

This Report will be made public on 12 March 2024



Report Number **C/23/98**

**To:** Cabinet  
**Date:** 20<sup>th</sup> March 2023  
**Status:** Key Decision  
**Responsible Officer:** Andy Blazkowicz - Director Housing and Operations  
**Lead Officer:** Samuel Aligbe Chief Officer - Corporate Estate and Development.  
**Cabinet Member:** Cllr Rebecca Shoob Cabinet Member for Housing & Homelessness

**SUBJECT:** Highview, Moat Farm Road, Folkestone, CT19 5DJ: Update on Proposed Sale, Land Matters, and revision to Unilateral Undertaking.

**SUMMARY:** In February 2023 Cabinet (Cabinet report C/22/94) resolved to ask officers to investigate alternative delivery options which included a potential disposal to a 3<sup>rd</sup> party with the benefit of planning consent.

This report informs Members of the progress made since the previous report C/22/94 and seeks to obtain approval to proceed with the sale to the preferred bidder [REDACTED] following a marketing exercise undertaken in November 2023. A further decision is also required to approve an amendment to the Unilateral Undertaking, and vary the scheme to be policy compliant, as approved by planning committee on the 7th of November 2023 (planning reference number 23/1641/FH) for 22% affordable homes.

#### **REASONS FOR RECOMMENDATIONS:**

The [REDACTED] offer is the most financially beneficial offer following the marketing exercise. This offer, alongside the BLRF grant, allows the best opportunity to recover as much of the costs spent to date on the scheme. Additionally, [REDACTED] is a reputable local developer, with a track record of delivering high quality homes within the district. This supports F&H DC's local economic development and local procurement objectives. Market conditions that would have allowed for direct delivery of the scheme by F&H DC have not improved since cabinet considered report C/22/94, leaving F&H DC with little option other than delivering the site via disposal to a contracted party.

The reason for the recommendation to approve an amendment to the Unilateral Undertaking is to ensure the proposals can revert to a policy compliant scheme that is attractive to the market, as private developers have indicated through recent market testing that they are unwilling to build out a 100% affordable scheme.

The reason for the recommendation to approve the Private Right of Way (PROW) acquisition is to ensure the planning consent is implementable, as the PROW is within the planning application redline but not currently in the development and title plan redline. Regularising this matter will support efficient delivery of the scheme.

Officers are also seeking approval to enter into the Planning Overage Agreement as this will replace the current Turn Overage Agreement which is prohibitive and a barrier to Developers purchasing and developing the site.

#### **RECOMMENDATIONS:**

- 1. To receive and note report C/23/98.**
- 2. To note the work carried out following approval of Cabinet report C/22/94.**
- 3. To agree that the Director for Housing and Operations has delegated authority to accept the offer from the preferred bidder for the sum of [REDACTED] and to progress all land matters including the disposal process through to completion.**
- 4. To approve the acquisition of the PROW land with KCC.**
- 5. To approve F&H DC entering into a revised overage agreement with KCC.**
- 6. To accept the amendment to the Unilateral Undertaking which varies the scheme to a policy complaint level of affordable housing, as conditionally approved by Planning and Licensing Committee held on 7<sup>th</sup> November 2023.**

## 1. BACKGROUND

- 1.1 The site was acquired by F&H DC from KCC in December 2017 with the intention to deliver a 100% affordable housing scheme as part of the HRA programme. The scheme was to deliver a zero carbon-in-use development.
- 1.2 The Council was unable to deliver the scheme as originally conceived due to significantly changed economic context with financial pressures arising from acute and sudden interest rate increases, significant inflationary pressures within the construction sector and other competing HRA budgetary demands to meet current and emerging stock reinvestment obligations.
- 1.3 Following the cabinet decision to pause the scheme, a marketing exercise was undertaken in November 2023. This resulted in twelve expressions of interest and five bids were received. The most viable bid was for [REDACTED].
- 1.4 The offer price of £[REDACTED] plus the BLRF grant of £465k, which has already been received from the One Public Estate (OPE), brings the total income received to F&H DC for this potential sale to [REDACTED].
- 1.5 This income whilst welcome, does not however cover the council's total costs incurred to date on this project and leaves a small deficit, based on current spend and projected costs in relation to the work required to complete the sale of the site (Table 1).
- 1.6 However, it is worth noting that the council's positive intervention and expenditure on the site to date has de-risked the site to enable the private sector to consider the proposal, addressed the significant market failure, and enabled the site to come to the market for consideration. This is due to activities undertaken by the council in terms of the in-house design, obtaining planning consent, the demolition of the derelict school and conducting the ecological translocations of wildlife habitats. Major site preparation works have been undertaken by the council since purchase.

