

From: Rebecca Spore, Director of Infrastructure

To: Eric Hotson, Cabinet Member for Corporate and Democratic Services

Decision No: 18/00063

Subject: Kings Hill: Phase 3 (Areas 10, 11 & 15) Freehold Disposal

Classification: Unrestricted (Exempt Appendix – appendix B, C)

Exempt appendix under schedule 12a of the Local Government Act 1972. Matters contained in the report are commercially sensitive.

Past Pathway of Paper: N/A

Future Pathway of Paper: Decision by the Cabinet Member for Corporate and Democratic Services

Electoral Division: Malling Rural East

Summary:

This report requests that Phase 3 Land areas 10, 11 and 15 be drawn down and sold subject to contract on the terms provided in the exempt appendix B in accordance with the Kings Hill Development Agreement dated 18th January 1989, as amended by the Deed of Variation 23 January 2018.

Recommendation(s):

The Cabinet Member for Corporate and Democratic Services is asked to agree to:

1. Note the terms of the disposal proposed by the partnership attached in CONFIDENTIAL appendix B and the valuation attached in CONFIDENTIAL appendix C.
2. The Draw-down of land areas 10, 11 and 15 in accordance with the Kings Hill Partnership 1989 and subsequent agreements identified in appendix A of the report corresponding to this decision.
3. Delegate to the Director of Infrastructure, in consultation with the Head of Paid Service and General Counsel, the finalisation of the process for draw down in accordance with the provisions set out in the Kings Hill provisions within the Constitution's Property Management Protocol and the Kings Hill Partnership Agreement.

1.

1. Introduction

- 1.1 The decision requested is pursuant to the contractual arrangements which are in place and relate with all land which falls within the Kings Hill Development Agreement, dated 18th January 1989, as amended by the Deed of Variation 23 January 2018.

- 1.2 Land and Property at Kings Hill (with limited exceptions) is committed to the objectives of a long-term Joint Venture arrangement with Liberty Property Trust. The primary KCC objectives of the Joint Venture was to bring forward land for the rapid delivery of both high-quality employment regeneration and quality new housing. An inherent part of this is to also further maximise financial receipts for KCC.
- 1.3 The Kings Hill Partnership is progressing with Phase 3 at Kings Hill. Phase 3 provides a total of 635 houses of which 17.5% (112 units) are affordable. The Phase 3 area has been subject to significant infrastructure investment and all the identified development parcels are prepared for development for sale.
- 1.4 Funding for affordable housing is complex and susceptible to fluctuations and time limits. Development viability is a major factor, and this is underpinned with blending affordable and private housing components, to support the necessary levels of commercial viability.
- 1.5 This decision will delegate authority for the Director of Infrastructure to agree to a draw down of 3 land areas described in plans at appendix A for residential schemes totalling 166 homes on Kings Hill.

2. The Proposal

- 2.1 Draw down Areas 10,11 & 15 in accordance with the Kings Hill Development Agreement, dated 18th January 1989, as amended by the Deed of Variation 23 January 2018, so that they can be sold by private treaty to a Registered Social Landlord and Developer identified in confidential appendix B along with the conditions of sale.
- 2.2 A Planning Application was submitted by the prospective purchaser on the 6 July 2018 to TMBC. A decision is expected imminently.
- 2.3 The scheme proposed by the purchaser on each site is as follows:

	Area 15	Area 11	Area 10	Total
Area (ha)	1.2	1.47	0.42	3.09
Affordable Units	67	34	11	112
Private Units	12	32	10	54

TOTAL	79	66	21	166

2.4 In the Phase 3 Outline Planning parameter plan the three Areas are defined as areas of high-density development. The Phase 3 Planning Consultation response stated that high density was around 40 units per hectare. There has been extensive liaison with TMBC planners, the Kings Hill Parish and Borough Councillors on the proposed plans and the associated densities.

