

**PAPER NO. 12**

**REPORT TO THE EXECUTIVE MEETING OF 5 SEPTEMBER 2016**

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**Meeting:** Executive

**Date:** 5 September 2016

**Subject:** Offers from developers for Harborough District Council to acquire public open spaces

**Report of:** Mark Perris

**Portfolio Holder:** Councillor Phillip King; Financial & Commercialisation

**Status:** Decision

**Relevant Ward(s):** Broughton Astley – Broughton  
Lutterworth – Swift  
Ullesthorpe  
Market Harborough – Welland  
Bosworth  
Glen

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1. Purpose of the Report

- 1.1. To consider the offers from William Davis, Davidsons Homes, Balfour Beatty Investments & Bellway for the District Council to acquire public open spaces at;
- Land off Dunton Road, Broughton Astley; Davidsons Homes
  - Bill Crane Way, Lutterworth; William Davis
  - Land at Leicester Road, Lutterworth; Davidsons Homes
  - Land off Fairway Meadows, Ullesthorpe; Balfour Beatty Investments
  - Land at Vislok Close, Market Harborough; Bellway Homes
  - Land East Of Welford Road, Husbands Bosworth; Davidsons Homes (seeking clarity prior to submission of reserved matter 15/00176/OUT)

2. Recommendations:

- 2.1. That the Executive does not pursue the land acquisitions as offered by William Davis, Davidsons Homes and Balfour Beatty.
- 2.2. That the Executive recommends to Council the acquisition of land at Vislok Close, Market Harborough from Bellway Homes, subject to receipt of the commuted sum indicated in the s. 106 agreement.

### 3. Summary of Reasons for the Recommendations

- 3.1. For items covered by 2.1 above, to avoid further burden to the Council's budget due to time limited contributions and long term liabilities, for example, for equipment replacement and works to balancing pond.
- 3.2. For items covered by 2.2 above, to comply with existing contractual arrangements.

### 4. Key Facts

#### Land off Dunton Road, Broughton Astley

- 4.1. Davidsons Homes in accordance with the provisions included within the Unilateral Undertaking dated 20 November 2014 have served notice offering the option that Harborough District Council acquire the public open space including balancing pond at land off Dunton Road, Broughton Astley associated with the development.
- 4.2. There is a s. 106 unilateral undertaking relating to the land, however, there is no obligation for the District Council to "acquire" the land. The original s. 106 included public open space and the balancing pool within the site. The approach from Davidsons Homes includes all aspects.
- 4.3. In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sum for maintenance would be £53,045.45 pro rata based on original area and current proposed. The land extends to a total area of approx. 0.139ha.

As such, there could be a cost to the District Council in terms of ongoing Revenue post year 15, and possibly future capital expenditure.

- 4.4. Davidsons Homes have outlined that in the event that the land is not transferred to the Council, it will arrange for a management company to do so.
- 4.5. The balancing pond forms part of the flood defences, and as such, ongoing maintenance is important, if the Council do not acquire the land, the facility would be added to the inspection regime already in place and in the event of any maintenance issues, The Council would work with the Local Lead Flood Authority, Leicestershire County Council, to take appropriate action to remedy the situation.
- 4.6. Options
  - a. To accede to the request from Davidsons Homes, and seek to negotiate a transfer of the land, subject to Council approval. This would require a budget to be created for the ongoing maintenance, and in the current financial climate this would have implications, albeit a commuted sum of £53,045.45 pro rata based on original area and current proposed would be received covering a 15 year period.

- b. To advise Davidsons Homes that the District Council does not wish to pursue an acquisition due to the long term cost implications.

#### Land off Bill Crane Way, Lutterworth

- 4.7. William Davis in accordance with the provisions included within the s. 106 unilateral undertaking dated 5 December 2012 have served notice offering the option that Harborough District Council acquire the public open space including play area at land off Bill Crane Way, Lutterworth associated with the development.
- 4.8. There is a s. 106 unilateral undertaking relating to the land, however, there is no obligation for the District Council to “acquire” the land. The original S106 included public open space within the site and the approach from William Davis includes all aspects.
- 4.9. In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sums for maintenance would be;
  - £146,117.63 for 0.111 ha of recreational area for children and young people

plus BCIS All in Tender Price Index uplift from the date of planning permission, 5 December 2012, to the date of transfer uplifts as identified in the s.106 unilateral undertaking dated 5 December 2012.

As such, there could be a cost to the District Council in terms of ongoing Revenue post year 15, and possibly future capital expenditure.

