

CABINET

DATE: 3 DECEMBER 2020

TO CONSIDER DEVELOPMENT OPTIONS ON LAND AT POST HILL, TIVERTON

Cabinet Member(s): Cllr Bob Evans, Cabinet Member for Housing and Property Services & Deputy Leader and Cllr Richard Chesterton
Cabinet Member for Planning and Economic Regeneration

Responsible Officer: Andrew Jarrett, Deputy Chief Executive (S151). Deputy Chief Executive (S151)

Reason for Report: To provide Cabinet with options to progress the development of land at Post Hill, Tiverton.

RECOMMENDATION:

- 1) **For Cabinet to give authority to submit a planning application, subject to final design and based on:**
 - (i) **Option 2-For 50 Social and 20 Affordable Homes**
 - (ii) **Option 3- For 50 Social, 15 Affordable Homes and 5 Self Build Homes**
 - (iii) **Option 4- 70 Affordable Homes**

- 2) **That, in the event that Cabinet proceeds in future to establish a new company structure, which**
 - (i) **is “Teckal” compliant; and**
 - (ii) **appropriate for the delivery of social/affordable housing**

the Cabinet agrees that delivery of the housing will be through that new company, subject to advice received when establishing the new company and any other material factors.

- 3) **If Cabinet does not agree recommendation 2), Property Services are instructed to proceed with a full tender exercise as soon as design work is completed and full planning permission obtained.**

Relationship to Corporate Plan: Homes: Deliver more affordable housing and greater numbers of social rented homes.

Financial Implications: Please refer to Part 2 Annex A.

Budget and Policy Framework: The construction of the new homes has been identified on the Capital Medium Term Financial Plan. The cost for the on-going maintenance of the asset will be met from the Housing Revenue Account.

Legal Implications: Please refer to para 3.0.

Risk Assessment: This land has development value. The risks to the Council of retaining the asset are the repair, maintenance and other ongoing costs including insurance. There is also the additional reputational risk in sitting on land which has been acquired for the delivery of affordable housing as part of the Tiverton EUE, as well as the delivery of housing to meet targets in the Council's newly adopted Local Plan.

Equality Impact Assessment: Any design will consider the needs of all and will be controlled via the planning application process. Our Housing Need has been considered as detailed on Table 1.

Impact on Climate Change: All options will consider the potential impact of construction with associated CO2 emissions and aim to be carbon neutral.

1.0 Introduction

1.1 The Council had an agreement with the landowner and Barratt & David Wilson Trading limited to purchase this land for the delivery of 70 affordable dwellings – to meet the policy requirements and wider aspirations of the Tiverton Eastern Urban Extension. This report proposes potential next steps available to the Council with regard to the development of this land that is now in Council ownership, a location map is attached to the report as Annex B.

1.2 Land was allocated East of Tiverton for mixed-use development within the Allocations and Infrastructure Development Plan Document (AIDPD), adopted in October 2010. Under policy AL/TIV/1, the 153ha allocation of mixed-use development is as follows:

- a) From 1550 - 2000 dwellings;
- b) A proportion of affordable housing (subject to further viability assessment) including at least five pitches for gypsies and travellers;
- c) From 95,000 - 130,000 sq meters of employment floorspace;
- d) Transport provision to ensure appropriate accessibility for all modes
- e) Environmental protection and enhancement;
- f) Community facilities to meet local needs arising;
- g) Carbon reduction and air quality improvements;
- h) An agreed phasing strategy to bring forward development and infrastructure in step and retain overall development viability;
- i) A public master planning exercise (before any planning application is made).

1.3 The Tiverton Eastern Urban Extension Masterplan (Supplementary Planning Document) was adopted on the 30 April 2014. This plan was subsequently amended and a revised masterplan was adopted on 14 June 2018. More detailed master planning of Area B is now well advanced. The Adopted Masterplan SPD will guide development in the area and have a significant bearing on the consideration of planning applications. A Design Guide for the Tiverton Eastern Urban Extension (EUE) has also been produced.

2.0 Background

2.1 The planning history for this land started with application 13/01616/MOUT for the development of up to 330 dwellings together with public open space, associated infrastructure and other works including vehicular access, pedestrian/cycle links and highway improvements. Land at NGR 298671 113603 Uplowman Road Tiverton Devon.

2.2 The outline permission was granted in September 2015 and this permission covered the area of land shown below including Post Hill Park.



