



Cabinet

20 January 2021

Report of: Councillor Ronnie de Burle -
Portfolio Holder for Corporate
Finance and Resources

Disposal of Land to Enable Development of Affordable Housing

Corporate Priority:	Delivering sustainable and inclusive growth in Melton
Relevant Ward Member(s):	Pat Cumbers (Melton Dorian); Alan Pearson (Melton Dorian); Phillip Wood (Melton Dorian)
Date of consultation with Ward Member(s):	12 January 2021
Exempt Information:	Yes Appendix D of this report contains exempt information and is not for publication in accordance with Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
Key Decision:	Yes b) Making savings or generate income of £50,000 or more
Subject to call-in:	Yes

1 Summary

- 1.1 This report sets out a proposal for disposal of a small section of access road to the Council's waste collection depot site at Lake Terrace in order to enable a development of 90 affordable homes by Nottingham Community Housing Association (NCHA).
- 1.2 This proposal is anticipated to generate a range of social, financial and regeneration benefits for the Council as well as our communities.
- 1.3 A range of implications of this proposal have been considered and mitigations are outlined in this report.

2 Recommendations

That Cabinet:

- 2.1 Approves the disposal of land (the access road at lake terrace) as mapped in Appendix A.
- 2.2 Notes the draft heads of terms in the Exempt Appendix D.
- 2.3 Delegates authority to:
 - 2.3.1 the Director for Growth and Regeneration to make minor amendments to the draft heads of terms;
 - 2.3.2 the Director for Growth and Regeneration to complete the sale;
 - 2.3.3 the Director for Housing and Communities in consultation with the Portfolio Holder for Housing and Communities to finalise the draft Local Lettings Policy.

3 Reason for Recommendations

- 3.1 To increase housing supply both by supporting private development and private landlords, and using council assets to build more homes is a key focus area under priority three of the Council's Corporate Strategy (2020-24).
- 3.2 This proposal will enable the development of 90 affordable homes by providing land for access. The Council has not identified any other use for the access road.
- 3.3 The recommendation of this disposal is in line with the Council's approved Disposal Policy.

4 Background

- 4.1 The developer and freehold owner (GS developments) of the development land (registered under title numbers LT465278 and LT174512) has outline planning permission (planning application no. 17/01500/OUT) for up to 90 residential units, dating from November 2017. GS Developments has requested to purchase a stretch of the MBC Lake Terrace access road leading to the Council's waste collection depot, in order to gain access to a site (Field 4100), comprising 3.97 ha (9.81 acres). The Council's Lake Terrace access land is identified in Appendices A.
- 4.2 A reserved matters application (no. 20/00317/REM) dealing with the detailed design and layout of the scheme was granted in November 2020, in satisfaction of one of the conditions of the November 2017 outline planning permission (planning application no. 17/01500/OUT). The development is proposed in partnership with Nottingham Community Housing Association (NCHA) and comprises of 48 affordable homes and 42 shared ownership units.
- 4.3 A S38 agreement and S278 agreement with both Leicestershire County Council (as highways authority and access land owner selling to developer) and Melton Borough Council ("the Council") (as access land owner selling to developer) will need to be agreed for access to the development site, in order that this access land (see land ownership plan

enclosed for the land identified as in the freehold ownership of Leicestershire County Council (LCC) and the Council respectively) becomes a publically adopted road section together with footpaths and street lighting. The heads of terms for the proposed sale of the Council's strip of access land sets out the timing of the sale transaction as being simultaneous with the s38 and s278. This protects all parties, including the Council, to ensure all parties have uninterrupted access to their land.

