  - c) Disposal of the site, subject to planning permission and vacant possession only.
9. Considering the pros and cons of each approach, and the aspirations for timely delivery of regeneration on the site, option c) is the preferred way forward by Estate Regeneration .
10. Radian Group have made a formal offer to purchase the site. They are proposing a scheme comprising the following:
  - 50 units consisting of 38 flats (71%) and 12 houses (29%).
  - 34 (68%) of the units are to be affordable of which 22 (65%) are to be affordable rent and 12 (35%) are to be low cost home ownership, with the proviso that if the units have not been able to be sold 6 months after completion, the low cost home ownership units may revert to affordable rent. Affordable units to be built to Code for Sustainable Homes Level 3.
  - 2 commercial units comprising 150 sq m (subject to the condition that if after 6 months they cannot be let then they can be converted to flats for affordable rent).
11. Radian intend to simultaneously enter into contract with Drew Smith to sell that part comprising the market dwellings and commercial units and also enter into a contract for Drew Smith to construct the affordable dwellings for Radian
12. The proposed timescale is:
  - Enter into contract to sell the land- May 2011
  - Planning permission granted – July 2011
  - Start on site – October 2011

- Practical completion March 2013
13. The scheme differs from the requirements previously set out in the information and development briefs for the site. The main differences are:
    - A reduction in the commercial space from 4 units comprising 500m<sup>2</sup> to 2 units comprising 150m<sup>2</sup> with the potential that the units would be converted to affordable flats if they could not be let. The developer has advised of lack of commercial interest, considering nearby competition from a national retailer.
    - Private homes account for 32% of the residential units. The preferred split as set out in the brief was for a 50/50 split in tenure between private and affordable. Private sale and low cost home ownership are not favoured because of lack of demand and affordability.
    - Code for sustainable homes level 3 met in respect of the affordable homes. The brief requested code level 4 for all units.
  14. The terms of the offer are set out in Confidential Appendix 3. The proposed disposal is not on the basis of a development agreement and there is therefore no binding obligation on the part of the Radian or Drew Smith to build. There is therefore a risk to the Council that the site will not be built out as expected. Completion of the sale will be conditional on planning permission being obtained which requires a capital outlay by the purchaser but it does not remove the risk. Whilst the Council would have negative control and influence over the situation to the extent that any building activities will have to comply with relevant planning permission, the Council will have no means of positively enforcing the carrying out of any building activity or of preventing an application for amended planning permission
  15. Approval is sought to the principle of the sale of the property subject only to planning permission and vacant possession and to delegate authority to Executive Director for Neighbourhoods, in consultation with the Solicitor to the Council, Head of Finance and Head of Property and Procurement to agree the sale price and detailed terms. As noted above, there will be no contractually binding terms requiring the transferee to undertake any development activity.
  16. Consultation has been undertaken with a range of bodies in the development of the estate regeneration programme including the HCA . The cross-party Estate Regeneration Stakeholder Group on which the Federation of Southampton Tenants and Residents Association is represented, plays an important advisory role in the project.
  17. An extensive programme of consultation took place during summer 2009 in respect of the Phase 2 sites. This involved a number of consultation events and a design festival with an independent facilitator. All residents and businesses directly affected were visited individually to ensure that they understood the proposal to regenerate their areas. Reports on the consultation are available in the Members Room which also indicates the high level of support by residents for the regeneration of their neighbourhoods.

## **Compulsory Purchase Order**

18. Cabinet on the 29<sup>th</sup> September 2009 delegated authority to the Executive Director of Neighbourhoods following consultation with the Cabinet Member for Housing and Local Services, Solicitor to the Council, Head of Finance and Head of Property and Procurement to negotiate and acquire by agreement any legal interests in the Phase 2 sites not held by the Council. In each case subject to approval of terms by Capita acting as independent valuers.
19. Good progress is being made decanting tenants, leaseholders and commercial tenants from the four sites. The remaining interests at Cumbrian Way are set out in the Statement of Reasons at Appendix 2.
20. Negotiations are continuing to purchase the remaining properties which are not held in Council ownership. To ensure the redevelopment of these sites can be guaranteed it is necessary for authority to be obtained for compulsory purchase orders to authorise the acquisition by the Council of any remaining land at Cumbrian Way Shopping Parade as shown edged red on the plan in Appendix 1 under section 226(1) (a) Town and Country Planning Act 1990 for the purpose of facilitating the carrying out of redevelopment and improvement of the land.
21. The draft Statement of Reasons for making the Compulsory Purchase Order is set out in Appendix 2. These will be amended by the Solicitor to the Council in accordance with the recommendations above.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