2.3 In August 2018 Barrett David Wilson Homes gained reserved matters planning permission for the following: 18/00133/MARM Reserved Matters application, pursuant to Outline application 13/01616/MOUT, for the construction of 248 dwellings, 3 Gypsy and Traveller pitches, public open space, landscape planting, pedestrian, cycle and vehicular links and associated infrastructure. Non Material Amendment 19/00607/NMA that was granted on 13/05/2019. This permission does not include all the area covered by the Outline permission referred to above.

2.4 The outline planning permission (13/01616/MOUT) has not lapsed, it remains valid for the development being undertaken in compliance with the permission (because the reserved matters were submitted in time in compliance with the planning condition) and the section 106 agreement is enforceable in respect of it. In the event of the Council not completing the purchase, the Owner would have had to apply for a fresh full planning permission for the Post Hill parcel of land, because the original permission required submission of all reserved matters in a certain timeframe.

3.0 Legal position

3.1 The retained land and the land the Council has purchased was granted outline permission on 18 September 2015 under 13/01616. This permission was subject to a standard condition requiring the submission of all reserved matters for approval within 3 years. The seller obtained reserved matters for the retained land on 29 August 2018.

3.2 The Council would need to apply afresh for the grant of planning permission on this land, although the principle of development and policy aspirations are clear. Any determination of an application will still look to the development plan policy and the number of affordable dwellings required across the entire wider allocation. The negotiations back in 2015-2017 resulted in an agreement that ‘the Council’s site’ would take the entire affordable housing provision. Accordingly, no affordable dwellings has been built on the retained land.

3.3 The options for delivery give rise to important considerations. The Council can develop the land itself and invite tenders. 3RDL could bid in the usual way for this contract for works. The Council could instead transfer the Land to 3 Rivers for them to proceed with a scheme which meets the overall aspirations (planning policy and delivery) of the Council, but great care would need to be taken in drawing up any agreements underpinning such transfer to ensure that a development agreement is not really a contract for works by another name – this can arise where such agreements are overly specific in what they expect the purchaser/delivery partner to achieve.

3.4 A further alternative is that, in the event that the Cabinet at a future date decides to proceed with a holding company and Teckal subsidiary (“NewCo”) (see paragraph 5.2), that this may be the preferred vehicle, whether through a direct award of a contract for works (permitted under the Teckal exemption), or through the transfer of the land to the NewCo with a clear specification on delivery and future arrangements. It is important to recognise that (and it is firmly acknowledged) a decision on setting up NewCo has yet to be taken – the Cabinet has asked for legal advice on the advantages and disadvantages of doing so and this will be brought forward in early 2021.

3.5 For clarity and as a very brief summary, a Teckal company has the perceived advantage of enabling direct award of contracts and commercial arrangements between public authorities and their commercial entities, without being subject to the full public procurement regime. The core principles are that, to be a Teckal company, the company must be owned and controlled by the public authority which is seeking to award a contract and –

- The public authority exercises a degree of control over the company similar to that exercised over its own departments; and
- The company carries out at least 80% of its activity for the public authority and there is no private sector participation in the company

4.0 Land Purchase

4.1 The Planning Committee on the 6 July 2016 resolved to discharge market housing developers from all affordable housing requirements, upon the completion of the Council’s land purchase of part of the site in order for the Council to be the affordable housing provider.

4.2 It was then proposed at the Planning Committee on 29 March 2017 that land for the affordable housing be transferred to the Council and that that all affordable houses are constructed by the Council, in order that the provision of affordable

housing and their timing would remain within the Council's control. It was therefore resolved that:

"The agreed terms of the S106 be amended to discharge market housing developers from all affordable housing requirements upon completion of the Council's land purchase of part of the site."

It also resolved that the S106 be amended to require no more than 260 dwellings (rather than 200) be occupied until the traveller pitches have been constructed and are ready for occupation in accordance with the traveller pitch scheme.

4.3 In December 2017 a S106 Deed of Variation was approved which amended the threshold to 300 dwellings be occupied before the trigger for the construction of the gypsy and traveller site.

4.4 The transfer of the land was completed on 6th October 2020. The value of the land purchase is shown on Part 2 Annex A.

5.0 Project Delivery

5.1 It was originally thought that 3 Rivers Development Limited (3RDL) would be the developer and might sell or lease the affordable dwellings back to the Council or to a third party housing association. For this reason the contract provided for the sale to be made to the Council or to 3RDL as its nominee.

5.2 The benefit of the contract was originally assigned to 3RDL, but the assignment was reversed last year, not through any definite change of plan by 3RDL. There is nothing to prevent the Council from transferring the land to 3RDL. Alternatively, the Council may decide in future to create a holding company with an affordable housing subsidiary. The precise structure and relationship to both the Council and 3RDL would need to be thought through at that time – noting that legal advice is to be sought in relation to this. Such advice will also need to address various implications, including those relating to public procurement.

