



Ward: Hillside

Land at Overhill, Southwick

Report by the Executive Head of Housing, Health and Community Safety

1.0 Summary

1.1 This report presents the Leader with a summary of the pros and cons of proceeding with the application to the Lands Tribunal to have the provisions of the restrictive covenant on the land set aside, and seeks a decision about whether to proceed further in order to establish the possibility of development of the site for housing purposes, including a large proportion of affordable housing.

2.0 Background

2.1 The land has been the subject of research into the possibility of development for some time. The details are not repeated here but are contained in various reports to the Adur Cabinet and the then Housing and Central Services Committee over the last few years. Surrounding residents have been vociferous in their opposition to the idea.

2.2 Members will recall that at the Cabinet meeting of 21st September 2010 the Cabinet resolved the following:

- Cabinet agreed, in principle, to working in partnership with HydeMartlet Housing Association, developers and possibly the Homes and Communities Agency to provide a high quality mixed tenure sustainable housing scheme;
- officers be instructed to apply to the Lands Tribunal to seek to have provisions of the covenant set aside;
- that a further report be submitted to Cabinet once the conclusion of the Lands Tribunal proceedings are known

2.3 As instructed Officers applied to the Lands Tribunal in June 2011 and as part of the process the residents of properties surrounding the land have been informed of the application.

2.4 In response to the application a number of residents living close to the land have again demonstrated their opposition to the covenant being lifted.

2.5 There is evidence of a significant need for affordable housing within the Adur District. The Housing Register has just over 1500 households registered and the Strategic Housing Market Assessment carried out in May 2009 estimates that Adur needs to develop 226 affordable homes per year to meet need.

2.6 There is a shortage of developable land in the District for housing purposes and Adur relies largely on previously developed or 'brownfield sites' which are not in its ownership to help it meet need. The 2009 Strategic Housing Land Availability Assessment (SHLAA) identified the Overhill site within the built-up area as suitable for housing development. It is a suitable location for development and would contribute to the creation of sustainable mixed communities.

3.0 Arguments for not proceeding with the application to lift the covenant

3.1 The level of local opposition is significant.

3.2 There are other potential developments which may come forward over the coming years, which could help the Council meet the housing numbers it requires in the future. Whilst Shoreham Harbour can help to meet future housing needs in the longer term, it is a unique and complex site which cannot substitute for other sites in the rest of the district. It has always been treated as a ring-fenced site which cannot be replicated elsewhere in the district if housing is difficult to deliver there.

3.3 There is no longer a requirement from the Government to meet nationally imposed housing targets for general housebuilding (although the local needs study recently conducted highlighted that the real need and demand for housing in Adur up to 2028 far exceeds the South East Plan target. See also 4.6 / 4.7 below).

3.4 The upcoming Localism Bill will give greater opportunity for local people to mobilise opposition to developments and decisions in their area which will make controversial projects more difficult to deliver.

3.5 The presentation by the housing association last year did not alleviate residents' concerns. It was not well received by residents, partly because it was unable at such an early stage to give anything other than an indication of what would be possible, and indeed some members felt that the presentation was not as strong as that which had been given to them.

3.6 There is no guarantee the Lands Tribunal will agree, and if they do, there may well be some compensation due if any surrounding owners are found to benefit from the covenant.

4.0 Arguments for proceeding with the application

4.1 Grant rates to assist the development of affordable housing will be significantly reduced over the coming years making it more difficult to fund affordable homes. Utilising Council assets is one of the few methods the Council has to ensure that a significant number of affordable homes will be developed in future years.

4.2 The Homes and Communities Agency (HCA) has stated that they will only provide grant for rented schemes which set the rent at the 'affordable' rent level which is equivalent to 80% of open market rent. Utilising Council assets is one of the few methods the Council has to ensure that a significant number of affordable homes could be developed at rents lower than 80% of open market rents.

4.3 As the owner of the site the Council would be in a stronger position to control the tenure and size of the homes and produce a higher percentage of affordable homes on the site to assist Adur's target as agreed in the Housing Strategy.

