CAB3147(HSG)
CABINET (HOUSING) COMMITTEE

REPORT TITLE: HOOKPIT FARM, KINGS WORTHY – NEW HOMES SCHEME

20 MARCH 2019

REPORT OF PORTFOLIO HOLDER: LEADER WITH PORTFOLIO FOR HOUSING, CLLR HORRILL

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WARD(S): KINGS WORTHY

PURPOSE

The report seeks approval for the purchase of 35 properties at Hookpit Farm, Kings Worthy and adjoining land for recreational purposes for the sum of £8,036,081.00.

RECOMMENDATIONS:

1. That the Corporate Head of Asset Management is authorised to enter into a conditional purchase contract to acquire 35 homes and additional recreation land from Drew Smith Ltd. for the sum of £8,036,081.00 subject to obtaining a parent company guarantee.

2. That the Corporate Head of Asset Management be authorised to agree the terms and conditions of sale as proposed in exempt appendix 1.

3. That the Corporate Head of Asset Management is authorised to complete the purchase of the 35 completed homes upon completion of their construction together with additional land for the sum of £8,036,081.00.

4. That the Corporate Head of Housing in consultation with the Corporate Head of Asset Management be authorised to negotiate and agree terms and enter into arrangements (including if deemed necessary the grant of a lease) with an appropriate body for the management and maintenance of the recreational

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open space acquired as part of the development.

5. That Rule 9.2 of the Council’s Contract Procedure Rule be waived and the Head of Legal Services be authorised to accept a single quotation from Anthony Collins Solicitors to deal with the acquisition of the properties and recreational land on the Council’s behalf.

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IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME

1.1 This scheme supports Delivering Quality Housing Options – the scheme will provide a mix of rented, shared ownership and discount market sale affordable housing.

2 FINANCIAL IMPLICATIONS

2.1 The completed properties and additional land are offered for purchase for the sum of £8,036,081.00, for which, budget provision has been included in the Housing Revenue Account Capital Programme for 2019/20.

3 LEGAL AND PROCUREMENT IMPLICATIONS

3.1 External legal advice from Antony Collins Solicitors has previously been sought on the appropriate contract structure to ensure that the arrangements do not fall foul of the procurement legislation. See Exempt Appendix 3. It is not possible for the Council to acquire the land from the developer and then procure the works of construction without carrying out an EU compliant tender process. Nor is it permissible for the Council to procure the works of construction and take a transfer of the properties on completion without carrying out an EU compliant tender process. Land transactions are however exempt from the procurement legislation but development agreements and works agreements are not. To ensure that the transaction qualifies as an exempt land transaction the Council cannot include specific obligations in the contract for sale which specify the works to its requirements or seek any changes to the Specification but will need to rely on informal consultation and the use of its statutory powers under the Town and Country Planning Act 1990 and the Building Regulations. It can in effect only agree to purchase the properties in the event of the developer wishing to build them.

4 WORKFORCE IMPLICATIONS

4.1 none

5 PROPERTY AND ASSET IMPLICATIONS

5.1 The scheme will provide 35 new affordable Council homes

6 CONSULTATION AND COMMUNICATION

6.1 Several consultation events have been held with the local community as well as additional meetings with Kings Worthy Parish Council and Top Field Action Group to ensure the scheme benefits the local community

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7 ENVIRONMENTAL CONSIDERATIONS

7.1 The scheme will fully meet sustainability standards set by planning requirements.

8 EQUALITY IMPACT ASSESSEMENT

8.1 none

9 DATA PROTECTION IMPACT ASSESSMENT

9.1 none

10 RISK MANAGEMENT

10.1 The significant risk associated with this type of contractual arrangement is the risk of the Council's 25% deposit which is to be paid at the start of construction. The Council intends to purchase the 35 dwellings and the remainder of 'Top Field' upon completion of the development. The structure of the payment will be based on approximately 5% deposit on exchange of contracts, a further 20% on the award of a planning consent and the balance on completion. The developer wishes the deposit to be held by its solicitors as "agents" for the developer rather than as "stakeholders to enable the developer to use the deposit monies to part finance the development.". The risk is that the developer of the site enters administration during the development of the properties and the Council loses its 25% deposit (as it's not secured against the land). The deposit will however be protected by a parent company guarantee from Galliford Try Partnerships).

