

LAND AT HURST FARM, HURSTWOOD LANE, HAYWARDS HEATH

REPORT OF: Head of Corporate Resources
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Wards Affected: Haywards Heath - Franklands
Key Decision No
Report to: Cabinet
14th October 2019

Purpose of Report

1. To request Cabinet to consider:
 - (a) The disposal of the land lying to the north-west of Hurstwood Lane, Haywards Heath, forming part of Hurst Farm, and shown edged and/or coloured in red on the plan to this report at Appendix D, ("the Development Land") comprising an area of approximately 27.62 acres, part of which forms part of an area of de-facto open space, to the Council's preferred developer, at market value, for the erection of new homes as part of a larger development scheme;
 - (b) In light of part of the southern parcel of land comprising ancient woodland having potentially been open for public use as de-facto informal open space, consider any objections received in response to the statutory advertisement; and
 - (c) In light of the considerations in (b) to decide whether to make the disposal in (a) as part of a larger development scheme.

Summary

2. This report outlines a proposal for housing development on part of Hurst Farm and summarises the decisions previously made by the Council when the Council acquired the land. It explains the current status of the land, the Council's powers of disposal and seeks agreement to the disposal of three parcels of Council owned land lying to the north-west of Hurstwood Lane, Haywards Heath comprising an area of approximately 27.62 acres, at market value, for the erection of new homes as part of a larger development scheme briefly outlined in paragraphs 11 and 14 of this report.

Recommendations

3. ***Cabinet is recommended to:***
 - (a) ***note that there were no responses to the statutory advertisements placed in the Mid Sussex Times on 29th August and 5th September 2019 giving notice of the Council's intention to dispose of the Development Land edged in red on the plan attached at Appendix D; and***
 - (b) ***authorise the Head of Corporate Resources and the Solicitor and Head of Regulatory Services to dispose of the Development Land***

to the Council's preferred developer on the basis set out in the Exempt Appendix E to this report, tabled at the meeting, and on such other terms as the Solicitor and Head of Regulatory Services recommends to protect the Council's interests.

Background

4. In 1996, parts of Hurst Farm, Hurstwood Lane, Haywards Heath comprising the three lots of land in the vicinity of Hurstwood Lane shown for identification purposes only coloured in green, mauve and pink respectively on the plan attached to this report at Appendix B, were put on the market by Savills, Property Consultants, on behalf of the Secretary of State for Health. The land was described in the sale particulars as follows:

Lot 1: A pair of semi-detached cottages, Grade II Listed Sussex Barn and a range of additional buildings in approximately 2.2. acres lying to the south of the proposed relief road and west of Hurstwood Farmhouse, which was then used for office purposes and was not part of the sale.

Lot 2: 49.06 acres of established pasture land and woodland to the north-west of Hurstwood Lane, including some modern farm buildings and a water pumping station.

Lot 3 45.19 acres of established pasture land, partly used for arable production in the past, together with an area of woodland to the south-east of Hurstwood Lane and mostly lying in Lewes District.
5. On the 3rd September 1996, the Council's Special Policy and Resources Committee received an exempt report on whether the Council should attempt to purchase part of Hurst Farm in the vicinity of Hurstwood Lane from the Secretary of State for Health. The report described the three lots of land as an important part of Haywards Heath and suggested that the land could be acquired with a view to protecting it from development in the longer term and providing an informal open space. The report stated that Lot 2 would appear to have the greatest potential if acquired by the Council. The report recommended that the Council should seek to purchase Lot 2. The Committee noted that the prospective purchaser of Lot 2 would be required to enter into an option to enable the necessary land to be available for the construction of the Haywards Heath Relief Road, in due course, and resolved:
"that:
 - (1) *the Council should seek to purchase Lots 1, 2 and 3 as set out in Savills sale particulars for Hurst Farm, Hurstwood Lane, Haywards Heath;*
 - (2) *the Secretary and Solicitor to the Council be authorised to instruct a valuer to advise the Council on the proposed purchase;*
 - (3) *it be noted that, if the Council is successful, an assessment of the future retention, use and management of each Lot be considered by the appropriate Committee; and*

(4) the Council's programme of Capital and Revenue Projects be amended as agreed by the Committee.