- 4.10 William Davis have made no arrangements for any alternative option and some houses have already been sold.
- 4.11 Options
  - a. To accede to the request from William Davis, and seek to negotiate a transfer of the land, subject to Council approval. This would require a budget to be created for the ongoing maintenance, and in the current financial climate this would have implications, albeit commuted sum of £146,117.63 plus index uplift would be received covering a 15 year period.
  - b. To advise William Davis that the District Council does not wish to pursue an acquisition due to the long term cost implications.

#### Land off Leicester Road, Lutterworth

- 4.12 Davidsons Homes in accordance with the provisions included within the s. 106 agreement dated 3 October 2014 have served notice offering the option that

Harborough District Council acquire the public open space at land off Leicester Road, Lutterworth associated with the development.

- 4.13 There is an s. 106 agreement relating to the land, however, there is no obligation for the District Council to “acquire” the land. The original s. 106 included public open space within the site. The approach from Davidsons Homes includes all aspects.
- 4.14 In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sum for maintenance would be;
- £65,818.75 for 0.05 ha of recreational area for children and young people
  - £31,416.00 for 0.28 ha of semi natural green space

£97,234.75 plus BCIS All in Tender Price Index uplift from the date of planning permission, dated 6 March 2014, to the date of transfer uplifts as identified in the s.106 agreement dated 3 October 2014.

As such, there could be a cost to the District Council in terms of ongoing Revenue post year 15, and possibly future capital expenditure.

- 4.15 Options
- a. To accede to the request from Davidsons Homes, and seek to negotiate a transfer of the land, subject to Council approval. This would require a budget to be created for the ongoing maintenance, and in the current financial climate this would have implications, albeit a commuted sum of £97,234.75 plus index uplift would be received covering a 15 year period.
  - b. To advise Davidsons Homes that the District Council does not wish to pursue an acquisition due to the long term cost implications.

#### Land off Fairway Meadows, Ullesthorpe

- 4.16 Balfour Beatty Investments in accordance with the provisions included within the s. 106 Unilateral Undertaking dated 24 June 2014 have served notice offering the option that Harborough District Council acquire the balancing pond at land off Fairway Meadows, Ullesthorpe associated with the development.
- 4.17 There is a s. 106 unilateral undertaking relating to the land, however, there is no obligation for the District Council to “acquire” the land. The original s. 106 included the balancing pool within the site and the approach from Balfour Beatty Investments includes all aspects.
- 4.18 In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sum for maintenance would equate to £123,969.78 per ha plus BCIS All in Tender

Price Index uplift from the date of planning permission, 21 August 2014, to the date of transfer uplifts as identified in the s.106 Unilateral Undertaking dated 24 June 2014.

As such, there could be a cost to the District Council in terms of ongoing Revenue post year 15, and possibly future capital expenditure.

4.19 The balancing pond forms part of the flood defences, and as such, ongoing maintenance is important, if the Council do not acquire the land, the facility would be added to the inspection regime already in place and in the event of any maintenance issues, The Council would work with the Local Lead Flood Authority, Leicestershire County Council, to take appropriate action to remedy the situation.

#### 4.20 Options

a. To accede to the request from Balfour Beatty Investments, and seek to negotiate a transfer of the land, subject to Council approval. This would require a budget to be created for the ongoing maintenance, and in the current financial climate this would have implications, albeit a commuted sum equating to £123,969.78 per ha plus index uplift would be received covering a 15 year period.

b. To advise Balfour Beatty Investments that the District Council does not wish to pursue an acquisition due to the long term cost implications.

#### Land East Of Welford Road, Husbands Bosworth; Davidsons Homes (seeking clarity prior to submission of reserved matter 15/00176/OUT)

4.21 Davidsons Developments are seeking to finalise a reserved matters planning application and have approached the Council regarding the option for the Council to acquire the public open space within the development to provide certainty and, if rejected, allow adequate time to set up a suitable management company.

4.22 The developer will be seeking to agree a s. 106 agreement, which could include the land. However, there is no obligation for the District Council to “acquire” the land.

4.23 In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sums in accordance with the standard amounts normally included would be included within the subsequent s. 106 agreement, which will include BCIS All in Tender Price Index uplifts from the date of planning permission to the date of transfer. As such, there could be a cost to the District Council in terms of ongoing Revenue post year 30, and possibly future capital expenditure.

