



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
7 November 2019
Agenda Item 11

Key Decision [Yes/~~No~~]

Ward(s) Affected: Northbrook

Delivering New Homes for our Communities - Fulbeck Avenue

Report by the Director for the Economy

Executive Summary

1. Purpose

- 1.1 To update members as to progress and developments on the development of new homes on the Fulbeck Avenue site with Boklok Uk Ltd.
- 1.2 To seek the Committee's approval for the sale of the land to Boklok UK under revised terms to those set out at the June meeting of the Joint Strategic Committee.

2. Recommendations

It is recommended that members of the Joint Strategic Committee:

- 2.1 Note the progress made since June for the sale of the land to Boklok for the redevelopment of the Fulbeck Avenue Site;
- 2.2 Agree the proposed route set out in this report for the sale of the land at Fulbeck Avenue;
- 2.3 Delegate authority to the Head of Major Projects & Investment, in

consultation with Worthing Borough Council's Executive Member for Resources, to agree the heads of terms for the sale of the land at Fulbeck Avenue to Boklok UK, and thereafter to enter into the conditional sale contract for the sale of the land subject to those heads of terms;

- 2.4 That as a condition of exercising his delegated authority at clause 2.3 the Head of Major Projects and Investment obtains a suitable valuation report to confirm what the best consideration that may be reasonably obtained by the Council for the sale of Fulbeck Avenue will be.

3. Background

- 3.1 Our 'Platform' commitments seek to make the best use of council owned land and buildings to deliver investment to support our local economy for the benefit of local communities. The Joint Strategic Committee considered a report at its June 2019 meeting detailing proposals for working with Boklok UK on the future development of the Fulbeck Avenue site. The committee agreed that in order to deliver new affordable and low cost homes to the housing market that we would dispose of land by way of a building lease to Boklok UK.
- 3.2 The report identified the opportunity that through working in collaboration (through a formal "Collaboration Agreement") with BoKlok will enable the Council to make a strategic intervention into the housing market in Worthing. By working on this collaborative approach the Council will have a partner capable of delivering housing options at pace, across a number of different site types and locations. Boklok's "Left to Live" affordable housing model aims to provide "genuinely affordable" homes by reversing the normal market based calculation of housing affordability.
- 3.3 It was agreed that an agreement for lease for the Fulbeck Avenue development should be progressed independently from the Collaboration Agreement which would act as a pilot scheme for the strategic relationship, to enable Boklok to demonstrate visibility of a deal flow, to support the business case for entering into the UK and this region. It was proposed that this agreement would take the form of the building lease model approach.
- 3.4 In the interim period the Council and Boklok have been working to prepare a detailed development scheme. This has included further work on design, preparing for public consultation. and undertaking detailed due diligence on property title, technical feasibility, achievement of best consideration and procurement advice.

4. Issues Arising from Proposals Considered at July JSC

- 4.1 As part of the due diligence process the Council received legal advice from Trowers & Hamlin on the EU Procurement Regulations. Trowers & Hamlin were of the view that there were elements of the proposed deal that could render the agreement to be classified as a public works or services contract for the purposes of the Public Contracts Regulations 2015. In evaluating this risk, the Head of Major Projects & Investment in consultation with the Chief Financial Officer and the Solicitor to the Council & Monitoring Officer, concluded that the alternative arrangements proposed below in this report should be the way forward, as this removes the risk of procurement challenge and enables the same or similar outcomes as set out in the initial report to be achieved.

5. Revised Approach for Fulbeck Avenue

- 5.1 The proposed alternative arrangement to avoid any risk of non compliance with the Public Contract Regulations 2015 is to sell the freehold of the site to Boklok and ensure that the Contract for sale of land is a straight forward sale contract with no binding obligation on BokLok to undertake any works, with the sale transaction being for best consideration.
- 5.2 The specific provisions of the contract for sale, would need to be drafted carefully to provide both parties with sufficient commercial comfort to move forward without creating any binding obligation in the contract for sale of the land.
- 5.3 The Council remains satisfied that affordable housing will be delivered as a requirement in the planning process (see below), leaving the remainder of the site to benefit from Boklok's style and expertise in delivering modular housing, and it is proposed that Members agree to enter into a conditional sale agreement for the land subject to planning permission being granted.
- 5.4 BoKlok UK would agree to work collaboratively with the Council and take into consideration any ideas or requests of the Council to develop plans for new homes on the site. BoKlok UK would be required to provide 30% of the homes as affordable homes in accordance with the Worthing Core Strategy 2013 and this would be a planning obligation. These units would be available to purchase by a registered provider as per normal practice. BoKlok UK would offer the remaining 70% of the homes constructed on their "Left to Live" business model.