6. On the 16th October 1996, the Council's Policy and Resources Committee received an exempt report, which informed the Committee that a Valuer had been appointed immediately following the September meeting, who had visited the site and after discussing the matter with Savills, had advised that the Council should submit three separate bids: one in respect of the whole site, Lots 1, 2 and 3; one in respect of Lots 2 and 3, and one in respect of Lot 2 only. Savills subsequently issued further particulars of sale in which it was stated that best and final bids should be submitted to them in a sealed envelope by noon on 20th September 1996, indicating that the Vendor was not bound to accept the highest or indeed any offer, and that a decision was expected to be made within 10 working days of the opening of tenders. Three bids on behalf of the Council, prepared in accordance with the Valuer's advice, were delivered to Savills on 19th September 1996. At the meeting of the 16th October 1996, the Committee were informed in an oral update by the Secretary and Solicitor to the Council that she was hopeful that the Council's bids for Lots 2 and 3 would be successful. The Committee resolved to note the report.
7. On the 27th November 1996, the Council's Leisure Services Committee received an exempt report on the Special Meeting of the Policy and Resources Committee held on 3rd September 1996 and the proposed purchase of Hurst Farm. They were informed that the Council's bid for Lots 2 and 3 had been successful, although an amended boundary for the eastern side of Lot 2 has been agreed, subject to agreement on a right of way to link, what would then be two parcels of land comprising Lot 2, and that if agreement could be reached the Council would purchase Lots 2 and 3 for the price of £231,117, subject to contract. The report noted that the future use of the land would need to be considered as part of the overall plan for informal open space in Haywards Heath, that accommodation works would be required to facilitate public access and stated that the land would continue to be managed as farm meadow land and pasture, the costs of which would be around £5,000. The Committee resolved to note the contents of the report.
8. On the 9th May 1997, the Council purchased the amended Lot 2 and the whole of Lot 3 from the Secretary of State for Health at the price of £231,117, subject to an option agreement made on the same date in respect of parts of Lot 2 to enable the Secretary of State to buy back the land necessary for the construction of the Haywards Heath Relief Road in due course. The option was exercised by the Secretary of State for Health's successors, the Urban Regeneration Agency (known as English Partnerships), on 14th December 2007 and the Haywards Heath Relief Road has been constructed, and has now been adopted by West Sussex County Council. As part of the same arrangement the large balancing pond constructed on part of the option land is being transferred back to the Council at nil consideration, subject to payment to the Council of a commuted maintenance sum to cover the future costs of maintaining the balancing pond.
9. Prior to the Council's purchase of Hurst Farm, the land was occupied by a local farmer for the purposes of grazing sheep under the terms of a grazing licence, which use commenced in or around March 1993 and was terminated by the Secretary of State for Health on or shortly before 9th May 1997.

10. Following completion of the Council's purchase and, in accordance with the earlier decisions of the Council made on the 3rd September 1996 namely, *"an assessment of the future retention, use and management of each Lot be considered by the appropriate Committee"* and on the 27th November 1996 namely, *"to continue with management of the land as farm meadow land and pasture"*, the Council has entered into a series of licences with various local farmers to use and occupy the land edged and hatched in black on the attached plan marked "Hurst Farm Grazing Area" attached to this report at Appendix C, for the purposes of grazing sheep on the land, which use continues to the present day.
11. In April 2009, the Council entered into a letter of understanding with the owners of the Blue Land and the Yellow Land to promote the site edged in red on the plan attached to this report at Appendix A, for development.
12. On the 14th December 2016, the Council made the Haywards Heath Neighbourhood Plan, which includes the whole of the land acquired by the Council in 1997, as part of an allocation for 350 new homes recognising the need to provide sites for housing in accordance with Central Government requirements imposed on local authorities by successive Governments during the last 10 years.
13. On 30th June 2017, an application for outline planning permission (application reference DM/17/2739) for the development of up to 375 new homes, a 2 form entry primary school with Early Years provision, a new burial ground, allotments, Country Park, car parking, 'Green Way', new vehicular accesses and associated parking and landscaping was submitted by the Council jointly with Cross Stone Securities Limited.
14. On 9th August 2018, the Council's District Planning Committee considered a report on planning application DM/17/2739 and resolved:

"That permission is to be granted subject to the conditions listed in Appendix B, and additional conditions as listed in the Agenda Update Sheet, and the completion of a satisfactory legal agreement to secure the necessary affordable housing and infrastructure provision. In addition, that authority be delegated to Officers to negotiate and complete a satisfactory S106 planning obligation."
15. On 11th March 2019, the Council's Cabinet considered a report on the proposed disposal of land for the proposed primary school, the burial ground, the allotments and the Country Park with associated access and car parking and resolved to note and consider responses to statutory advertisements placed in the Mid Sussex Times on 3rd and 10th January 2019, and to authorise the Head of Corporate Resources and the Solicitor and Head of Regulatory Services to dispose of the land required for the proposed primary school, the burial ground, the allotments and the Country Park to the parties named in that report on the basis set out in the Exempt Appendix to that report and on such other terms as the Solicitor and Head of Regulatory Services recommends.
16. Those authorised disposals are yet to be completed.