2.5 This transaction will deliver the entire affordable component spread over three parcels, whilst complying with the planning requirements.

3. Financial Implications

3.1 Sale of the three land parcels of land by the Kings Hill Partnership will realise a land sale receipt to The Kings Hill Partnership. Total consideration payable on completion by the purchaser is outlined in confidential appendix B. The achievement of open market value has been verified via a Report & Valuation undertaken by CBRE, the Partnership's acting agent dated May 2018. This is attached in appendix C.

3.2 KCC receives an agreed equal share of these receipts after infrastructure costs allowable under the terms set out in the Development Agreement. Until final accounts are determined, the share to KCC cannot be allocated.

3.3 The sale will be subject to VAT. This means that KCC can recover VAT without affecting its partial exemption limit.

4. Key Risks

4.1 Failure to draw down the parcels of land. This would cause unacceptable delays to the compliance of planning obligations and conditions and subsequently directly impact the Calibrated Land Disposal Programme for Phase 3. This would ultimately result in a significant negative impact on distributions payable to both Partners and working cashflows.

4.2 Exposure to exceeding partial exemption limits. All the land parcels have been elected for VAT and whilst the transactions involve affordable housing, there will be no partial exemption liability for KCC due to the careful sale structure.

4.3 Failure not to comply with the Development Agreement. Essentially KCC as partner is contracted to supply land for development within the Kings Hill boundary as described in the 1989 agreement. In not providing the land as required, KCC risks litigation.

4.4 Hardening of the residential development market. The UK and particularly the South East is entering into a period of uncertainty. Already, the market has begun to slow. Not proceeding at some pace may result in a failure to conclude the transaction at the level agreed.

- 4.5 KCC failing to verify correct draw down according to the contract. The Director of Infrastructure under the terms of the Property Management Protocol is required to consult with identified Cabinet Members and Corporate Directors on the decision to permit draw down, but specifically she must be satisfied that:
- a. The process for arriving at a proposal to dispose has been followed in accordance with the 1989 agreement. (The Open Market Value Test)
 - b. The calibrated disposal programme has had due regard to the market (i.e. not a fire sale scenario) (The Over Supply Test)
 - c. Risks relating to the protection of value of the land remaining for draw down are being properly mitigated. (Right Product – Right Place Test)
 - d. And for KCC itself the draw down will not leave the authority with any residual liability. (Liability Protection Test)

5. Policy Considerations

- 5.1 KCC, through the Partnership, delivers economic regeneration, housing and essential receipts to be reinvested in the development and modernisation of Council services. The Partnership can commit to a rapid and accelerated disposal programme of the higher value private residential land and the planning obligations.

6. Conclusions

- 6.1 This transaction will deliver 166 private and affordable homes and a substantial capital receipt to the Kings Hill Partnership where KCC is a 50% partner. This scheme will mitigate affordable housing contributions to the rest of sites on phase three facilitating enhanced land values.
- 6.2 KCC is contracted to make this land available for draw down and it is proposed that the Director of Infrastructure in accordance with the Kings Hill provisions in the Property Management Protocol verify the land is being correctly drawn down and authorises its release to the transaction.

7. Recommendation(s)

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1. Note the terms of the disposal proposed by the partnership attached in CONFIDENTIAL appendix B and the valuation attached in CONFIDENTIAL appendix C.
2. The Draw-down of land areas 10, 11 and 15 in accordance with the Kings Hill Partnership 1989 and subsequent agreements identified in appendix A of the report corresponding to this decision.
3. Delegate to the Director of Infrastructure, in consultation with the Head of Paid Service and General Counsel, the finalisation of the process for draw down in accordance with the provisions set out in the Kings Hill provisions within the Constitution's Property Management Protocol and the Kings Hill Partnership Agreement.

8. Background Documents

8.1 The Kings Hill Development Agreement 1989 and Deed of Variation 2018

8.2 CBRE Report and Valuation – May 2018

9. Contact details

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