## 2. LAND MATTERS

- 2.1 The original purchase of the site from KCC had an overage agreement included. The overage agreement was of no consequence to F&H DC when the intention was to retain the site and develop a 100% affordable housing scheme.
- 2.2 To a developer seeking a policy complaint scheme of 22% affordable homes, the existing overage requirement becomes an obstacle to viability. This is due to the nature of the Turn Overage Agreement which requires a payment of 50% of any uplift to the land value on all onward sales for a period of 30 years and this requirement runs with the land despite the potential onwards sale of the land. The net effect is that it sterilizes the potential for development if no action is taken to amend the overage clause.
- 2.3 In response to the above a new planning overage has been agreed with Kent County Council (KCC) which accounts for both costs spent and allows for

developer profit. This has helped to make the development more viable to the market and any proposed new developer.

- 2.4 The Order for diverting the Private Right of Way (PROW) in KCC's ownership was made in October 2022 and will be completed on the conclusion of the Highview development. The future developer would conduct this.
- 2.5 The sale of the PROW land to F&H DC has been agreed and will complete once the new routes are constructed as part of the development.
- 2.6 The main footpath runs adjacent to Mead Road from Blackbull Road to Park Farm Road and will remain in place. The two routes linking this footpath to Downs Road and Moat farm road are to be diverted through the site. The reason for diverting the PROW is to bring the footpaths through the site to alleviate local concerns around anti-social behaviour. This followed on from early consultation and follows guidance regarding 'designing out crime'.
- 2.7 The original scheme was designed as 100% affordable housing for the HRA. To make the site more viable for the market to deliver this needs to be reduced to a policy compliant level of 22%. Members of cabinet are asked to formally approve the amendment to the Unilateral Undertaking and vary the scheme to be policy compliant, as approved by members of planning committee on the 7th of November 2023 (planning reference number 23/1641/FH).

### **3. CHALLENGES TO DIRECT DELIVERY OF SCHEME**

- 3.1 The challenges faced to the direct delivery of the scheme were presented within the 22 February 2023 cabinet report C/22/94.
- 3.2 The scheme was tendered via the Ashford BC Framework, to be awarded under a design and build contract, with tenders returned on 30<sup>th</sup> August 2022. This resulted in three tender offers being received from local Kent based contractors.
- 3.3 The tender offers from the tender participants reflected build cost inflation which was significantly higher than the pre-tender cost plan.
- 3.4 The inflationary costs, alongside interest rate increases and pressure on the HRA budget, due to other housing stock reinvestment obligations and priorities, made the scheme unviable for direct delivery by FHDC.
- 3.5 The challenges to direct delivery by F&H DC have not subsided sufficiently since the February 2023 report, as market conditions and challenges reported continue to remain prohibitive.

### **4. OFFER FROM PREFERRED BIDDER**

- 4.1 The site was marketed with local firm Motis Estates with a guide price of [REDACTED] to include the BLRF funding award of £465K.
- 4.2 The most viable offer from the market was [REDACTED] plus the retention by the council of the BLRF funding providing the council with a total income of [REDACTED].

- 4.3 Officers believe that the offers received reflect the complex and challenging viability issues on the site and the current market / inflationary conditions.
- 4.4 Whilst the sale of the site is unconditional the developer proposes to submit a revised planning application to increase the number of units on the site. Whilst this will be largely on the same footprint, the new application will increase to around 40 units from 30. This will also increase the number of affordable housing units to 9. The council is in discussion with the developer to potentially purchase these 9 affordable units, which will be subject to separate negotiations and the viability of the scheme, for the HRA.
- 4.5 Following discussions with One Public Estate they have confirmed in writing that the Grant Conditions will be met through a FHDC disposal of the site to a developer who will carry out the BLRF funded works as part of the development. From FHDC's perspective there will be conditions in the sale contract with the developer to ensure these works are carried out within the appropriate timescales.

## **5. REASONS FOR DISPOSAL**

- 5.1 The disposal of the site will offer the council an opportunity to recover much of the expenditure spent to date on the scheme, reducing the pressures on the HRA budget.
- 5.2 The income received will release funds to enable the prioritisation of the capital programme for the upgrading of existing housing stock or purchasing new affordable homes for the HRA.
- 5.3 It will enable a local developer to take the site forward and deliver the homes, therefore achieving ongoing supply of much needed new homes for the district and supporting our local businesses and their supply chains, which is a matter council has recently indicated strong support for.
- 5.4 A further potential benefit will be the opportunity to purchase the affordable housing units for the HRA to secure and grow the affordable housing asset base within the district managed by the council. This will be subject to further negotiations, assessment of specific proposals and broader market conditions, a review of HRA budget capacity and pipeline, and overall viability.

## **6. OPTIONS**

- 6.1 **Option 1:** Continue to pause the project and reconsider options when the financial outlook is more positive and market conditions are more favorable:
- Evidence that this scenario will evolve is inevitably speculative, uncertain, and subject to macro events and factors that by their nature are unpredictable.
  - There would be some (limited) costs in securing, maintaining the site and managing the ecology were this scenario to be adopted – Estimated at £20K PA.