Risk	**Mitigation**	**Opportunities**
Property *Build quality*	 Enforcement of building regulations	
Specification The Council is not involved in the design or specification of the scheme The Council has no right to change the specification	Copy of Council's Employers Requirements issued for guidance only on the quality expected for new schemes, but the Council cannot insist they are met contractually The Council will seek a full specification at exchange of contracts but will have no control over the development other than	

Properties unsold	through the use of its statutory powers Convert to rented accommodation	
Community Support	Number of events with Kings Worthy residents and neighbours immediately affected by the scheme were held to identify and mitigate potential issues	
Timescales		
Financial / VfM *Deposit payment at risk*	Financial viability appraisal has been undertaken – risk with builder as purchase price is pre-agreed Appropriate financial checks are carried out on the Seller and a guarantee will be provided to protect deposit	
Legal *Risk of challenge that the transaction is not an exempt land transaction and should have been procured.*	Specialist legal advice has been obtained on the contractual / procurement issues and to undertake the conveyancing work.	Alternative contractual approaches were considered however there would be a greater risk of legal challenge unless a full EU Procurement was conducted
Innovation	"off the shelf" purchase	
Reputation *Loss of deposit*	Parent Company Guarantee to be arranged	
Other *Failure to complete development*	Deposit will be returned and Council could pursue purchase of land only and separately tender build works	

11 SUPPORTING INFORMATION:

11.1 The Hookpit Farm site is an area of land outside of the development boundary for Kings Worthy consisting of a 9.4 ha of land. The land benefits from an outline planning consent for 25 units of affordable housing, with the remainder of the land retained by Drew Smith. When the original outline planning consent was granted in February 2018, there was some local concern

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expressed about the future of the remainder of the Top Field site which was not incorporated within the consented scheme. It had been a desire of the local community to see the land available for public access which culminated in an application under the Commons Act 2015. This application was rejected at a public enquiry in September 2016.

11.2 The owners of the site approached the Council and advised that they would consider an offer for the whole of the Top Field site and one way of achieving this outcome could be the addition of some further affordable housing. The Council discussed this idea with the local community representatives who felt that it was worth a discussion with the wider community including the views of the Top Field Action Group (TFAG) who had pursued the town and village green application.

11.3 Two community consultation events were held with Kings Worthy residents as well as a number of smaller meetings to address more specific issues such as drainage mitigation for neighbouring properties. The outcome of these events was that there was a broad local consensus to support a new scheme which would provide an additional 10 new affordable properties (in addition to the previously consented 25) and the remainder of the site being held in public ownership and accessible to the local community.

11.4 At the request of the community the Council has investigated various management arrangements for the open space which would give long term protection and a well managed environment reflecting the sensitivity of the site. Initial discussions with the Land Trust have taken place and they have indicated their interest in managing the land for the Council.

11.5 The owners of the site, Drew Smith have offered the Council a package price of £8,036,081.00 for the construction of 35 dwellings and the remainder of the site in their ownership (the plan being to provide this as open space for community use). The mix of housing would consist of:

- 4 x 1 bed flats (affordable rent)
- 4 x 2 bed flats (affordable rent)
- 11 x 2 bed houses (affordable rent)
- 6 x 2 bed houses (shared ownership)
- 6 x 3 bed houses(affordable rent)
- 2 x 3 bed houses (shared ownership)
- 2x 4 bed houses (discounted market sale)

11.6 The scheme mix reflects local needs but also the need to generate a surplus to subsidise the acquisition and improvement of the open space and its long term management. All of the properties will be affordable housing, as defined

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in the National Planning Policy Framework and as an exception site will be for local people with a connection to Kings Worthy.

11.7 Drew Smith has a long established reputation as an affordable housing contractor in the South East having worked in the sector for over 25 years. They are currently working with Southampton City Council delivering Extra Care accommodation, Eastleigh Borough Council building a mixed development of flats and houses and Radian (Housing Group) at Bordon in East Hampshire. They completed one scheme of 21 homes for Winchester City Council in 2017 at New Queens Gate, Stanmore which was nominated for the regional LABC Awards. In addition the Council is currently negotiating a 77 home scheme at The Valley, Stanmore.