- 4.4 A sale price has been agreed with the developer 'in principle' subject to contract, Cabinet approval and the developer's board approval. The draft heads of terms are enclosed at Appendix D. The access land will be a publically adopted road section, at an estimated cost to the developer of £150,000, which will benefit the Council by removing the current repair and maintenance liability for the Council.
- 4.5 The sale price of for the Council's Lake Terrace access land has been commercially negotiated, with reference to the principles in case law *Stokes v Cambridge* 1961 for ransom land, which sets out 1/3rd of the resultant development land value, less profit, and costs for roads, sewers and fencing, should be attached to the ransom land.
- 4.6 The developer (GS developments) and their delivery partner NCHA have demonstrated that the development proposal is both viable and deliverable. The contractual terms of sale are agreed with the landowners and the terms of the construction contract are agreed with the contractor. Subject to any further planning permissions if required, and transfer of the Lake Terrace access land, the developer is looking to start construction on site in March 2021 with house completions following from summer 2022 to summer 2023.
- 4.7 This scheme delivers a range of social, regeneration and financial benefits for the Council as identified below:
- This scheme will see a section of the Lake Terrace access road, part in the Council's and part in Leicestershire County Council's ownership, being adopted by LCC Highways Authority following the developer's improvements works to provide for a road that meets the adoptable standards, together with footpaths and street lighting installed. This will reduce the council's long term repair and maintenance liability for the Council's Lake Terrace access road section.
 - The publically adopted road section will be delivered at no cost to the Council and enhance the current road access to the Council's Biffa site as well as into LCC's household waste site, and also to the car park for the Council's Lake Terrace allotment site.
 - It will generate a capital receipt which will help to fund Council's priorities for the capital programme.
 - Additional homes will generate additional income in the form of Council tax. This scheme delivers 90 homes that are in addition to Local Plan allocations, contributing to the windfall gain.
 - The scheme will deliver 48 affordable homes for social rent and 42 homes for shared ownership, which provide a route for low income families to gain access to property ownership.
 - Additional affordable homes will reduce pressure on the Council's housing stock and contribute towards dealing with homelessness.
 - The investment into Melton through the construction process, in terms of jobs and economic activities is estimated at least £16.7m through this scheme.

- The planning approval for this scheme includes the benefit to services and infrastructure worth £1.2m to be delivered in Melton Borough.
- The scheme benefits from £3.3m of funding provided by Homes England in support of the 100% affordable scheme, and a further £900k is through NCHA's recycled grant money from Homes England.
- Adoption of the access road will retain the ownership of the road within public sector, opening up opportunities for the potential future development of both MBC waste depot site and the adjacent LCC Household Waste and Recycling site.

5 Main Considerations

5.1 The recommendations of this report will enable a 100% affordable housing scheme. The proposed development has been granted detailed planning permission and the level of development is acceptable in terms of local planning policy. While the development will help significantly towards meeting the aspirations of the Council's emerging Housing Strategy as well as improve the delivery of the Local Plan, concentration of affordable housing in one location needs to be managed carefully.

5.2 Concentration of affordable homes and place management:

The planning requirement for affordable homes on this site is 40% which was agreed as part of the outline planning application and the related S106 in 2018. The planning system offers no mechanism for involvement in the tenure of the remaining 60%.

5.3 The mix of homes is proposed as follows:

Type	Floor area (M2)	Affordable rent	Shared ownership	Total units
1 bed 2 person house	53	4	0	4
2 bed 4 person house	72	26	24	50
3 bed 5 person house	85	18	18	36
Totals		48	42	90

5.4 While it is positive to see 90 affordable homes delivered in Melton, consideration needs to be given to the impact such concentration of singular demographics in one location could have on place management. The proposed mix in typology and tenure, as shown in the table above, will cater for a range of groups and needs in the local community. The shared ownership tenure will provide a route to home ownership for low income families and support a new generation of aspirational home owners in Melton.

5.5 The affordable rented homes will be managed by NCHA Housing Services Team operating out of their Office in Mountsorrell, Leicestershire. All homes developed and subsequently let in Melton are covered by the Leicestershire Choice Based lettings scheme and policy. In addition to the process safeguards bound in this NCHA are agreeing a Local Lettings Plan with the Council to provide additional safeguards. NCHA already has established policies for dealing with anti- social behaviour and management of estates in its standard lettings policy, but the Council are working on agreeing a local lettings plan that is based on the Council's housing allocation policy.

