

# Leyfields and Netherstowe open space Proposed Agreement with Bromford

CLLr Doug Pullen , Leader of Council

Date:	18 <sup>th</sup> May 2021
Agenda Item:	14
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Key Decision?	YES
Local Ward Members	Cllrs Ball and Robertson

  
Lichfield  
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**COUNCIL**

## 1. Executive Summary

- 1.1 In September 2018 a Cabinet decision was made to enter into a contract for the sale of two pieces of District Council owned open space known respectively as Leyfields and Netherstowe subject to relevant planning permission being obtained. The contract for sale of the land was to be subject to granting of planning consent for affordable housing.
- 1.2 In July 2020 the contract was finally signed.
- 1.3 In August 2020 planning applications were submitted for the two sites and validated in September 2020
- 1.4 Under the provisions of the Local Government Act 1972 section 123 a Local Authority must give notice of its intention to dispose of open space by advertising in a newspaper for two consecutive week and consider any objections to the proposed disposal. This process was undertaken in November 2020. As explained in 3.2 below this should have been done in 2018 before the decision was taken by Cabinet, but we were not at this stage aware.
- 1.5 A report was submitted to Cabinet on 17<sup>th</sup> January 2021 with the results of the consultation.
- 1.6 At that meeting Cabinet resolved to proceed with the sale, but only on the basis that they were contractually committed to do so and that if this was not the case they would not be supporting disposal of the land.
- 1.7 This led to two further actions being taken.
- 1.8 Firstly an independent external investigation was commissioned to uncover what, if any, errors were made in the process of this proposed disposal
- 1.9 Secondly legal advice was sought as to the status of the consultation undertaken
- 1.10 The second of these issues revealed that the consultation process was challengeable in law as it had not been conducted legally in that the contract had already been signed prior to consultation being undertaken.
- 1.11 This coupled with the Cabinet desire to see the subject land remain as open space has given rise to a negotiation with Bromford to cancel the contract by mutual agreement with Lichfield District Council paying compensation to Bromford for costs reasonably expended. This would also result in the withdrawal of the planning applications for the two sites, which remain live and undetermined.
- 1.12 A report was submitted to Cabinet on 11<sup>th</sup> May 2021. They agreed the recommendation to cancel the contract for sale of land to Bromford and delegated authority for the terms of that agreement to the Leader of cabinet and Chief Executive. However as the finical implications are a departure from the

approved Medium Term Financial strategy approved by Council in February 2021, Council must consider the recommendations relating to financial implications .

## 2. Recommendations

- 2.1 That Cabinet recommend to Council the refund of planning applications fees of £13,365.60 and make payment of £103,491.37 ( a total of £116,865.97) to Bromford and approve an amendment to the Medium Term Financial Strategy to fund the payment from general reserves.
- 2.2. That Cabinet recommend to Council to further amend the Medium Term Financial Strategy to remove the capital receipt of £527,000 from the Capital Programme.

## 3. Background

- 3.1 The first point to make is that no Council would wish to find themselves in this position. Mistakes have been made and the process has led to distress for members of our community and wasted time, energy and abortive costs for a valued partner. This is genuinely regretted.
- 3.2 The most fair and transparent way to address this issue was to discuss with Bromford the cancellation of the contract that , following a cabinet decision in 2018, was legally, and in good faith, entered into with them. This is the preferred route for the present Cabinet who have made their position on the development of this and indeed any council owned open space clear; this is not something they wish to see in Lichfield district. It is also the most cost effective way of addressing the problem as opposed to awaiting legal challenge. It would also require the withdrawal of the two undetermined planning applications, and Bromford did this on 14th April 2021.
- 3.6 It is recommended that the Council pay reasonable costs to Bromford which amount to £116,856.97. This is to cover its costs in connection with the transfer of land and the aborted planning and site investigation. The schedule at Appendix A details the breakdown of this payment. The aborted costs related to the sites have been provided by Bromford Housing and assume VAT is not recoverable by the Council from HMRC. If payment is agreed it would be made from general reserves, given that this one of the express purposes of that reserve.
- 3.7 Work is ongoing to consider if there can be a claim on the councils professional indemnity insurance to cover any or all of these costs but that will depend on the outcome of the external investigation and whether there is evidence of any maladministration or professional negligence.

### Alternative Options

It is important to note that any alternative scenarios will potentially result in the increased risk of legal challenge, increased costs for the council and our partner Bromford, as well as continued distress an uncertainty for the community. Given the intent of the current Cabinet is not to see this land developed but retained as open space the recommended option is the preferred route. That said for the purposes of transparency we could;

1. Rerun the whole process seeking to undertake consultation before negotiating a new contract with Bromford ; this is clearly against the wishes of Cabinet and the views expressed by the public consultation

	<ol style="list-style-type: none"> <li>2. Take action to rescind the contract with Bromford but this could give rise to a legal challenge by Bromford and the potential of specific performance as well as increasing the costs to both parties</li> <li>3. All of the above would also give further cause for distress to the community affected and be against the overall desire of the Cabinet and Council not to see development on these sites.</li> </ol>
Consultation	<ol style="list-style-type: none"> <li>1. No consultation on this proposed solution has been taken but it is clear that the public are against the loss of open space given the objections to the proposed sale under the delayed s123 process and the current planning applications</li> </ol>
Financial Implications	<ol style="list-style-type: none"> <li>1. The council will lose the capital receipt identified for these sites currently in the MTFS of £527,000.</li> <li>2. It is recommended that the Council pay reasonable costs to Bromford which amount to £116,856.97. This is to cover its costs in connection with the transfer of land and the aborted planning and site investigation. The schedule at Appendix A details the breakdown of this payment. The aborted costs related to the sites have been provided by Bromford Housing and assume VAT is not recoverable by the Council from HMRC. If payment is agreed it would be made from general reserves, given that this one of the express purposes of that reserve.</li> </ol>
Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> <li>1. Being transparent and open, acknowledging mistakes, and seeking to improve governance from a full assessment and investigation when things go wrong is part of being a Good Council</li> </ol>
Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> <li>1. None.</li> </ol>
Crime & Safety Issues	<ol style="list-style-type: none"> <li>1. None</li> </ol>
Environmental Impact	<ol style="list-style-type: none"> <li>1. Agreement not to proceed with the sale ensures that the open space remains and available to meet the needs of the local community</li> </ol>
GDPR/Privacy Impact Assessment	<ol style="list-style-type: none"> <li>1. There are no GDPR or privacy impact issues associated with this report as it contains no personal data or reference to personal data.</li> </ol>

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Reputational risk	Being open and transparent	Likelihood : Material Impact : Material Severity of Risk : Material
B	There is an adverse impact on the	The Council has commissioned an	Likelihood : Material

	External Auditor's annual value for money assessment.	external investigation to learn lessons that will be shared with the External Auditors.	Impact : Material Severity of Risk : Material
C	There is insufficient funding to deliver the approved Capital Programme.	<p>The Capital Strategy risk assessment identified planned capital receipts are not received as the most significant risk.</p> <p>Therefore an allowance of £264,000 has been incorporated into the minimum level of reserves.</p> <p>In terms of the balance of £264,000, a delegation was approved by Cabinet as part of the MTFS to implement alternative funding sources to fund the early repayment of Burntwood capital investment in the event planned sources are not available.</p>	<p>Likelihood : Tolerable</p> <p>Impact : Tolerable</p> <p>Severity of Risk : Tolerable</p>
D			
E			

Background documents

Relevant web links