11.8 The Hookpit scheme meets the Council's viability tests which include an additional £100,000 to improve the field for public use and £10,000 pa for management and maintenance. With an input of £1M internal subsidy via RTB receipts (which have to be spent otherwise returned to HMCLG) the loan repayment is year 32 with a net NPV of £47,459. The full viability appraisal is set out in Appendix 1.

11.9 It is proposed that the conveyancing be carried out by Anthony Collins Solicitors on behalf of the Council,. The quote for the work is £13,950 which, under the Council's Contracts Procedure Rules is above the threshold for accepting a single quote for work. As Anthony Collins provided the original advice on procurement it is the opinion of the Head of Legal Services that it would be advantageous to maintain continuity and ensure that the transaction constitutes an exempt land transaction and appoint them to complete the remaining work.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 The Council could have developed the original 25 affordable homes, however it was recognised that developing an additional 10 affordable homes would secure the remainder of Top Field as open space in perpetuity for the local community. The Council could have purchased the open space without additional housing however this option was rejected on financial grounds.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None

Other Background Documents:-

None

APPENDICES:

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Appendix 1 - Viability Appraisal

Appendix 2 - Draft Heads of Terms

Appendix 3 Advice from Anthony Collins 18 April 2018

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Exempt classification removed by Monitoring
Officer 06/08/26

Appendix 1

Financial Viability Summary – Hookpit Farm, Kings Worthy

Heading	Analysis	Criteria
Units	4 x 1 bed flats (AFF) 4 x 2 bed flats (AFF) 11 x 2 bed houses (AFF) 6 x 3 bed houses (AFF) 2 x 4 bed houses (AFF) 6 x 2 bed houses (SO) 2 x 3 bed houses (SO) 2 x 4 bed houses (SO)	
Estimated total scheme cost	£8,670,562	
Market Value of dwellings	£11,430,000	
Net scheme cost as a % of market value	75.90%	< 95%
Net present value	£47,459	> £0
Interest Cover	122.43%	>= 110%
Loan repayment year	32	
Rent as % of open market rent	70% 1 bed flats 75% all other affordable units 2.75% of remaining equity for SO properties	Affordable properties maximum 80%, subject to not exceeding LHA
Rents per week based on 52 week year (AFF)	1 bed flat £125.19 2 bed flat £155.77 2 bed house £155.77 3 bed house £205.96 4 bed house £221.54	

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HEADS OF TERMS
FOR A CONDITIONAL PURCHASE CONTRACT ON
LAND OFF BURNETTS LANE, KINGSWORTHY

SUBJECT TO CONTRACT

Preamble	Drew Smith Limited (DSL) owns the Property which currently sits outside of the settlement edge. Adjacent to the property DSL has previously developed 25 affordable units which it delivered in partnership with Hyde Housing Association and has more recently secured outline planning permission for 25 affordable dwellings on a part of the property. DSL intends to submit a detailed planning application for development of its property. WCC would, as local planning authority, determine this application. The scheme would be driven at the instigation and design of DSL. WCC agrees to purchase the land and properties from DSL upon completion and on the terms set out in this document. These heads of terms record the basis upon which DSL and WCC have agreed to move the scheme forward.
Seller	Drew Smith Limited 7-9 Mill Court The Sawmills Durley SO32 2EJ Contact: Leanne Smith Telephone: 01489 861400 Email: lsmith@drewsmith.co.uk
Sellers' Solicitors	Shoosmiths LLP Forum 5 The Forum Parkway Whiteley Fareham Hampshire PO15 7PA Tel 03700 866901 Contact: Joanne McGuinness Email: joanne.mcguinness@shoosmiths.co.uk
Buyer	Winchester City Council (WCC) Colebrook Street Winchester SO23 9LJ Contact: Andrew Palmer Telephone: 01962 840222 Email: apalmer@WINCHESTER.GOV.UK
Buyers' Solicitors	Anthony Collins