5.3 There would be a reduction in outlay in Employers Agent and other management fees that are set out in para 10.2 and 11.2. In the event of 3RDL being instructed to proceed with the development, including controlled uplift percentages on Employers instructions.

5.4 Alternatively, the Council could look to

(a) collaborate with another housing subsidiary to secure delivery; or

(b) deliver the scheme in house.

5.6 Selling onto another affordable housing provider would mean losing the asset and the Council would be unlikely to recoup its costs. Delivering the scheme in house would involve setting up a suitability resourced team with independent support from an employer's agent (lead consultant).

6.0 Affordable Housing

6.1 The requirement to provide affordable housing is explicit in the local plan policy and this is consistent with National Policy. As referred to above the Council is in a position to meet the affordable housing requirement of 21.5% affordable (S106 Deed of Variation -December 2017). This equates to approximately 70 dwellings.

6.2 The local housing need shown on Table 1 below sets out housing need as captured by the Mid Devon Housing team from the Devon Home Choice Monitoring report as of April 2020.

6.3 Please note that Table 1 includes those registered and these figures alone demonstrate that there is sufficient need in the Tiverton area to ensure that the 70 dwellings would be occupied. It also shows that there is particular need for 1, 2 and 3 bed properties, however some people will express a preference to live in multiple areas. Homes are advertised on Devon Home Choice with the rent shown so people will know when they bid how much they will be required to pay on a weekly basis if successful. Table 1 shows an absolute number of people who wish to live in a particular area with no differentiation between preference for Social or Affordable rent.

Table 1

Band	Housing Type	Housing Needs Requirement Size					
		1BH	2BH	3BH	4BH	5BH	6BH
Total	General Needs	118	45	48	15	5	0
	Step Free	28	7	3	2	0	0
	Max 3 Steps	4	2	2	0	1	0
	Wheelchair	12	4	0	2	1	0
	Grand Total	162	58	53	19	7	0

A	General Needs	0	0	0	0	0	0
	Step Free	0	0	0	0	0	0
	Max 3 Steps	0	0	0	0	0	0
	Wheelchair	0	0	0	0	0	0
B	General Needs	17	10	6	1	2	0
	Step Free	8	2	0	0	0	0
	Max 3 Steps	2	1	2	0	1	0
	Wheelchair	5	1	0	1	0	0
C	General Needs	7	17	41	11	2	0
	Step Free	11	2	3	2	0	0
	Max 3 Steps	2	1	0	0	0	0
	Wheelchair	6	1	0	1	1	0
D	General Needs	94	18	1	3	1	0
	Step Free	9	3	0	0	0	0
	Max 3 Steps	0	0	0	0	0	0
	Wheelchair	1	2	0	0	0	0

Breakdowns of One Bedroom Need

Age	16-35	36-54	55+
1 Bedroom Need	72	42	48

6.4 As Members will be aware there are a number of different ways of providing affordable homes such as social rented and affordable rented, to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

6.5 Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

6.6 Since 2001, rents for properties let on ‘social rent’ have been based on a formula set by Government. This creates a ‘formula rent’ for each property, which is calculated based on the relative value of the property, relative local income levels, and the size of the property. Annual rent changes were limited and landlords were expected to move from the actual rent of the property to the formula rent. This approach was designed to ensure that similar rents were charged for similar social rent properties. From April 2016, the Welfare Reform and Work Act 2016 required social landlords to reduce their rent by 1% each year for the four years between April 2016 and March 2020. In October 2017, the Government announced its intention to set a long term rent deal for local authority landlords and housing associations. This would permit annual rent increases on social rent of up to the Consumer Price Index (CPI) plus 1 percentage point from 2020, for a period of five years.

For 2020/21, the Council agreed to increase social rent for each property by 2.7%, (CPI at September 2019 1.7% plus 1%). The actual average social rent charged by the Council will be £79.44 per week (over 52 weeks).

6.7 The Council currently has 2,911 socially rented properties.

6.8 The Council currently has 85 affordable rented properties.

6.9 Table 2 details average rent charges for Social and Affordable rents within Tiverton.

Tiverton Parish - Average Rent Charges for 2019/20

	Social Rents		Affordable Rents	
	Weekly (Over 48 weeks)	Annual Charge	Weekly (Over 48 weeks)	Annual Charge
One Bed	£77.72	£3,730.56	£86.82	£4,167.36
Two Bed	£83.53	£4,009.44	£106.01	£5,088.48
Three Bed	£89.35	£4,288.80	£136.89	£6,570.72
Four Bed	£95.17	£4,568.16	£144.09	£6,916.32

6.10 Building Services will be bringing forward a report in quarter four of the 2020/21 financial year to Homes PDG on where the Council can construct Social Homes on land already within their ownership in various locations across the District.

