

URGENT DECISION REPORT TO CABINET MEMBER

From: Rebecca Spore, Director of Infrastructure

To: Peter Oakford, Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services

Subject: Disposal of Land at Intersection of M20/M25, Swanley, Kent

Decision no: 24/00078

Key Decision: involves expenditure or savings of maximum £1m.

Classification: *Unrestricted report with Exempt Appendix A, which is not for publication under Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).*

Past Pathway of report: None

Future Pathway of report: Cabinet Member Decision

Electoral Division: Swanley – Perry Cole

Is the decision eligible for call-in? *No – Urgent Decision*

Summary: The report outlines the proposed disposal of the Kent county Council (KCC) land holding at the north-west sector of the intersection of M20/M25, Swanley, Kent (“the property”).

A strip of surplus land was strategically retained by the council. This was due to the perceived development potential on third party land directly to the north.

In line with the council’s disposal protocols and s.123 best consideration requirements, an Option Agreement was granted by KCC to the prospective purchaser, Broomhill Developments (South) Ltd (Broomhill) in 2017, which was later renewed in 2020.

Under the option agreement the purchaser was required to seek planning consent for development of a minimum of 10,000sqm of industrial units on the adjoining land which they had an interest in. The consideration of KCC land is determined via a formula which is set out in the option agreement.

Both the 2017 and 2020 Option Agreements were entered into by KCC under delegated authority as the level of consideration was projected to fall within the limits of officer delegations as per the constitution.

Following a protracted planning and development process, the purchaser has now served notice upon the council to ‘exercise’ its Option to complete the purchase.

Following complex negotiations, due diligence and s.123 compliance checks, it has been identified that the anticipated consideration payable will exceed the limits of officer delegations, and therefore a key decision is being sought to ensure compliance with KCC's governance processes, to complete the transaction. Due to timescales set out in the option agreement it is necessary to follow the urgent key decision pathway.

Recommendation(s):

As Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, I agree to:

1. Approve the sale of the property known as Land at the Intersection of the M20/M25 under the terms and conditions of an Option Agreement dated 11 June 2020;
 2. Confirm the Director of Infrastructure's decision under delegated authority to dispose of the property known as Land at Intersection of M20/M25, Swanley, Kent, noting that the property's performance in terms of consideration payable exceeded the expectations underpinning the original disposal governance plan; and
 3. Delegate authority to the Director of Infrastructure, in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services to finalise the sale and take other actions including but not limited to, entering into relevant contracts or other legal agreements, as necessary to implement this decision.
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1. Introduction

- 1.1 Authority was granted for the disposal of land at Intersection of M20/M25, Swanley, Kent in 2017, disposal was by way of an option agreement. Subsequent authority was given in 2020 to extend the option with revised commercial terms. Authorities were granted at officer level as the consideration payable under the option was projected to fall within the limits of officer delegations. Authorities complied with adopted policies in respect of disposals and satisfied KCC's s123 best consideration requirements.
- 1.2 Market dynamics have changed significantly since 2020 following the pandemic, resulting in an increase in the value of KCC's entitlement under the option agreement.
- 1.3 The purchaser has exercised its Option to purchase the property. Under the terms of the Option Agreement and following negotiations and relevant due diligence, the anticipated consideration payable to meet the council's s.123 requirements is above the previous estimates, and exceeds the limits of the £1m officer delegation; Authority is therefore now sought to confirm and proceed with the sale under the Option terms.

1.4 Due to the timescales involved in the property transaction the decision is following the urgent key decision pathway.

2. Background

2.1 The property comprises c.167m long and c.1m wide strip of freehold land located directly at the rear of Gateway Trading Estate as illustrate on the site plans at Appendix B.

2.2 This strip of land was strategically retained by the council when the existing industrial land fronting London Road was disposed of following highways works associated with the M20/M25 intersection. The retention of this land created a potential “ransom strip” due to development potential on third party land directly to the north.

2.3 The property was declared surplus in 2017 and was progressed as a property disposal in-line with the Council’s adopted policy via an Option Agreement with Broomhill Development Ltd as a special purchaser due to then having an option on the adjacent land.

2.4 A 5-year Option was granted by KCC to Broomhill Developments (South) Ltd (Broomhill) on 31st March 2017 with the intention that the purchaser would seek planning consent for development of a minimum of 10,000sqm industrial units on the adjoining land.

