

This report will be made public on Tuesday 9 July 2019.



Report Number **C/19/12**

To: Cabinet
Date: 17 July 2019
Status: Key Decision
Responsible officer: John Bunnett – Place and Commercial
Cabinet Members: Councillor David Monk, Leader of the Council, Councillor David Godfrey, Transport, Housing and Special Projects

Subject: **Biggins Wood – Delivery**

SUMMARY: This report recommends the acceptance of two bids to deliver the Biggins Wood development.

REASONS FOR RECOMMENDATIONS:

The council has sought bids for the delivery of the Biggins Wood development. The bids received have been evaluated and a decision needs to be made on the acceptance of the offers. Completion of Biggins Wood will be in accordance with the Council's strategic objectives of more homes and more jobs.

RECOMMENDATIONS:

1. To receive and note report C/19/12.
2. To accept, subject to the completion of satisfactory agreements (including the formation of a joint venture) the offers from :-
 - R in respect of the commercial element of the development and;
 - E in respect of the residential element of the development.
3. To enter into a joint venture partnership with R in accordance with the details set out in this report on terms to be agreed.
4. To agree the use of £500,000 from the Business Rates Pool Reserve to fund the commercial element of this proposal.
5. That the Corporate Director for Place and Commercial be authorised with the agreement of the Leader of the Council and the Cabinet Member for Transport, Housing and Special Projects and in consultation with the Corporate Director for Customer, Support, and Specialist Services to negotiate and conclude such

agreements (including the formation and establishment of a joint venture) and to take such other actions as are necessary to deliver the Biggins Wood development in accordance with the offers set out in this report. This to include the use of the Business Rates Pool to fund any shortfall in remediation costs should this occur.

1 BACKGROUND

- 1.1 Members will recall that the Council purchased land at Biggins Wood / Caesar's Way on 21st December 2016. . The price paid for the land was one and a half million pounds (£1,500,000). The land was purchased with existing planning permission for 77 homes, 54 light industrial units and one office building. The site comprises 2.43 hectares (10.95 acres) in all of which 2.08 hectares (5.14 acres) is the commercial land area and 2.34 hectares (5.81 acres) is the residential land area.
- 1.2 On 31 May 2017 Cabinet considered report C/17/06 and resolved:
1. *To receive and note report C/17/06.*
 2. *To note the necessary preliminary work required to undertake detailed delivery planning through to a procurement decision.*
 3. *To note that a further report is brought back to Cabinet when a delivery decision needs to be made. That report will:*
 - *Detail the issues around finance, risk profile and timelines of each option; and*
 - *to recommend a procurement route.*
- 1.3 On 20 February 2019 cabinet received report C/18/70 on the outcome for grant funding made to Homes England under the Government's Accelerated Construction Programme to support remediation and other development costs for the site. The application was successful and the council was awarded approximately one million pounds. Cabinet resolved to accept the grant offered (minute 78).
- 1.4 This report sets out the reasons for purchasing the site, what the Council's aims are, the process of that has been followed to seek interests in the site and makes recommendations on the acceptance of two offers.

2. REASONS FOR PURCHASING THE SITE

- 2.1 The report recommending the purchase of the site framed the reasons in the following way:-

"The reason for purchasing the site is to help meet the Council's vision.

Prosperous and ambitious – Working for more jobs and homes in an attractive district"

And in particular to implement proposals to meet the key objectives of the Council's Corporate Plan particularly:

- a) *To boost the local economy and increase job opportunities through the development of a major new employment offer;*
- b) *More homes; enable the construction of 77 new homes including 23 affordable homes;*

c) *Support an attractive and vibrant place to live by ridding the area of a derelict and contaminated site and by creating new public open space.*

d) *Deliver value for money...*”

2.2 It should be recalled that the last use of the site was in the late 1970s when the brickworks on it closed. It has remained unused therefore for approximately 40 years. In the years of disuse the site has become overgrown and is unattractive. The main access to it is particularly poor from an aesthetic point of view.

3. OFFERS RECEIVED

3.1 The site was offered for sale, freehold or leasehold in the Estates Gazette in February of this year. By way of reminder the planning permission is for:-

- 77 residential units, of which 30% (23 No.) will be affordable, and of those 60% (14 No.) will be for affordable rent and 40% (9 No.) will be shared ownership.
- 46 No. 2 bed 4 person houses.
- 31No, 3 bed 5 person houses.
- Commercial Office units – 660m².
- Light Industrial/Storage units – 5,142m².