Present status and purpose

17. The Council has a general power to acquire land by agreement under Section 120(1) of the Local Government Act 1972, which provides as follows:

“For the purposes of:

(a) any of their functions under this or any other enactment, or

(b) the benefit, improvement or development of their area,

a principal council may acquire by agreement any land, whether situated inside or outside their area.”

The Council is therefore, empowered to acquire land by agreement inside or outside the District of Mid Sussex for the purposes of any or the Council's functions or for the benefit, improvement or development of the District of Mid Sussex.

18. Section 120(2) of the Local Government Act 1972, provides that:

“A principal council may acquire by agreement any land for any purpose for which they are authorised by this or any other enactment to acquire land, notwithstanding that the land is not immediately required for that purpose; and, until it is required for the purpose for which it was acquired, any land acquired under this subsection may be used for the purpose of any of the council's functions.”

The Council is therefore, empowered to acquire land by agreement even though it is not immediately required for the purpose for which it was acquired.

19. When land is acquired by a local authority for a statutory purpose or function, it continues to be held by the local authority for that purpose or function until it is formally appropriated to another purpose or function.
20. Where land is acquired by a local authority for a particular statutory purpose or function and the statute under which the land was acquired restricts its use to that particular statutory purpose then the land can only be used by the local authority for that statutory purpose and this is the case, notwithstanding its designation in the local plan or the existence of any planning permission granted in respect of the land.
21. Although the report of the 3rd September 1996, suggested that the land could be acquired for use as informal open space, neither the recommendation in that report nor the resolution passed on the 3rd September 1996, authorising the purchase of the land stipulated that the land would be acquired for that purpose and, indeed, the exempt minutes of the meetings held on the 3rd September 1996 and the 27th November 1996 clearly stipulate that the future retention, use and management of each part of the land is to be determined by the Council at a later date.
22. No further reports on the future retention, use and management of the land have been considered by the Council, except for the report to Cabinet on 11th

March 2019 regarding the proposed disposal of parts of Hurst Farm lying to the east of Hurstwood Lane for the provision of a school, a burial ground, allotments and a country park in connection with the development contemplated by the planning application referred to in paragraph 14 of this report, and consequently those parcels of land and the land, the subject of this report, is held by the Council as strategic corporate investment farmland until the Council resolves to appropriate the land for some specific statutory purposes or function of the Council or resolves to dispose of the land, as the Council did in respect of the land on the east side of Hurstwood Lane on 11th March 2019. However, that resolution of Cabinet does not affect its status as strategic corporate investment farmland, it merely declared the land covered by that report as surplus to the Council's requirements for the purpose of the disposal authorised.

Council's powers of disposal

23. The Council has a general power to dispose of land under Section 123(1) of the Local Government Act 1972, which provides that:

"Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish."

These powers are permissive and must be exercised strictly in accordance with the provisions of Section 123(2) and Section 123(2A) of the 1972 Act.

Terms of disposal

24. Section 123(2) of the 1972 Act, provides that:

"Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained."

Section 123(7) of the 1972 Act, provides that:

"For the purposes of this section a disposal of land is a disposal by way of a short tenancy if it consists:

- (a) of a grant of a term of not exceeding seven years, or*
- (b) of the assignment of a term which at the date of assignment has not more than seven years to run."*

25. Local authorities are therefore, given powers under Section 123 of the 1972 Act to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term of a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies of less than 7 years), unless the Secretary of State consents to the disposal.
26. The Council has undertaken a marketing exercise and in line with advice from a professional valuation surveyor proposes to dispose of the land at full market value on the basis of the terms set out in the Exempt Appendix E to this report, tabled at the meeting.

Disposal of open space land

27. Section 123(2A), provides that:

“A principal council may not dispose under subsection (1) above of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.”

Open space is defined in Section 336(1) of the Town and Country Planning Act 1990 as “any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground” and it includes any land used informally by local inhabitants for recreation, although not formally laid out and not formally dedicated to public use under the Open Spaces Act 1906. Land that has been made available and used by local inhabitants for informal recreation is classed as “de-facto open space”.

28. The land at Hurst Farm acquired by the Council in 1997 was not acquired for use as open space, has never been laid out as a public garden, is not held or used for the purposes of public recreation and is not a disused burial ground. Public access to the land has been precluded by fencing and use of the land for grazing sheep since the Council acquired the land and before that, and therefore, the land does not constitute de-facto open space. Consequently, sub-section 123(2A) of the Local Government Act 1972 does not apply and there is no requirement for the Council to advertise any intention to dispose of the land.

