



ADUR & WORTHING
COUNCILS

**Record of Officer
Executive Decision**
Ref. No: HMP&I/018/19-20
Date of Decision: 25 February 2020

If you have any questions about this decision please contact Democratic Services on 01903 221006 or email democratic.services@adur-worthing.gov.uk

Record of Decision: HMP&I/018/19-20 Disposal of Land at Hayley Road, Lancing to New Monks Farm Ltd

Decision taken by: Head of Major Projects & Investment

Declaration of Disclosable Pecuniary Interests: I do not have a disclosable pecuniary interest, or conflict of interest.

Decision:

To dispose of the freehold interest in the land at Hayley Road as shown in Plan A for £50,000.

Key Decision: Yes

Reason For Decision:

Reason for the Decision:

To enable the proposed development in approved planning application AWDM/0961/17 to proceed and for the detailed reasons set out in the paragraphs below.

Summary & Background

Land known as New Monks Farm is adjacent to the Mash Barn Estate on the estate's eastern perimeter. The owners of this land (New Monks Farm Limited) have submitted a planning application for the following development:

AWDM/0961/17 | Hybrid planning application seeking (1) Full planning permission for the demolition of existing buildings and erection of 249 dwellings with temporary access via Grinstead Lane, a Country Park, relocation and extension of the Withy Patch Gypsy and Traveller site, permanent access via a new roundabout on the A27, landscaping, two additional football pitches and other associated infrastructure (including pumping facility at the River Adur); (2) Outline planning permission (with only landscaping reserved) for a non-food retail store (Use Class A1); and (3) Outline planning permission (with all matters reserved other than access) for the erection of a further 351 dwellings, community hub, primary school, and landscaping. The application is accompanied by an Environmental Impact Assessment. | Land East Of Shadwells

Road At Mash Barn Estate Mash Barn Lane Lancing West Sussex

The planning application identifies Hayley Road as a temporary access point onto the estate for phase one of the development prior to the improvement works to the A27 with the construction of a new roundabout and permanent access to the new housing estate. It is proposed that the planning requirement for the construction of the 250th house will be that a new junction with the A27 into the development is completed.

It is further proposed in the planning application that the access from the land at Hayley Road will remain once the development is completed for bus, taxi, pedestrians and cyclists only.

New Monks Farm Limited (NMF Ltd) have identified that there is an alternative second access available to the south of the site from Mash Barn Lane. This route is not detailed within the planning application and as such is currently not the approved temporary access for phase one or the approved ongoing public transport link.

The New Monks Farm planning application was submitted to Adur District Council in September 2017. Representative of New Monks Farm Limited formally contacted the landowners as to the land at Hayley Road's availability for purchase in June 2018. The planning application that the Council's Planning Committee have approved includes this parcel of land as part of the planning application.

Negotiations have been ongoing since this time to agree the value of the land. To support this process the Council have commissioned a valuation of the land in accordance with RICS best practice (a "red book Valuation") to give the Council an indication of its value.

The valuation concludes that the value of the land is £200,000. Through protracted negotiations New Monks Farm Limited have contested this valuation and do not accept the conclusion of the valuation. Furthermore, New Monks Farm Limited have identified through a viability exercise that the adjacent development site has marginal viability and argue that in paying full £200,000 to the Council would render the scheme unviable to the extent that they would be forced not to proceed with the scheme. New Monks Farm Limited have made a best and final offer of £50,000 to secure this land to access the development.

This report set out the context and justification for disposing of the land to New Monks Farm Limited at a £150,000 undervalue for £50,000. The report follows the approach suggested in Government Circular 06/03 which provides guidance on the circumstances in which the Council can dispose of the land at an undervalue and the information required on which to base this decision.

Government Circular 06/03: Local Government Act 1972: General Disposal Consent (England) 2003

This circular provides Local Authorities with directions in relation to the disposal of land under powers granted in sections 123 and 127 of the LGA 1972: GDC (E) 2003 for less than the best consideration that can reasonably be obtained. It is therefore the starting point when considering any valuation of Local Authority land for disposal purposes.