3.2 The offers differed in content and approach.

3.3 The recommendations are that, subject to the approval and completion of satisfactory agreements (see paragraph 7 below) the offer of company R (“R”) be accepted in respect of the commercial element and the offer of company E (“E”) be accepted for the residential part. The two offers are set out in more detail below. As there still will be negotiations over the details the companies have been anonymised.

4 COMMERCIAL DEVELOPMENT

4.1 R propose the formation of a joint venture company owned 50 – 50 by R and the Council.

4.2 R have provided draft heads of terms for the joint venture partnership. The joint venture (JV) would be a company, the council would own 50% of the shares and R the other 50%. Although not stated in the heads of terms the Council would insist on equal representation on the board of directors.

4.3 The purpose of the joint venture would be to deliver the commercial development for profit.

4.4 The proposed financing of the JV and how it would develop the land is shown below.

- 4.5 The council's initial contribution to the joint venture will be the value of the commercial land and a capital contribution of £500,000. The Council's contribution will be matched in value by a financial contribution from R, this is the Commencing Capital. R would build the development on behalf of the joint venture using a phased approach (see below), with the Commencing Capital used for this purpose.
- 4.6 The site will be developed in a phased approach. The first phase, including site remediation and servicing (see below) would be constructed using the Commencing Capital and, in respect of the servicing and remediation, the grant from Homes England. The first phase would comprise 932m² of commercial space (the "First Unit"), if the demand is present 371m² would also be constructed. It is envisaged that the joint venture would be agnostic as to the disposal of the units and how future units would be constructed. Decision on this will be led by the market so, for example, units could be sold freehold or leased, the units could be sold under a design and build agreement or as completed units. Fundamentally the market conditions will dictate this as will the timing of future phases of the development.
- 4.7 Funding for the financing of the remaining parts would need to be agreed. However either party could decide not to fund the remaining phases or fund it only in part. In this event there would be a transfer of shares either in whole or in part at an agreed price to reflect the contribution of the partner deciding not to fund or partially fund the remaining phases. This would affect, of course, the share of profit.
- 4.8 R have submitted an appraisal which shows that building the First Unit would mean the commercial development at that stage would break even. R's estimate is that the commercial development if fully constructed would mean a commercial return to the Council of not less than 5%. The assumptions used by R to arrive at these figures have been independently validated by Smith Woolley and Perry.
- 4.9 Members should appreciate that if a joint venture is formed the Council's direct control over the development would be curtailed. The JV would have to pursue the broad objectives set down but would otherwise be in control of the development. As indicated above this would include whether to sell or lease units. Any directors would have to act in the best interests of the company rather than the body appointing them. It would however be for the Council to decide whether to fund the development beyond phase 1 as described in paragraph 4.6 above.
- 4.10 As part of the agreement on the land but not part of the JV, R would also build the estate road, incoming main supplies and carry out remediation works to the entire site as part of one operation. Whilst R / the joint venture will have no continuing interest in the residential part of the site it would not make sense to remediate part only of the site. The costs of remediation etc. will be substantially met from the Homes England grant. Any shortfall will be funded by the Council.

- 4.11 Would participation in the JV enable the Council to achieve its objectives in buying the land? Obviously much will depend on the market in terms of timing but it would appear to be a good method of ensuring the employment land is built out, the site's appearance is vastly improved and the Council makes a commercial rate of return.

5. RESIDENTIAL DEVELOPMENT

- 5.1 E's offer is based on the delivery of a clean site and one serviced to the boundary. E's offer represents at least a 10% uplift in land value of the residential site.
- 5.2 E will build the dwellings - 77 in all, in accordance with the planning permission. This is at their risk. It is the expectation that some of the houses will be of modular construction. E consider that they may be able to achieve a density of more than 77 units, officers will explore the possibility of an overage clause in this event. The development will be the subject of an agreement which will ensure as far as possible that it is completed within a defined timescale with an expectation that work will begin on site by spring 2020 at the latest. However again the market will be a factor in determining how quickly the houses are completed.
- 5.3 The planning permission envisages 23 affordable homes. These will be acquired by the Council as part of its housing stock on completion of the development. The costs of these affordable dwellings will be met from the housing revenue account, the dwellings themselves added to the Council's housing stock and managed by East Kent Housing. This has been agreed in the HRA business plan and Biggins Wood identified as a pipeline project.
- 5.4 By accepting the offer from E will the Council achieve its objectives? The proposal delivers the houses in accordance with the planning permission. The site will be much improved in appearance, 23 affordable homes will be constructed in an area where there is a high demand for such homes. Furthermore it delivers value for money with the uplift in land value.