- 4.4 There may be a financial consequence to stopping the process at this point as were the Lands Tribunal application to proceed and the covenant be lifted, the land may potentially have a higher value, although valuations have not been obtained at this point.
- 4.5 The draft HydeMartlet proposals which were shared with the residents at the exhibition prior to the Cabinet meeting in September 2010 sought to create an eco-friendly, mixed tenure, sustainable development which would include family homes, enhanced community facilities and green open space for the benefit of the whole community. The presentation fell short of definitive detailed plans for a development for fear of residents seeing this as a “done deal”, but the indicative layouts produced were unable to answer residents’ concerns either.
- 4.6 If sites such as this which are within the built up area cannot come forward, this will put more pressure on developing sites outside the built-up area which are less sustainable unless properly planned for.
- 4.7 As stated above, Shoreham Harbour should not be seen as a replacement site for other potential sites elsewhere in the district. While there may be less of an imperative to meet centrally-imposed housing targets now, there nevertheless remains a demand for housing in the district, and of course particularly for affordable housing for people who are unable to afford to purchase in the private sector, as can be seen from the Housing Register information as set out above. The recent study on local affordable housing needs highlights that Adur’s housing needs now and in the future outstrip the housing provision target set in the South East Plan.

5.0 Financial implications

- 5.1 If the application was to continue and it was successful in lifting the covenant, there may be a possibility of compensation due to any affected person the Tribunal deemed to be a beneficiary of it.
- 5.2 If the covenant proves capable of being lifted, then the land asset owned by the Council may be worth more than it presently is with the covenant still in force, although at this stage no valuation has been attempted.

6.0 Legal implications

- 6.1 By Section 123 of the Local Government Act, 1972 the Council may dispose of land held by them in any manner they wish.
- 6.2 The application to the Lands Tribunal, now known as the Upper Tribunal, Land Chamber, is governed by the Tribunal Procedure (Upper Tribunal) (Land Chamber) Rules, 2010 which include at:
Rule 10 the Land Chamber’s powers in relation to making orders for costs; and
Rule 20 the rules relating to withdrawing proceeding, which state that the consent of the Land Chamber is required unless all parties to the proceedings agree.
- 6.3 In all decisions the Council must act reasonably in accordance with the principles set out in the case of *Associated Provincial Picture Houses Ltd –v- Wednesbury*

Corporation [1947] in which the Court of Appeal set out that a decision maker must take into account all relevant matters, must not take into account matters that are not relevant and the decision must be within the range of reasonable decisions that can be made on the facts, and must not be so absurd as to be outside that range.

- 6.4 In this matter the Council should take account of the housing needs in the area; the availability of land for meeting such need; previous decisions of the Council; views of local people; the legal processes available; the effect on the Council and local people of the continued uncertainty as to whether or not the covenant can be discharged and, if so, whether or not compensation would be payable to any persons.

7.0 Recommendation

- 7.1 The Leader is recommended to give the appropriate weight to the various factors and decide whether officers be instructed to withdraw the application to the Lands Tribunal to lift the covenant, thus effectively ending the possibility of housing development on the site, or whether to proceed as per the original resolution of the Cabinet in September 2010.

Local Government Act 1972

Background Papers:

Reports:

Cabinet :

21st September 2010: Land at Overhill, Southwick;

Housing and Central Services Committee:

12th June 2007: Development of Council-owned Land for Affordable Housing – Proposals for Land at Overhill;

23rd January 2007: Proposals for Land at Overhill and Williams Road

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Schedule of Other Matters

1.0 Council Priority

1.1 To revitalise, regenerate and create lively economies.

2.0 Specific Action Plans

2.1 Housing Strategy 2005-10

- Key priority 1: balancing the local housing market; exploit development opportunities in the District
- Key priority 2: meeting affordable need; maximise affordable housing across a range of tenures

3.0 Sustainability Issues

3.1 The provision of mixed tenure and well designed housing is essential to the sustainability of the communities within Adur.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

6.1 Matter considered and no issues identified.

7.0 Reputation

7.1 Matter considered and no issues identified.

8.0 Consultations

8.1 An exhibition was held for the general public to outline the draft proposals at the Quayside Youth Centre in Southwick on 14 September 2010 and previous Cabinet and Committee meetings have been publicised and attended by residents.

9.0 Risk Assessment

9.1 If the site is not disposed of for nil or low cost then it will significantly impact on the Council's ability to meet its affordable housing target of 50 homes per annum.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified.