The Technical Appendix to the circular confirms that Local Authorities must obtain best consideration for the sale of any land, considering the Unrestricted Value.

Unrestricted Value is defined as:

“The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2)5, except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).”

Paragraph 6 of the Circular states that it is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible. Generally it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. (Emphasis added)

Paragraph 8 states that the terms of the Consent mean that specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Where applicable, authorities should also have regard to their community strategy. (Emphasis added)

Paragraph 9 identifies that in determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue. (Emphasis added)

These paragraphs make clear that an authority can dispose of land at an undervalue in certain circumstances. That these circumstances include where the disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of its area. Finally, that the authority should receive valuation advice and be knowledgeable as to the likely amount of the undervalue.

Government Circular 06/03 sets out guidance for Local Authorities on the sale of land at an undervalue. The circular sets out five key pieces of information which should be included in any report seeking to agree to the disposal of land at an undervalue. Paragraphs I) – V) below set out the proposed

I) a written description of the site and buildings, its physical characteristics, location and surroundings together with a plan which should be accurate enough to allow it to be used to identify the land;

The land is located on a housing estate known as Mash Barn Estate in Lancing to the south of the A27, in West Sussex. The property is situated between two terraces of houses to the north and south with an area of open space to the east known as New Monks Farm.

A plan showing the situation of the Property is set out below.



The Property is laid to grass and is well maintained. The site of the Property is roughly rectangular in shape and is bounded by hedges to the east and is open with no clear boundaries to the other sides. By reference to the Ordnance Survey extract, we calculate that the Property has an area of 0.042 acres (1,830 sq. ft.). There are no buildings on this piece of land, however, the property is well maintained. This area and the precise site boundaries will be confirmed prior to the disposal.

A copy of the Ordnance Survey extract plan which shows the Property hatched green.



- I) **A written description of the authority's tenure and a summary of the details of any leases, encumbrances, such as easements etc, to which it is subject. Details should be given of the purpose(s) for which the authority holds the land. Normally land is held for the purposes of the power under which it was acquired, or taken on lease, unless it has since been formally appropriated to another purpose;**

The Council owns the property freehold for the purposes of amenity. The land is identified as being held as public open space for the purposes of S123 of the Local Government Act 1972 and the required consultation has taken place prior to this decision being made. No responses were received to this consultation.

The Property is identified within the Adur Local Plan 2017 as being within the built up area and adjacent to a strategic site Allocation. The relevant policy relating to the built up area is Policy 2 – Spatial Strategy, the policy relating to the Strategic Site Allocation is Policy 5.

III) A written description of the existing use(s), current planning consents and alternative planning uses(s) that are likely to be permitted:

The current lawful use of the site is as amenity land.

The land has been subject of a planning application by the purchaser (New Monks Farm Ltd) and the land included within the red-line boundary included within this planning application. The details of the application are set out below:

Application number	Description of Development	Date of Decision	Decision
AWDM/0961/17	Hybrid planning application seeking (1) Full planning permission for the demolition of existing buildings and erection of 249 dwellings with temporary access via Grinstead Lane, a Country Park, relocation and extension of the Withy Patch Gypsy and Traveller site, permanent access via a new roundabout on the A27, landscaping, two additional football pitches and other associated infrastructure (including pumping facility at the River Adur); (2) Outline planning permission (with only landscaping reserved) for a non-food retail store (Use Class A1); and (3) Outline planning permission (with all matters reserved other than access) for the erection of a further 351 dwellings, community hub, primary school, and landscaping. The application is accompanied by an Environmental Impact Assessment.	04/02/2020	Approved conditionally with S106 agreement

The planning application was discussed at the Adur District Council Planning Committee meeting on 03 October 2018. The planning officer's report to the Council recommended approval of the application subject to section 106 agreement.