22. The Council has already established a budget provision in the HRA capital programme to meet the costs of relocating residents, acquiring leasehold interests (including those made using CPO powers) etc and demolishing the buildings on the site. This expenditure is part funded by the HCA as part of a Funding Agreement covering all four Phase 2 sites. There are conditions attached to the provision of this funding that the Council is committed to ensuring that developers meet. Breach of some of these conditions on any site could result in funding having to be repaid for all four sites whilst breach of other conditions would mean repayment of grant for that specific site only.
23. The proposed sale subject to planning and vacant possession would mean that the Council would not be legally able to require the purchaser to meet the funding conditions in the HCA agreement. This therefore leaves the Council at risk of having to repay some or all of the grant for Cumbrian Way and potentially sums for the other three sites. The grant relating to Cumbrian Way is £787,000 and there is a further £2,838,000 for the other three sites.
24. It should be noted that as they currently stand, the purchaser's development intentions are not in accordance with the deliverables set out in the current HCA funding agreement. To limit the financial exposure to the Council (to the HRA), the purchasers intended deliverables would either need to be re-negotiated in advance of sale to be consistent with the terms in the Funding Agreement with the HCA, or agreement will need to be secured from the HCA in advance of the sale to vary the current funding agreement, and, as

part of this, it would be necessary to ensure that any repayments for subsequent non delivery of the intended deliverables would be limited to the £787,000 for Cumbrian Way only.

25. The aim is to ensure that the intentions of the purchaser following the sale are consistent with the terms (revised if necessary) of the funding agreement with the HCA. This would ensure that so long as the purchaser delivers the redevelopment as stated there would be no repayment to the HCA.
26. However if subsequently the purchaser did not deliver the redevelopment as intended, and therefore not in accordance with the terms (revised if necessary) of the funding agreement with the HCA, then the HCA would have discretion to reclaim some or all of the grant received in relation to Cumbrian Way, hence why agreement must be secured in advance of sale with the HCA on the maximum sum repayable should the purchaser subsequently not delivered the anticipate deliverables.
27. The Current offer has been discussed with the HCA and they have agreed, in principle, that a variation of the funding agreement would be acceptable.
28. Any repayment of grant would need to be funded from the HRA and there is no provision to meet this reduction in funding. This risk would need to be taken into account in setting the level of HRA balances in forthcoming budgets.

#### **Property/Other**

29. The land and properties are required for the improvement of the area which will improve the economic, social and health well being of the residents within the four estate regeneration areas and enhance the environment of the estates.

#### **LEGAL IMPLICATIONS**

##### **Statutory power to undertake proposals in the report:**

30. The Council has powers under section 226(1)(a) of the Town and Country Planning Act 1990; the Housing Acts and the Local Government Act 1972 section 120 to undertake estate regeneration proposals. General Disposal Consent E of the General Housing Consents 2005 allows local authorities to dispose of any land held for housing purposes for the best consideration that can reasonably be obtained provided that any dwelling-house included in the disposal: (a) is vacant; (b) will not be used as housing accommodation; and (c) will be demolished
31. The Compulsory Purchase Order is to be made in accordance with s.226(1)(a) Town and Country Planning Act 1990 and The Land Acquisition Act 1981.

##### **Other Legal Implications:**

32. In recommending the making of CPO the rights of third parties that may be affected (including the property rights of the current property owners of the sites) have been balanced against the public interest in acquiring the land. It is recommended that the Council can be satisfied that the proposed CPO is necessary and proportionate having regard to the provisions of the Human Rights Act 1998 and is in the public interest having regard to the both the

need to provide good quality, energy efficient homes in areas where people wish to reside now and in the future and the need to regenerate these estates.

33. Procurement implications are set out in Confidential Appendix 4.

### **POLICY FRAMEWORK IMPLICATIONS**

34. These proposals will help deliver the new homes including affordable homes required in both the Housing Strategy 2007-11 and as part of the Council's partnership with PUSH. The regeneration of Southampton's council estates will play an important part in delivering a number of corporate policy objectives for regeneration.

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**KEY DECISION?** Yes

<b>WARDS/COMMUNITIES AFFECTED:</b>	Millbrook
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### **SUPPORTING DOCUMENTATION**

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

#### **Appendices**

1.	Cumbrian Way Shopping Parade CPO Plan
2.	Draft Statement of Reasons for Cumbrian Way Shopping Parade CPO
3.	Confidential - Terms of Offer
4.	Confidential – Procurement Advice

#### **Documents In Members' Rooms**

1.	<p>Consultation Report</p> <p>A 5-92 Laxton Close, Weston</p> <p>B Cumbrian Way Millbook, Exford Avenue Harefield, 5-25 Laxton Close Weston and 222-252 Meggeson Avenue Harefield</p>
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#### **Integrated Impact Assessment**

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	No
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#### **Other Background Documents**

**Integrated Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None