5.6 The scale of the proposal is not out of keeping with many developments taken forward by NCHA and other registered providers in very similar settlements. NCHA are confident it can deliver a high quality product and service to tenants and homes owners on this scheme and NCHA will work with the Council to agree a letting plan, as described above,

which safeguards the community and ensures that the new estate becomes a desirable and popular place to live.

5.7 **Shared ownership tenure:**

NCHA are proposing 42 shared ownership units on this site. Shared ownership is a strong and established low cost home ownership product which has been successful in allowing people to secure a position on the property ladder. The shared ownership product is an integral part of Homes England's programme supported by Government as a key product in the home ownership tenure proposition / strategy. Most main stream building societies and banks are lending on the tenure. NCHA has confirmed that their investigation into demand for shared ownership on this scheme has met with a very positive response from local agents and valuers confirming strong values and demand for this tenure. NCHA expect to sell a minimum 50% initial equity share under the standard 125 year model lease from Homes England, with owners paying a rent of 2.75% of the unsold equity. Under the provisions of the leases home owners will have the right to increase their equity stake in steps (stair-casing) and can ultimately buy the freehold interest in their homes. Based on NCHA's experience elsewhere, they expect to see an increase in stair-casing of around 35%, this is the average across NCHA shared ownership stock. Given this scheme's location, NCHA hope and expect stair-casing levels to be higher.

5.8 **Design of the scheme:**

The proposed scheme provides homes which meet Homes England's funding requirements and are homes designed by NCHA's in house design team following consultation with NCHA Service Departments and the Council's planning team. The layout provides car parking allocated to each home, and all homes have usable private garden space and have access to public open spaces throughout the scheme.

5.9 The scheme layout is safe and secure and has been designed having regard to the key principles of Secured by Design. Open spaces and streets are designed to be over-looked to avoid anti-social behaviour. The scheme layout utilises 'perimeter block development', this is an urban design principle that arranges the built form in blocks of any shape so that the backs of the properties face one another and the fronts face onto the public realm. This enables back gardens to be located in secure areas surrounded by the built form and roads to be overlooked by the fronts of the houses. To enhance this, houses on street corners have frontage that turns the corners so that there are no blank gables and surveillance from the front windows onto the public realm or streets is continuous. Rear gardens are secure with side gates for each property, this enables all bins, bikes and sheds to be stored in the back garden with lockable side access to secured by design principles.

5.10 The road network within the proposal has been designed to try and keep vehicle speeds to below 20mph. This has been achieved by a combination of corners and plateaux which help to keep car speeds down. In addition, short block-paved private drives, provide a sense of ownership to clusters of houses. Parking is mainly on plots with sufficient parking to reduce the need to park on the street. Footpaths link the layout to the surrounding areas and all areas of public open space are overlooked by dwellings.

5.11 **Protecting future use of the Council's waste collection depot:**

The proposed development envelopes around the Council's waste collection depot site at Lake terrace. Building homes close to the depot would bring approx. 250-300 more people living in the close proximity to the depot site who would be impacted by the operations and

activities at the depot. This has the potential to increase the number of complaints for Council's environmental health team for noise, smells etc. An appropriate landscaping scheme could help manage this and protect the interest of both the new residents as well as the depot's operation. The planning conditions for reserved matters for the development have included this aspect.

5.12 **Alternative access options:**

In terms of the design of the scheme's road layout, and the developer's proposal to use the Lake Terrace road access to the scheme, the alternative would be a bridge over the adjacent stream and over land that is not in the control of the developer, and we are advised that the cost of constructing a bridge for road access makes the scheme financial unviable. As a result the Lake Terrace access is the only financially viable solution.