Land OS 1408 London Road, Great Glen; Davidsons Homes (seeking clarity prior to submission of reserved matter 15/00912/OUT)

- 4.24 Davidsons Developments are seeking to finalise a reserved matters planning application and have approached the Council regarding the option for the Council to acquire the public open space within the development to provide certainty and, if rejected, allow adequate time to set up a suitable management company.
- 4.25 The developer will be seeking to agree a s. 106 agreement, which could include the land. However, there is no obligation for the District Council to “acquire” the land.
- 4.26 In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sums in accordance with the standard amounts normally included would be included within the subsequent s. 106 agreement, which will include BCIS All in Tender Price Index uplifts from the date of planning permission to the date of transfer. As such, there could be a cost to the District Council in terms of ongoing Revenue post year 30, and possibly future capital expenditure.
- 4.27 Options
- a. To accede to the request from Davidsons Developments, and seek to negotiate a transfer of the land, subject to Council approval on completion and following a suitable developers maintenance period, eg 12 months. This would require a budget to be created for the ongoing maintenance, and in the current financial climate this would have implications, albeit a commuted sum plus index uplift would be received covering a 15 year period.
  - b. To advise Davidsons Developments that the District Council does not wish to pursue an acquisition due to the long term cost implications.

Land off Vislok Close, Market Harborough

- 4.28 Bellway Homes in accordance with the provisions included within the s. 106 agreement dated 21 May 2004 have served notice offering the option that Harborough District Council acquire the land at Vislok Close, Market Harborough associated with the development.
- 4.29 There is a s. 106 agreement relating to the land, and there is an obligation for the District Council to “acquire” the land for £1. The original s. 106 included the balancing pool within the site and the approach from Balfour Beatty Investments includes all aspects.
- 4.30 In the event that the District Council agreed to consider a transfer of the land, it should consider if the land were transferred, the commuted sum for maintenance would equate to £1,039 per dwelling plus RPI uplift from the date of planning permission, 9 October 2003, to the date of transfer uplifts as

identified in the s.106 agreement dated 21 May 2004. This sum stood at £76,653.21 in 2013, and will be subject to further uplifts.

As such, there could be a cost to the District Council in terms of ongoing Revenue post year 15, and possibly future capital expenditure.

#### 4.31 Options

- a. To accede to the request from Bellway Homes, and seek to transfer of the land, subject to Council approval. This would require a budget to be created for the ongoing maintenance, and in the current financial climate this would have implications, albeit a commuted sum equating to £123,969.78 per ha plus index uplift would be received covering a 15 year period.
- b. To advise Bellway that the District Council does not wish to pursue an acquisition due to the long term cost implications. This risks contractual issues arising as the Council has an obligation to acquire the land for £1 under the terms of the agreement.

### 5 Legal Issues

- 5.1 In the event that the Council wished to pursue an acquisition/s, the recommendation would need to be referred to Council for a decision. There would be a requirement for legal work to complete the transfer.

### 6 Resource Issues

- 6.1 There are potential financial implications for the Council if it pursued an acquisition including time limited contributions and long term liabilities, for example, for equipment replacement and works to balancing pond.
- 6.2 Any s. 106 obligations have to be CIL compliant. The purpose of obligations and any commuted sums including for public open space is to make the development acceptable in planning terms. There is a requirement for the Council to demonstrate that monies have been expended for the purposes for which they were obtained. As such, if the Council received monies and did not spend it, it would have to be paid back. Therefore, there is not an opportunity to profit from this exercise.

### 7 Equality Analysis Implications/Outcomes

- 7.1 No specific implications arising as a result of this report.

### 8 Risk Management Implications

- 8.1 The main risk is associated with the financial implications of pursuing any acquisition(s).

### 9 Consultation

- 9.1 The ward members have been made aware.

10 Options

10.1 The options are outlined in 4.5, 4.11, 4.15, 4.20, 4.24 4.27 and 4.31 above.

11 Background Papers

11.1 None.

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**Previous report(s): None**

**Information Issued Under Sensitive Issue Procedure: No**

**Ward Members Notified: Yes**

**Appendices:**

**Appendix A – Land off Dunton Road, Broughton Astley Plan**

**Appendix B – Land off Bill Crane Way, Lutterworth Plan**

**Appendix C – Land off Leicester Road, Lutterworth Plan**

**Appendix D – Land off Fairway Meadows, Ullesthorpe Plan**

**Appendix E – Land East Of Welford Road, Husbands Bosworth Master Plan;  
Davidsons Homes**

**Appendix F – Land off Vislok Close, Market Harborough Plan**