6. FINANCE

- 6.1 As stated above the financing of the first phase of the commercial land will require a capital contribution of £500,000 from the Council. Furthermore there may be a capital contribution to fund any shortfall in the monies available to undertake the remediation works. There is at present no budget for this money, though there is money available in the business rate pool.
- 6.2 It should be appreciated that if the commercial element proceeds to be fully developed the net profit from that element and from the residential land will be substantial.

7. AGREEMENTS NECESSARY

- 7.1 To achieve the Council's objectives in respect of both the commercial and residential parts of the Biggins Wood Development will entail detailed agreements.
- 7.2 In respect of the commercial element a joint venture will have to be formed including most probably a shareholder agreement.
- 7.3 In respect of the residential element a development agreement will be needed to ensure that the development is completed.
- 7.4 It is suggested that the Corporate Director for Place and Commercial be authorised with the agreement of the Leader of the Council and the Cabinet Member for Transport, Housing and Special Projects and in consultation with the Corporate Director for Customer, Support, and Specialist Services to negotiate and conclude such agreements (including the formation and establishment of a joint venture) and to take such other actions as are necessary to deliver the Biggins Wood development in accordance with the offers set out in this report. This to include the use of the Business Rates Pool to fund any shortfall in remediation costs should this occur.

8. RISK MANAGEMENT ISSUES

- 8.1 The following risk management areas are highlighted.

Risk	Seriousness	Likelihood	Preventative Action
Lack of demand for commercial office space	High	Medium	Advise suggest there is demand
Severe slowdown of the housing market	High	Medium	Advise received that there is and will continue to be demand.
Remediation works greater than expected	High	Low	Expert advice has been taken on this.

9. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

- 9.1 Legal Officer's comments:

The Localism Act 2011 ("the Act") includes a "general power of competency" which gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited. The power of competency under s1 of the Act enables the Council to establish a company for commercial purposes. Under s4 of the Act all trading must be carried out through a company. This gives the powers to enter into prudential investment and in this context the investment provides a financial return along with

ancillary benefits in terms of delivery of housing and also helps to meet the Council's vision.

The Council will be appointing external solicitors to provide detailed legal advice on:-

- the formation of the joint venture and any ancillary agreements and assisting in the negotiation of the setting up of the joint venture;
- the agreement necessary to ensure the site is remediated, the access road constructed and the land services and assisting in the negotiations leading to the completion of the agreement; and
- the agreement necessary to ensure the residential element is completed, the affordable housing is transferred to the council and modular housing provided and assisting in the negotiations leading to the completion of the agreement.

9.2 Finance Officer's Comments

The broad outline of the proposal is set out within the report. The land at Biggins Wood was purchased for £1,500,000. An additional £131,000 was agreed for works to progress the site (Cabinet report C/17/06 22 May 2017). It should be noted that this was split between the General Fund (70% and the HRA (30%). Any realisation of the benefits will need to reflect this split. In total the costs are £1,631,000 split General Fund £1,141,700 and HRA £489,300. The Council has also been awarded a grant from Homes England of £1,015,767 to support the remediation of the site. This is expected to substantially cover the costs of remediation. However, any shortfall in this can be met from the business rates pool referred to below. The cost has been assessed independently but this measure can act as a contingency and as an additional safeguard to be used with the authority of the respective Corporate Directors in consultation with the Leader and Cabinet Portfolio Holder.

The report references the potential for the additional £500,000 capital contribution for the Council to be drawn from the business rates pool. This fund was considered by Cabinet on the 21 June 2017 and agreed that the pool, whose use needs to also be agreed by Kent County Council, was an appropriate funding mechanism for Biggins Wood although the precise amounts were not considered. The pool itself, as at the end of 2018/19 has £863,491 remaining and therefore funding is available for this purpose.

The proposed offer seems to offer the Council good value for money although it should be noted that due diligence still needs to be completed. With regard to the residential element, this is comparatively straight forward and the HRA business plan has factored in the purchase of 23 properties for affordable housing / shared ownership. The commercial development, for which the additional £500,000 is being requested, is more complex although does seem to indicate a positive return for the Council.

The returns being suggested for the commercial development are based on estimates of the proposed bidder and need to be validated during the due

diligence process. The nature of the Joint Venture is to be determined however the principle seems to be that of a shared risk and reward. Whilst there is a return after phase 1, the maximisation of profit will only occur once the scheme is fully developed and this will require further investment. Those decisions will need to be agreed at the appropriate time and will be subject to the prevailing environment.

9.3 Diversities and equalities implications

There are no diversity or equalities issues arising from this report.

10. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

Exempt – paragraph 3 of schedule 12A Local Government Act 1972 (as amended).