A proposal to approve the application at committee was seconded and following a vote, the application was approved 5 in favour and 3 against subject to the section 106 agreement and various conditions.

The most relevant conditions with regards to the valuation of the Property are conditions 50 and 52 which specifically mention the subject site as follows:

50 - "The Non-Food Retail store or any more than 249 dwellings shall not be occupied until a bus gate between Hayley Road and the development has been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority."

52 – “No more than 250 dwellings shall be occupied until access from Hayley Road has ceased from which point it shall be limited to use by cyclists, pedestrian’s buses or emergency vehicles only.”

In terms of alternative planning uses, there is potential for the site to be developed for new homes. However, the likelihood of a proposed development for housing on the site receiving planning consent is considered to have a reduced likelihood as development on the site would prevent access to the land to the east and could be perceived as being prejudicial to the delivery of an allocated site in the adopted Adur Local plan which would be strong grounds for the planning application to be refused.

IV) A summary of the proposed transaction, noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the authority;

Summary of the proposed transaction

It is proposed to dispose of the freehold of the land for £50,000.

Reasons for disposing at an undervalue

Annex 2 of Circular 06/03 provides guidance on the circumstances in which the authority considers it appropriate to dispose of the land at an undervalue. The specified circumstances are:

A) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

- i) the promotion or improvement of economic well-being;*
- ii) the promotion or improvement of social well-being;*
- iii) the promotion or improvement of environmental well-being; and*

B) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

The paragraphs below outline how the authority considers that the disposal of the land will contribute to the achievement of the economic, social and environmental objects:

Economic well-being

The government has recognised that the retail sector is an important employer and falls within the general definition of an employment generating use. In this respect, the Local Plan acknowledges that employment generating uses, such as retail, make a significant contribution to the economy. The applicants have referred to a report undertaken by the Department of Business Innovation and Skills (BIS) now Department of Business, Energy & Industrial Strategy (BEIS) entitled Retail Sector Overview April 2013 which indicates that around £71 billion in gross value added (GVA), representing around 5% of the total of the UK economy (BIS). Retail is comparatively more labour intensive than other sectors of the UK economy. In 2016 BIS reported that there were over 3 million jobs in the retail sector.

The proposed Ikea store would clearly generate far more jobs than the Local Plan allocation. In total the applicants submit that the proposal would create 430 gross full-time

and part-time jobs, and therefore fully complies with Policy 5 of the Local Plan. It is accepted that retail jobs are particularly beneficial for target groups that can otherwise suffer exclusion from labour markets and experience significant economic deprivation. Retail is an especially important source of employment for young people and school leavers, particularly those who leave school with few formal qualifications. Of the 430 jobs 60% are to be part-time and 40% full time (an equivalent of 336 gross FTE jobs).

Although, concerns have been expressed that the retail use would not address the shortage of employment floorspace in the District, there are significant employment benefits given the location of the site adjacent to Mash Barn Ward where there is a higher rate of unemployment than the rest of the District and the Ward is in the 20% most deprived in terms of income and education and skills (2015 – Indices of Multiple Deprivation).

	Adur	Mash Barn
% of People Income Deprived	12.0%	15.1%
% of Working Age People Employment Deprived	8.4%	9.6%
% of Children in Income Deprived Households	17.1%	20.1%
% of Older People Income Deprived	15.1%	22.5%

Given these statistics it is highly relevant that Ikea is a Living Wage employer (currently £8.75 outside of London compared to the minimum wage of £7.50). It is also relevant that Ikea has a very good record of employing locally and training apprentices. Ikea states that in two of its recently opened stores,

- 90-95% of 'co-workers' (not management) have come from the immediate post codes
- 60-65% of managers have come from immediate post codes - this percentage is lower as they move experienced and specialist managers into stores from other stores as this provides a development route and ensures that they retain their brand values and approach
- Recruitment would be undertaken by working with local agencies and organisations including community groups. IKEA have a flexible approach to how they recruit, which focuses on identifying potential and commitment as opposed to a focus on existing experience and/or formal qualifications.