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	134 Edmund St, Birmingham B3 2ES Contact: Telephone: 0121 200 3242 Email:
Buyers' Agent	TBC Contact: Telephone: Email:
Property	Freehold interest of 35 Affordable Rent Housing Units on land comprised in title numbers HP758619, HP647224 and part of title HP385054 extending to approximately 23 acres as shown on the attached plan.
Retained Land	Land off Tudor Way forming part of title number HP385054 as edged blue on the attached plan.
Development Objectives	Secure detailed planning permission for a minimum 35 residential dwellings with a gross internal floor area of 2,999m2 plus associated private roads, private drainage and open space to a specification proposed by DSL. Make provision for future highway access to the boundary of the Retained Land.
Development Timetable including long stop dates	Sign HOT's – **ASAP** Exchange Conditional Purchase Contract following WCC cabinet approval **- March 2019** Submission of detailed planning application – **January 2019** Planning Consent issued – **April 2019** Start on Site – **August 2019** Planning Longstop Date – **December 2019** Site complete – **February 2021** Final Long Stop Date for contract purposes – **June 2022**
Consideration	35 Unit Package Price: £7,798,425 (seven million, seven hundred and ninety-eight thousand and four hundred and twenty-five pounds) excluding VAT where applicable (subject to WCC's appointed QS approval prior to exchange of Conditional Purchase Contract). 5% Deposit on Exchange of the Conditional Purchase Contract: £389,921 (three hundred and eighty-nine thousand nine hundred and twenty-one pounds) excluding VAT where applicable. A first payment of 20% on the earlier of (i) 24th June 2019 or (ii) the date the Planning Condition is satisfied (which is the grant of a satisfactory planning permission and expiry of public procurement challenge and/or Judicial Review period): £1,560,079 (one million, five hundred and sixty thousand and seventy-nine pounds. If payment is made before 24th June 2019 and the Planning Condition has not been satisfied before the Planning Longstop Date DSL to return payment within 10 working days of the Planning Longstop Date. Applied finance charge: £237,656.00 Final Payment (including finance charge) on transfer of 35 units: £ £6,086,081 (six million, eighty-six thousand and eighty-one pounds) excluding VAT where applicable (less retention of £35,000).

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	Any reduction in floor area, subject to achieving a minimum 35 residential dwellings, will not result in a reduction to the package price.
Specification/finishes	Details of the Drew Smith Limited specification will be appended to the Conditional Purchase Contract.
Terms & Conditions	The Conditional Purchase Contract will be exchanged conditional upon:- • Satisfactory planning permission. • Expiry of public procurement challenge and/or Judicial Review period. • 35 built units of Affordable Rent Housing DSL and WCC (in its role as Housing Enabler), will liaise with the local community and agree the scope of the planning application to be submitted to the Local Planning Authority (LPA) for planning permission. DSL will prepare and submit the planning application at its own cost. On exchange of the Conditional Purchase Contract a parent company guarantee will be provided by Galliford Try Partnerships against the 5% deposit payment and the 20% first payment. This will guarantee reimbursement of the aforementioned payments if DS becomes insolvent or does not return the deposit and first payment for any reason following the Final Long Stop Date or if the first payment is made before 24th June 2019 and DSL is unable to satisfy the Planning Condition before the Planning Longstop Date). Any S106/CIL costs will be paid by WCC in addition to the Consideration. Any part of the Property outside the Development Site will be transferred to WCC in its current condition and the Seller will not be responsible for any land management or maintenance costs associated with this land. The Sellers will retain a right of access with or without vehicles to the Retained Land. The Sellers will also retain rights of way for services, maintenance etc. to the Retained Land. Collateral Warranties to be provided in favour of WCC for architect, engineer and timber frame only. NHBC New Build Warranty including insolvency and options 1, 2 & 3 (or equivalent) to be provided on all dwellings under this agreement. Galliford Try Partnerships (GTP) to act as a guarantor for DSL. If WCC requires a performance bond or other security, it will pay for this in addition to the Consideration. Retention £1,000 per dwelling to be retained by the Buyer at completion. The retention to be repaid on the later of (i) expiry of defect liability period or (ii) once DSL has remedied any defects notified to it by the Buyer before practical completion is declared (determined by DSL acting reasonably). 12 months defect liability period from the date of practical completion. Handover documents: DSL standard documents to be appended to contract for: • Signboard requirements • Handover procedures/requirements • Defects/aftercare protocol

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