2.5 Under those arrangements, it was reported by the Local Planning Authority’s monitoring survey that good progress was being made by the purchaser who had been undertaking all relevant surveys, design and key stakeholder engagement, including positive pre-applications with Sevenoaks District Council’s planners for a larger scheme that first envisaged.

2.6 However, in 2019/20 the purchaser was required to renegotiate with a third party to ensure access could be provided to the scheme in addition to the KCC “ransom strip” causing various delays to the scheme delivery. As a result, KCC renewed the Option Agreement on 11 June 2020 for a further 5 year term, on improved commercial terms, satisfying the Council’s s123 obligations.

2.7 Both the 2017 and 2020 Option Agreements were entered into by KCC on the understanding from the information available at that time (on what is considered a complex development site with significant abnormal development costs), that the estimated consideration payable would be within delegated limits. This view was supported by an independent valuation assessment.

2.8 The Constitution’s Property Management Protocol provides delegated authority to the Director of Infrastructure to agree freehold disposals up to a value of £1m, with

disposals more than this figure to be determined as a key decision by the Cabinet Member.

2.9 The purchaser has served its Notice to 'exercise' its Option. Following complex negotiations, due diligence and s.123 compliance checks (including legal assurance) the anticipated consideration exceeds the £1m threshold and an Urgent Key Decision is required prior to completion under the terms of the Option Agreement dated 11 June 2020.

2.10 KCC's Freehold Property Assets Disposals Policy states that assets declared surplus to requirements should be disposed of, enabling the recycling of receipts into the Council's Capital Programme and the modernisation of the retained estate.

3. Financial Implications

3.1 The sale of the property will result in a capital receipt which will be reinvested back into the Council's Capital programme. The detail is considered in the Exempt Appendix A outlining KCC's options with financial implications.

4 Legal implications

4.1 External solicitors along with King's Counsel have been appointed to handle the conveyancing process in liaison with the Council's office of General Counsel.

4.2. Further legal commentary is included in the Exempt Appendix A to this report, which outlines KCC's options and legal implications.

5 Equalities implications

5.1 The property is currently vacant and has been declared surplus to KCC's operational requirements through the relevant governance processes. It has been vacant since at least 2017. As such the disposal of this vacant property is not considered to have any positive or negative impact on protected groups.

5.2 An Equalities Impact Assessment (EqIA) has been undertaken and is included as Appendix C to this report.

6 Data Protection Implications

6.1 There are no Data Protection Implications associated with this decision.

7 Other corporate implications

- 7.1 The delivery of disposals in compliance with adopted policy and statutory duties is aligned with the Council's corporate objectives set out in the Medium-Term Financial Plan and Securing Kent's Future Strategy.
- 7.2. Capital receipts will be reinvested back into service delivery and the modernisation of the Council's retained estate for the benefit of service users.

8 Governance

- 8.1 Authority is required to confirm final approval of the transaction to ensure compliance with Council's constitution. The total transaction value being in excess of £1m, which means that formal decision approval is required from the Cabinet Member responsible for the Property portfolio. Due to the timescales involved in the property transaction the decision is following the urgent decision pathway.
- 8.2 The Local Member was consulted as part of the initial disposal plan and Officer level decision process, as per the Council's constitutional requirements, when no objections were made, they will be kept informed as part of this Urgent Key Decision process.
- 8.3 The Director of Infrastructure will have delegated authority under this decision to take the necessary actions to finalise the sale and enter into relevant agreements to conclude the sale.

9 Conclusions

- 9.1 Sale of this property was previously approved through Officer level decision making in line with the Property Management Protocol and Asset Disposal Policy as was appropriate based on valuation advice at the time. Approval is therefore sought to conclude the sale of the property under the Option terms as detailed in this report.

Recommendation(s):

As Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, I agree to:

1. Approve the sale of the property known as Land at the Intersection of the M20/M25 under the terms and conditions of an Option Agreement dated 11 June 2020;
2. Confirm the Director of Infrastructure's decision under delegated authority to dispose of the property known as Land at Intersection of M20/M25, Swanley, Kent, noting that the property's performance in terms of consideration payable exceeded the expectations underpinning the original disposal governance plan; and
3. Delegate authority to the Director of Infrastructure, in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services

to finalise the sale and take other actions including but not limited to, entering into relevant contracts or other legal agreements, as necessary to implement this decision.

11. Appendices

11.1 Appendix A Exempt appendix to executive decision report.

11.2 Appendix B Site Plans

11.4 Appendix C Equality Impact Assessment EqIA.

12. Contact details

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