Education attainment and the lack of skills generally with the District has been an issue for some years and is highlighted in the ES. Qualification levels in Adur are much lower than the rest of the sub region. In 2011, a quarter of all adults in Adur (26%) had no qualifications compared to West Sussex (20%) and Greater Brighton (18%). Whilst, a number of objectors have referred to the low paid and low skilled nature of any jobs generated by the new store, this is not reflected in the range of jobs on offer and the potential salaries and training opportunities.

In employment terms, in addition to the 430 full and part time jobs the Socio-economic Chapter of the ES states that there could be a further 40 indirect full time jobs in the local economy associated with the proposed new store.

The significant employment generated by the development is also compelling. The Ikea

store would deliver 430 jobs and the development would assist in bringing forward jobs associated with the commercial development planned at the airport. The ES suggests that with construction jobs and indirect jobs the total could rise to 876 new jobs. The intended occupier, Ikea is an international company and has a reputation for providing good employment and training opportunities. Ikea is a living wage employer which is significant given that the site lies adjacent to a Ward that is in the top 20% deprived in terms of income and education and skills.

The benefits to the local economy are recognised by a number of local business organisations notably the Chamber of Commerce and the West Sussex Coastal Partnership and it is accepted that this £150 million development would be a significant boost to the local and wider regional economy. The ES provides a summary table which highlights the key economic benefits of the proposed development to the local economy and this is set out below:

Economic Impact Summary (100% job occupancy)	Completed Development	Annual Average during Construction
Jobs Created		
Gross Direct IKEA PT and FT	350	
Gross Direct IKEA Ancillary	80	
Construction FTE Jobs	332	
New School	15	
Indirect Jobs	99	
Gross Jobs	876	
IKEA Net Direct FTE Jobs	189	
Construction FTE Jobs	109	
New School FTE Jobs	15	
Net FTE Jobs	313	
New Homes Indirect Jobs	44	
IKEA Indirect Jobs	55	
Indirect FTE Jobs	99	
Total Net FTE Jobs	413	
GVA Economy		
New Homes	£3,171,996	£1,871,477
New Commercial	£5,488,560	£4,390,848
Adur Economy GVA	£8,660,556	£6,262,325
New Homes Bonus (2 Years)	£186,023	£18,602
Additional Business Rates	£1,500,000	£1,200,000
Council Tax Revenue	£1,108,671	£653,217
Total Public Sector	£2,794,694	£1,871,819
Total Economic Impact	£11,455,249	£8,805,964

Table 6-1 Economic Impact Summary Table

It is relevant that the Airport is currently in administration and therefore the delivery of the joint access and drainage strategy would help the future viability of the airport.

Social well-being

The Objectively Assessed (Housing) Need (OAN) for the District is 6,825 and the Local Plan Inspector accepted that the constraints of the District were such that this could not be met. The Local Plan proposes a minimum of 3,718 dwellings over the plan period (177 dwellings per year). The delivery of New Monks Farm is therefore a critical part of Adur District Council's total housing supply over the plan period.

The NPPF also requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with a buffer of 5% (moved forward from later in the plan period) to ensure choice and competition. If a 5 year supply of land cannot be identified, the national presumption in favour of sustainable development is applied when determining planning applications.

In calculating the five year housing land supply for the period 2018 - 2023, based on the delivery of 177 dpa, it can be demonstrated that Adur currently has a 5.2 year supply of deliverable sites without relying on development at New Monks Farm. Therefore, whilst development at New Monks Farm is crucial to delivering the overall strategy of the Local Plan, it is not necessary for the first phase of 249 dwellings to be completed within five years. However, the five year housing land supply calculation (which uses the standard

methodology) assumes that the identified supply of sites (including 630 at Shoreham Harbour (Free Wharf and part of Kingston Wharf) will all deliver as predicted in the housing trajectory.