5.13 **Best value consideration:**

The Council has an obligation to get 'best value' under S123 of the Local Government Act 1972. There are circumstances where a disposal at below best value is permissible, where it secures the promotion or improvement of the economic, social or environmental well-being of its area (if below £2m under value sale). The council's RICS qualified Corporate Property & Asset Manager has negotiated the sale price for the disposal of the Council's Lake Terrace access land, with the principles of *Stokes v Cambridge* as the basis for the negotiation, as well as the principles of the Council's recently updated Disposal Policy and its obligations to achieve 'best value'. The development appraisal provided by the developer has been scrutinised by officers and it is concluded that demanding higher value for the Lake Terrace access land will affect the viability of the site to deliver these homes, when considering the abnormal development costs associated with levelling of the site, drainage and the £1.2m s106 contribution. Therefore 'best value' has been demonstrated in accordance with the council's obligations and policies and an 'arms length' commercially negotiated best price achieved. The scheme is viable due to a significant level of public sector investment by Homes England. Taking this into account as well as taking into account the wider social, financial and regeneration benefits as identified in Section 3 of this report, it is concluded that the agreed price is the appropriate price for this section of the road.

5.14 **State Aid considerations may need to be taken into account**

Whilst it is considered by officers that state aid is not applicable since best value has been demonstrated in the 'arms length' commercial negotiation for the proposed disposal of the Lake Terrace access land, ongoing advice will be sought as part of the Council's due diligence.

Future-proofing MBC interest

An overage provision has been agreed with the developer for the sale of the Council's Lake Terrace access land. If the developer achieves planning consent for further houses in the existing scheme (whether private market or social housing), or the tenure is changed from social housing to private housing, then the overage provision is triggered and the Council will receive a further sum of money. If the access land is used by the developer for future development of additional parcels of land, a further overage will be due to the Council, based on the planning consent achieved.

6 Options Considered

6.1 Option 1: Demand higher price

This option has been explored through prolonged negotiations with the developer over the last 12 months. Detailed analysis of the development appraisal has identified viability issues if a higher price is pursued. Such a demand will make the scheme unviable and the developer will not be able to deliver the 90 homes already approved by planning and therefore the developer will not agree a higher price, and 'arms length' 'best value' has been demonstrated in accordance with the council's obligations and policies in achieving a best value sale price with the addition of the overage provisions. There are also the peripheral benefits for the wider Melton community to take into account, such as creation of jobs through the development, the inward investment of £16.7m that the development brings, the creation of affordable homes and a community. With consideration to 'best value' demonstrated by the commercial negotiation and also the wider benefits to the Melton community 'fair value' is also achieved.

6.2 Option 2: Allow access over the road and retain freehold of the land

This option has been explored and rejected as while it would achieve most benefits identified in section 3, it would not generate a capital receipt and the Council will retain future repair and maintenance liability for the existing road section of Lake Terrace, estimated at a cost of £5k per annum.

7 Consultation

7.1 Consultation with ward councillors is arranged on 12h January.

7.2 Information has been sought from key stakeholders such as NCHA, LCC and Homes England as part of the negotiations process.

8 Next Steps – Implementation and Communication

- Instruct the solicitors for due diligence and negotiations of the contract
- Complete the sale

9 Financial Implications

9.1 The sale will generate a capital receipt as set out in the exempt appendix D which will help fund the Council's priorities for the capital programme. Members should note that funding for the capital programme is limited and taking into account proposals for the 2021/22 capital programme are likely to be fully exhausted. As such any future capital proposals will have to be limited to invest to save projects where borrowing can be justified as borrowing for asset maintenance will put an unsustainable pressure on the revenue budget. Therefore, the opportunity to provide a necessary increase in capital receipts needs to be carefully considered to ensure the council has sufficient funds to meet its future ambitions.

- 9.2 Legal fees of up to a maximum of 4% of the sale value can be offset against the capital receipt. Anything over this amount will have to be met from the revenue budget.