- 5.5 The June JSC report identified a timeline for the project proposing that a planning application will be submitted in January 2020. This is unlikely to be affected by the revised approach should it be agreed by Members.
- 5.6 Local authorities are given powers under s123 of the Local Government Act 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 on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable, unless the Secretary of State consents to the disposal, or the disposal is less than a £2m threshold level. Consideration in section 123(2) is confined to transaction elements which are of commercial or monetary value. As a result, in coming to the view as to whether best consideration reasonably obtainable has been achieved in a transaction the Council cannot take into account factors such as job creation, regeneration or other social outcomes which do not have a direct or monetary value to the Council. In complying with its duty to dispose of land for best consideration reasonably obtainable, the expert valuation report will consider not just the monetary value of the sale, but the commercial value to the Council. Inevitably, the consideration received will reflect the nature of the development and be supported by the expert valuation report.
- 5.7 While this more simplified land deal approach will provide benefits in terms of removing the risk of the transaction being at odds with the Public Contracts Regulations 2015 and enable the development to proceed without delay, it will also result in the Council having less control over the eventual form of the development in the long term. Once the Council has sold the land to BoKlok there is limited recourse should they change their development strategy, business model, or investment approach. However the requirement for Boklok to consider our objectives and requirements, enables us to work in good faith and collaboratively with Boklok in developing its project and the planning process will ensure that the affordable housing is delivered.

6. Financial Implications

- 6.1 The cost of undertaking the legal advice, further feasibility studies, independent valuations, and other work required has been estimated at £25,000. This is being funded from the Worthing Borough Council Major Projects & Investment revenue budget.
- 6.2 As part of the land deal, the Council will be disposing of the freehold of the land at Fulbeck Avenue to Boklok. The final consideration for the land is yet to

be determined but will be supported by the expert independent valuation

7. Legal Implications

- 7.1 Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of their functions.
- 7.2 Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 7.3 S1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation
- 7.5 As confirmed in the report, the Council must comply with its duty to obtain best consideration for any disposal of land under s123 Local Government Act 1972. By section 128(1) of the Act specific consent of the Secretary of State is not required for the disposal of any interest in land that the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well being of its area and the undervalue is less than two million pounds.
- 7.6 Any disposal of the land at an undervalue must not amount to unlawful state aid, and in the event there is an undervalue proper enquiries should be made of Boklok to ensure that the sale is state aid compliant.
- 7.7 The terms of the contract for sale of land should avoid creating a public services or works contract as defined by the Public Contract Regulations 2015.

Background Papers

Report to the Joint Strategic Committee on the 4th June 2019 - Delivering New Homes for our Communities - Fulbeck Avenue

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Sustainability & Risk Assessment

1. Economic

The proposal to market the site for a mixed use scheme accords with the Adur and Worthing Economic Plan 2013 - 2023 where the Economic Priorities are named as Support Business, Develop Growth, Enhance Business Environment, Advance Local Skills, Encourage Sustainability and Promote Health and Wellbeing. The Economic Plan also states “It is vital that Adur and Worthing provides foundations for business to operate effectively” and promotes the following aims:

- Support Business
- Develop Growth
- Enhance Business Environment
- Advance Local Skills
- Encourage Sustainability
- Promote Health and Wellbeing

2. Social

2.1 Social Value Conditional disposal and redevelopment of the site with mixed use will enhance the town and help to support the economic prosperity of the District.

2.2 Equality Issues Matter considered and no issues identified.

2.3 Community Safety Issues Matter considered and no issues identified.

2.4 Human Rights Issues Matter considered and no issues identified.

3. Environmental

Marketing the site for a conditional disposal will bring forward development of the remaining, redundant brownfield site as identified as the strategy for Shoreham within Platforms for our Places.

4. Governance

An internal officer board consisting of representatives from key departments essential to successful delivery has met and reviewed the programme at key stages of the marketing exercise.