- Loss of BLRF grant of £465k currently held by FHDC.
- Lose the opportunity to sell the site to a credible local developer and to take the site forward during challenging economic circumstances.
- Lose the opportunity to deliver much need housing and local regeneration and economic development benefits.

6.2 **Option 2:** Sell the site with the benefit of planning permission with demolition and ecology works completed:

- Will enable the prioritisation of the HRA capital programme to upgrade existing stock or deliver new homes to the HRA.
- Recovery of the costs spent to date.
- The BLRF grant would be secured through the transfer of the land to the proposed developer.
- Will enable another developer to take on the site and deliver the scheme, ensuring provision of new homes is realised.

## 7. RISK MANAGEMENT ISSUES

7.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Purchaser does not complete land transaction	High	Low	Agreed HoTs, continuous dialogue with purchaser.
KCC overage agreement being delayed	High	Low	Continue ongoing dialogue with KCC
Drafting of the sales agreement being delayed	High	Medium	Progress sales agreements in a timely manner

## 8. FINANCIAL IMPLICATIONS

- 8.1 The total scheme capital spend is [REDACTED] including estimations for sales commission, legal fees, and PROW cost. No allowance for FHDC officer time is included.
- 8.2 Confirmed spend to date totals [REDACTED].
- 8.3 Acquisition costs [REDACTED] (include legal fees & SDLT).
- 8.4 Estimated further spend on sales commission, legal fees, and PROW costs [REDACTED].
- 8.5 The only viable bid is for the sum of £ [REDACTED].
- 8.6 BLRF grant already received by FHDC totaling £465k. This will be retained by the council should the site be released to a developer before 30<sup>th</sup> September 2024.
- 8.7 This transaction would offer a small loss of some [REDACTED]. Please see table 1 below detailing the costs and income of the scheme.

**Table 1**

Capital Spend	Amount
Acquisition	[REDACTED]
Confirmed Spend to Date	[REDACTED]
Estimated KCC Overage Fees	[REDACTED]
Estimated Motis Sale Commission	[REDACTED]
Estimated KCC PROW land costs	[REDACTED]
Estimated Legal fees for land sale	[REDACTED]
<b>Total Anticipated Final Spend by FHDC.</b>	[REDACTED]
Developer Offer Value	[REDACTED]
BLRF Grant	£465,000.00
<b>Difference Between Spend and Income</b>	[REDACTED]

## 9. KEY EVENTS AND PROGRAMME

9.1 See below Table 2 setting out the key milestones.

**Table 2**

Milestone	Dates
Acquisition of Highview from KCC	23/12/2017
Licensing and Planning Committee Approval	02/08/2022
BLRF Grant award	13/10/2022
Completion of Marketing Exercise	04/11/2023
Unilateral Undertaking Amendment (planning committee)	07/11/2023
Transfer of site to developer prior to BLRF Deadline	30/09/2024
Planning consent lapses	01/08/2025

## 10. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 10.1 Legal Officer's Comments (NM)

There are no legal implications arising directly from this report. However, if the Council decides to dispose of the property then it must comply with s123 of the Local Government Act 1972 to ensure that it does not sell the land for less than the best consideration reasonably obtainable (unless it obtains the consent of the Secretary of State).

### 10.2 Finance Officer's Comments (JS)

A local authority has a statutory duty under section 123 of the Local Government Act 1972 when disposing of an interest in land and other assets to obtain the best consideration reasonably obtainable. It is for the authority to demonstrate that it has achieved best consideration; if best consideration is not obtained, Secretary of State approval is required.

A local authority may dispose of assets/land at less than best consideration where the Secretary of State has given permission to do so or under the Local Government Act 1972: General Disposal Consent (England) 2003 in circumstances where the local authority considers the disposal is likely to contribute to the social, economic or environment wellbeing in its area.

Given that this sale requires BLRF grant monies in order to almost break even, it would be prudent to confirm whether all grant conditions are satisfied such that the grant terms have been satisfied.

Finance worked with Housing and Operations in the formulation of report C/22/94 and the macroeconomic picture outlined in that report has not materially changed. Option 1 would continue to draw revenue funding for site maintenance until such time as any development could be reasonably



performed directly by the Council (and be reliant on macroeconomic conditions and build costs outside Council control); whereas should members decide to proceed with option 2, a large capital receipt would return to the HRA and have addressed market failure in the district for a modest overall cost to the HRA.

#### 10.3 Diversities and Equalities Implications (GE)

There are no equality and diversity implications directly arising from this report.

#### 10.4 Climate Change Implications (OF)

There are no climate implications arising from this report.

### 11. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councilors with any questions arising out of this report should contact the following officer prior to the meeting.

Samuel Aligbe Chief Officer - Corporate Estate and Development  
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The following background documents have been relied upon in the preparation of this report: None.

***(Note: only documents that have not been published are to be listed here)***

#### **Appendices:**

None.