Adur has a surplus of just 75 dwellings (in terms of a 5 year supply of sites) and if just one of the larger sites does not deliver within these timescales, without the early delivery of New Monks Farm the Council may not have a five year housing land supply which could potentially make the Council vulnerable at appeal in connection with other non-allocated sites.

Of significance is the acute lack of affordable housing in the District. With the Councils waiting list approaching 1,000 households and developments at Shoreham Harbour providing only limited numbers of rented accommodation on the grounds of viability, there is an urgent need for greenfield sites to deliver the full 30% affordable housing with an emphasis on rented accommodation. The scheme would provide 108 affordable rented homes (60%) and 72 intermediate homes and as the Head of Housing indicates with current Local Housing Allowances (LHA) rates it is likely that affordable rents would be lower than 80% of current market rents. The development would therefore make a significant contribution to those in housing need within the District.

In terms of public benefits the delivery of 600 dwellings is vital to meet the Districts future housing needs. As the Local Plan identifies the Council cannot meet its Objectively Assessed Housing Need (OAN) and the sites available are limited. With the number of households on the Councils Housing Register approaching 1,000, the early delivery of 180 affordable homes is an important consideration. The loss of this site would be significant and could potentially affect the Councils ability to deliver a 5-year supply of housing if other sites are delayed.

Key Terms and Restrictions

The following key terms and restrictions will apply:

1. Purchaser to meet the councils legal and valuation costs in this matter, whether it completes or not, which are estimated to be:

Legal: £5,000

Survey and Valuation Costs £11,387.12

S123 Notice Advertising Costs £400

2. Any costs incurred between selection and completion of any sale (or withdrawal) are entirely at the risk of the purchaser
3. Subject to the council being offered the right of first refusal (excluding any dedication as public maintainable highway) on any future sale or council to have the right to call for the site to be sold to them if works are not implemented within 24 months of disposal
4. The site only to be used in conjunction with planning permission AWDM/0961/17 and will be restricted for use to create an access to adoptable standards for no more than 249 residential units and thereafter to provide an access constructed to adoptable standards restricted to Buses, Taxis, Emergency Vehicles, Cyclists and Pedestrians to serve the residential estate of no more than 600 units, a 2FE school, a Non-Food Retail Store (Use Class A1), Traveller Site and Country Park . Should the site provide access by way of a further planning consent to an increased number of units, the purchaser, and successive beneficiaries of the access will pay a sum equating to the greater of the

uplift in full value from the purchase price of the site to the market value of the site subject to the increased unit numbers or £250,000, whichever the greater.

5. Council to retain a right of access over the land at all times and for all purposes, with or without vehicles, plant and workmen to access its retained land

- v) A detailed Valuation Report covering the matters listed in the Technical Appendix, and signed by a qualified valuer (a member of the RICS). The Department would normally expect the valuation to have been undertaken no earlier than six months before the submission.

A detailed valuation report has been received by the Council dated 13th January 2020 which values the land at £200,000.

Application of State Aid Law

At paragraph 14 of Circular 06/03, it is made clear that notwithstanding the Consent Order, local authorities are also bound to comply with EU State Aid rules. Accordingly, an assessment of the Proposed Sale must consider these rules and in particular the EU Guidance which specifically deals with sales of publicly owned land at below market value.

State Aid comprises financial aid provided out of public resources which meets all the criteria in Article 107(1) of the Treaty on the Functioning European Union ("TFEU"). Article 107(1) declares that State Aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is prohibited as incompatible with the Common Market, unless the Treaty allows otherwise.

The cumulative criteria for State Aid to exist are:

- (a) There is a grant of State Aid by the State or through State Resources

The EU Commission and European Court of Justice have interpreted the term "State Aid" very widely, to include many different forms of financial assistance or economic advantage. EU Guidance has been specifically issued in respect of the sale of public land and buildings and there is little doubt that a sale of public land and buildings at less than full market value is an example of State Aid. In addition, it is clear that the prohibition of State Aid extends to local authorities within Member States and therefore, given Your ownership of the Property, any aid would be granted by or through State Resources.