29. Section 123 deals with the disposal of land. There are similar requirements under Section 122 of the 1972 Act relating to appropriation of land for different purposes. In particular, subsections 122(1) and 122(2A) of the 1972 Act, provide as follows:

“(1) Subject to the following provisions of this section, a principal council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned.”

“(2A) A principal council may not appropriate under subsection (1) above any land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.”

30. In the present case, section 122 of the 1972 Act has no application because the land has not been held by the Council as open space. Rather, the Council must consider the proposed disposals under Section 123(2A) of the 1972 Act because some of the land has possibly been used as de facto open space. Unlike section 122(1), where the power to appropriate land is limited to situations where the land “is no longer required for the purpose for which it

is held immediately before the appropriation”, the requirement under section 123 is simply to consider any objections to the disposal.

Section 123 Advertisements and Objections

31. As some of the Development Land is ancient woodland and has not been subject to grazing agreements and as general public access to that limited area is likely to have taken place since the Council acquired the land in 1997, the Council has treated the land as “de facto open space” and has caused notice of its intention to dispose of the Development Land to be advertised in two consecutive weeks in the Mid Sussex Times, being a newspaper circulating in the area in which the Primary School Land, the Burial Ground Land, the Allotment Land and the Country Park Land is situated namely, on 29th August 2019 and 5th September 2019 inviting members of the public who may object to the disposal of the Development Land to make their objections known to the Council by 30th September 2019.
32. Unlike the proposed disposal of the Primary School Land, the Burial Ground Land, the Allotment Land and the Country Park Land in March this year, the Council has not previously considered the disposal of the Development Land or advertised any intention to do so and consequently there are no previous letters of objection to consider. Further, the Council has not received any responses to the statutory advertisements published on 29th August 2019 and 5th September 2019.
33. While there is undoubtedly a link between the planning application considered by the Council’s District Planning Committee on the 9th August 2018 and the need for this disposal report, it is important to remember that they are completely independent processes that must be followed by the Council and that, as a matter of public policy and law, we must not conflate planning issues with property issues and vice versa. The consideration of planning applications is not an executive function of the Council and they must be determined by the Local Planning Authority through the planning committees in accordance with planning policy and law; decisions concerning the acquisition, use, management and disposal of Council land is an executive function of the Council and must be determined by the Council’s Cabinet in accordance with the Council’s corporate policies and procedures and local government law.

Policy Context

34. This proposal is brought to Cabinet against a background of Central Government asking councils to maximise the value of their assets and bring forward land for potential housing development.

Other Options Considered

35. The Council could consider retaining the land as strategic corporate investment farmland and/or designating the land as informal open space. Such a proposal would see the Council forgo a much needed capital receipt and remove an allocated site from housing development.

Financial Implications

36. There are currently significant financial pressures for the Council in delivering public services in the District. Capital receipts can be used to invest to deliver income to help maintain public services in the District including supporting economic growth and job creation.

Risk Management Implications

37. As with any decision concerning the exercise of statutory powers by a local authority, there is a risk of judicial review. Provided that the Council makes its decision in good faith and for proper reasons the risk of judicial review is small.
38. As with any other application, the planning application may be refused. The Council would have the right to appeal any such refusal to the same extent that any other applicant may appeal.
39. Any planning permission issued in respect of the land may be called in by the Secretary of State or be subject to application for judicial review to the same extent as any other planning permission.

Equality and customer service implications

40. As the land is held as strategic corporate investment farmland and public access to and use of the majority of the land has been precluded by existence of fencing and grazing sheep on the land, and as the current use for grazing sheep is permitted by way of a licence, the Council is entitled to determine, there are no equality and customer service implications arising from the proposed disposal of land that has been subject to the grazing licence arrangements. As regards the limited area to which the public have likely enjoyed public access, given that the outline scheme contemplated by the application referred to in clause 14 of this report provides that the land presently ancient woodland will remain as ancient woodland and the Council's preferred developer will be required to maintain that area as ancient woodland and other parts of the outline scheme as areas as open space land, the Council is entitled to determine that there are no adverse equality and customer service implications arising from this report and the proposed disposal. Indeed it is considered that the public realm elements of the scheme will improve equality and customer access to parts of the land to be disposed of.

Other Material Implications

41. There are none, save as already disclosed in this report.

Background Papers

Legal File and earlier reports.