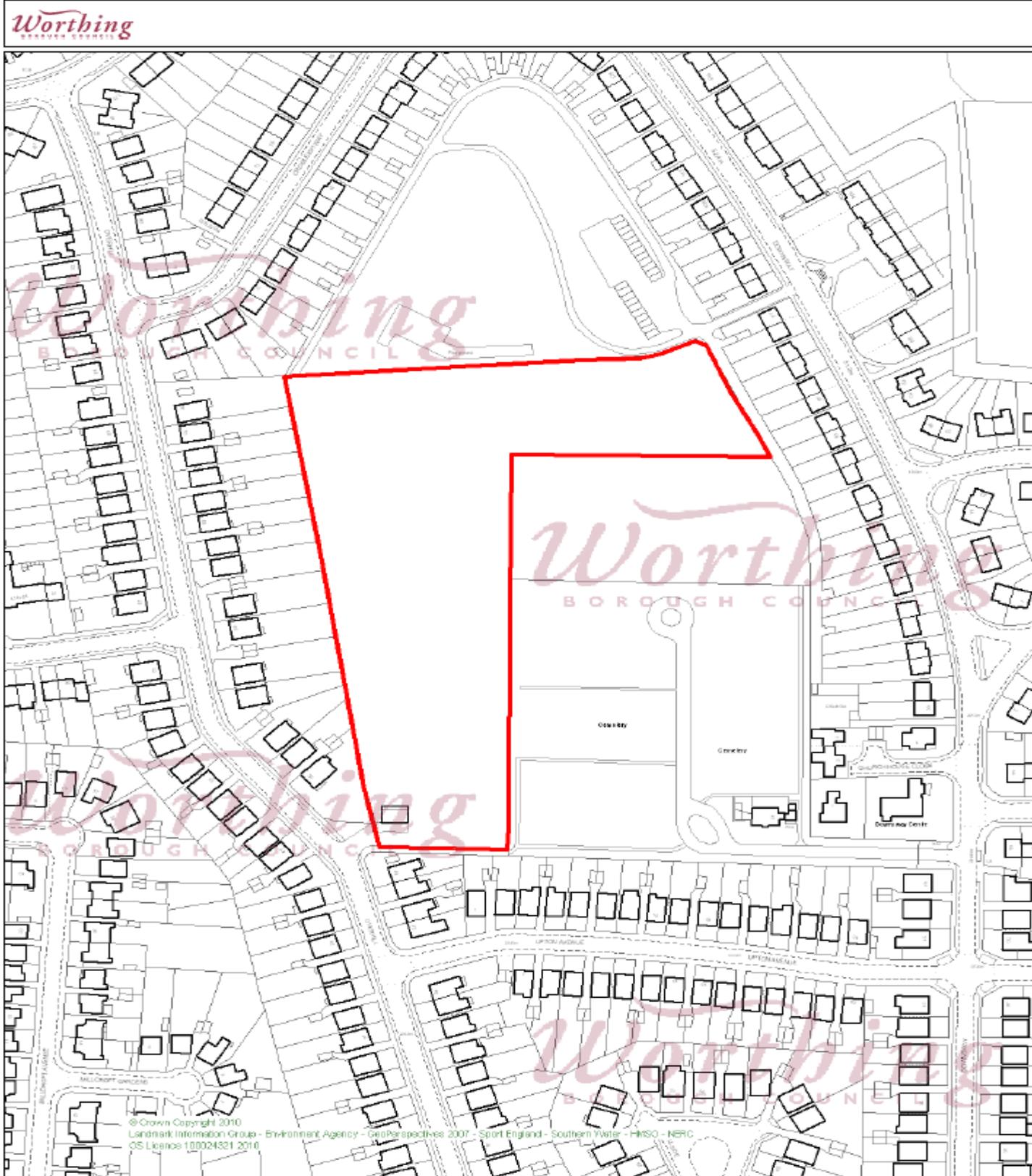
11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

- 12.1 The proposal involves working in partnership with HydeMartlet Housing Association, developers and possibly the Homes and Communities Agency, to provide a high quality mixed tenure sustainable housing scheme.

Appendix A



Notes:	
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