Financial Implications reviewed by: Director for Corporate Services

10 Legal and Governance Implications

- 10.1 Section 123 of the Local Government Act 1972 empowers the Council to dispose of its land provided the Council secures the best consideration that can reasonably be obtained when disposing of the land.
- 10.2 The tripartite s38 agreement and s278 contractual agreements between the developer and Leicestershire County Council (as highways authority and adjacent access land owner selling to the developer) and Melton BC (as access land owner selling to developer) will be entered into prior to, or simultaneously with, the completion of the proposed access land sale and this is set out in the agreed heads of terms at Appendix D.
- 10.3 Ongoing legal advice will be provided throughout the transaction

Legal Implications reviewed by: Monitoring Officer – 11.01.21

11 Equality and Safeguarding Implications

- 11.1 If the land sale is approved, then the Lake Terrace access road will be improved to adoptable standard which will enhance accessibility and safety to the LCC household waste and recycling site and the Council's waste depot, as well as for the new residential development.

12 Community Safety Implications

- 12.1 Paragraph 5.11 identifies design decisions for the scheme that will help increase community safety for the occupiers of these homes.
- 12.2 The Lettings Plan and other place management arrangement to be put in place by NCHA, in accordance with the Council's policies, will help with managing safety, anti-social behaviour and crime.

13 Environmental and Climate Change Implications

- 13.1 As per paragraph 5.13.

14 Other Implications (where significant)

NA

15 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	The scheme doesn't get delivered following the access land disposal	Almost Impossible	Negligible	Low Risk
2	Developer gets more money from the scheme and council loses out from the development profit, which is at the developer's own risk.	Significant	Marginal	Medium Risk
3	MBC Waste Depot operation is impacted due to resident complaints, albeit mitigated by the landscaping design considered by the reserved matters consent.	High	Critical	High Risk
4	Estate management becomes a problem in the future, albeit mitigated by the Local Lettings Plan controlled by MBC together with NCHA.	High	Critical	High Risk
5	Land does not get adopted by LCC or MBC does not have access to the depot site following access land sale. This risk is entirely mitigated since it is the basis of agreement as set out in the heads of terms that the land sale will not complete unless the contracts for adoption are simultaneously completed.	Almost Impossible	Critical	Low Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High			3,4	
	4 Significant		2		
	3 Low				
	2 Very Low				
	1 Almost impossible	1		5	

Risk No	Mitigation
1	The developer has invested significant amount of money in achieving planning. Funding from Homes England is approved for delivery. NCHA have been chosen as a preferred delivery partner. Despite all this, if the scheme is not delivered, the Council will have received the money and removed its liability for long term maintenance and repairs to the access road land.
2	An overage clause has been agreed for the land sale.
3	A landscaping condition is included to the planning conditions.
4	An MBC bespoke lettings plan is to be agreed with NCHA.
5	Developer will not purchase the MBC land without simultaneously entering into s38/s278 with LCC with them as land owner and highways authority too, and MBC as land owner only, as to do so would leave the developer at risk of not having access to their site. The heads of terms for the sale of the MBC land are conditional upon a simultaneous tripartite contractually binding position with LCC/MBC and developer for s38 and s278. This effectively and completely mitigates the risk regarding access for all 3 parties.

16 Background Papers

16.1 There are no background papers

17 Appendices

17.1 Appendix A: Plan identifying Land for Disposal

17.2 Appendix B: Photos of the site and access road

17.3 Appendix C: Proposed plan for the approved development

17.4 EXEMPT Appendix D: Draft heads of terms

Report Author:	James Morris , Corporate Property and Asset Manager
Report Author Contact Details:	01664 502317 jmorris@melton.gov.uk
Chief Officer Responsible:	Pranali Parikh , Director for Growth and Regeneration
Chief Officer Contact Details:	01664 504321 PParikh@melton.gov.uk