- (b) It distorts or threatens to distort competition

There will be a distortion of competition if the State Aid provides a competitive advantage to one organisation at the expense of another. An advantage is any economic benefit which an organisation could not have obtained under normal market conditions. In this case (assuming the Proposed Sale proceeded), the Developer would be obtaining a direct financial benefit of £350,000.00, which it would not accrue were it not for You agreeing to sell the Property at £50,000.00, below Market Value (something that a private entity would arguably not consider all things being equal). The financial situation of the Developer will be improved (in the sum of £350,000.00) by Your intervention. Accordingly, there is the potential for the State Aid to provide a competitive advantage and thus distort competition in this instance.

- (c) It affects (or potentially affects) trade between Member States

As referenced above, the EU Commission and European Court of Justice have adopted a broad interpretation of the criteria applying to State Aid. It is assumed that any State Aid provided to a producer or supplier in an EU market is capable of affecting competition and trade, since it gives the recipient a competitive advantage over rivals in all Member States (given that the basis of EU State Aid law is promoting a single common market). The definition of State Aid does not require that the distortion of competition or effect on trade is significant or material and an advantage granted to an organisation that operates in a market which is open to competition will normally be assumed to distort competition and be liable to affect trade between Member States. It is not a requirement that the recipient of the aid is involved in cross-border trade for this criteria to be met. Given that the Developer is in the business of carrying out residential development (a sector in which there is wide ranging and fierce competition), it seems clear that the Proposed Sale meets this criteria and the competitive advantage conferred upon the Developer is capable of affecting trade between Member States.

State Aid must be notified to and approved by the European Commission in advance of implementation, unless:

- (d) It does not fulfil one or more of the criteria for State Aid described above (and it appears to us that the Proposed Sale potentially meets all those criteria);
- (e) The *de minimis* exclusion applies (Aid not exceeding €200,000 to a single undertaking over a rolling 3 year period is excluded from the State Aid rules). Again, it seems clear that the extent of the State Aid would not exceed this threshold;
- (f) The State Aid can fit into a Treaty exemption, or the General Block Exemption Regulation (GBER) which provides for exemption for State funding meeting certain conditions (it does not seem immediately apparent that any of these would apply to the Proposed Sale) ; or
- (g) The Market Economy Investor Principle (MEIP) applies (the Proposed Sale does not fall within this principle).

It is clear that the sale of the site at an undervalue of £150,000 constitutes a state aid as defined above. However, it is clear that the *de minimis* exclusion applies as the value does not exceed €200,000 at current exchange rates.

Alternative Options Considered:

To not sell the property to New Monks Farm Limited. This is not the preferred option as it does not enable the development to come forward in line with the Adur Local Plan 2017.

To not sell the land to any other party. This is not the preferred option as it does not enable the development to come forward in line with the Adur Local Plan 2017.

Other Matters Considered:

Legal Advice and Issues	x	Financial Advice and Issues	x
Sustainability Issues	x	Equality Issues	x
Community Safety Issues	x	Human Rights Issues	x

Reputation	x	Risk Assessment	x
Health & Safety Issues	x		
Consultation: Consultation has been carried out with the Council's Monitoring Officer, and Chief Financial Officer in respect of the proposed transaction. S123 public consultation was undertaken from 06 th February 2020 to 20 th February 2020.			
Background Papers: Adur Local Plan 2017 Planning Application AWDM/096/17 Planning Committee Report			
Contact Officer: Cian Cronin Head of Major Projects & Investment cian.cronin@adur-worthing.gov.uk			
Call-in: The call-in deadline for this decision will be 5:00pm on 3 March 2020			

Signed:



Dated: 25 February 2020

Name: Cian Cronin, Head
of Major Projects &
Investment

Decision Ref No:
HMP&I/018/19-20