6.11 It is important that future HRA budget is available to fund this project at circa £2 Million. We are actively looking for potential infill sites and have currently identified over 30, with many more opportunities coming forward in the months to come. We have estimated that we may be able to find as many as 100 sites that will be considered. A full report to the Homes PDG that will be presented in quarter 4 of 2020/21.

6.12 The Building Services team are also considering options to provide modular buildings, potentially on garage sites.

6.13 Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

6.14 Officers have been investigating whether some of the 70 plots could be provided as custom self-build plots custom self-build as shown on option 3.

7.0 Options on Design

7.1 A working group has been working on potential options to how this development forward could be brought forward, subject to settling the delivery vehicle (who) and the desired outcome (options).

7.2 A full financial analysis has been provided for each option on Part 2 Annex A.

7.3 Option 2

-50 Socially rented dwellings including 48no 3 Bed dwellings and 2no 4 Bed dwellings

-20 Affordable rent dwellings including 14no 3 Bed dwellings and 6no 4 Bed dwellings

Total 70 dwellings.

7.4 Option 3

- 50 Social rented dwellings including 48no 3 Bed dwellings and 2no 4 Bed dwellings

- 15 Affordable rented dwellings including 10no 3 Bed dwellings and 5no 4 Bed dwellings.

-5 Self Build dwellings including 4no 3 Bed dwellings and 1no 4 Bed dwellings-Total

Total -70 dwellings.

7.5 Option 4

-A third option is being presented for 70 Affordable Homes 21No. 1 bed units, 21No. 2 bed units, 20No. 3 bed units and 8No. 4 bed units.

8.0 Financial Analysis

8.1 Property Services worked with an employers agent on calculating estimated costs for each option as shown below. The costs will be subject to final design, planning conditions and tender and are an indication of the overall cost of the scheme that includes an estimated sum for a communal heating system and carbon/sustainable measures that will be value engineered at all stages of the design to improve value for money.

8.2 Option 2- Estimated costs have been provided in Part 2.

8.3 Option 3- Estimated costs have been provided in Part 2.

8.4 Option 4- Estimated costs have been provided in Part 2.

8.5 A full procurement exercise will be taken prior to Contract Award for both project delivery options, value engineering will also take place and a project contingency sum will be a minimum of 5%.

8.6 The Council is committed to be Carbon zero by 2030 and this build would contribute towards our emissions and therefore needs to aim to be Carbon Neutral.

8.7 Once the 25 year loan value on an annuity repayment basis has been paid off, the HRA will then have an asset.

8.8 In 2020/21, the Council allows a budget of circa £1.157 million towards our 30-year life cycle maintenance programme and it is essential that funds are kept available for this programme.

8.9 Financial modelling has been calculated on the assumption of grant funding at the outset on each option.

8.10 Part 2 Annex C, D and E attached to this report will provide detail to the financial analysis of each option the working group decided to explore further.

8.11 It was also identified that there should be a pedestrian crossing allowed for to ensure our tenants have safe access to play facilities.

8.12 The financial return on each option including maintenance costs are provided in Part 2 and Table 2 below identifies average rent charges for social and affordable property.

8.13 The Capital Medium Term Financial Plan allocated to bring this development forward identifies expenditure in the following financial years:

- 2020/21 - £3.605 (currently £2.506 Million will slip to 2021/22).
- 2022/23- £6.5 Million
- 2023-24- £2.650 Million
- 2024-25- £2.645 Million

Remaining allocation total -£14.301 Million.

9.0 Considerations

9.1 Affordable dwellings can be eligible for grant funding from Homes England. In this case as the social or affordable housing is in lieu of developer contributions grant monies is not available, however a grant from the One Public Estate and the Local Regional Fund is being sought and this is detailed in Part 2.

9.2 This development could provide an opportunity for a District heating scheme, which can be an effective way of cutting carbon emissions and this will be explored further as part of the design stages and will be presented as an option prior to Contract Award.

9.3 This development could provide an opportunity to provide a high quality carbon neutral construction and low energy housing option. This may increase the cost per square on construction, however this would provide tenants with low energy costs throughout the year.

10.0 Site Layout

10.1 Attached to this report are examples of the design for the development, the site layout for option 4 will be the same as option 2 (Annex F). We have utilised the two entrances from the neighbouring developments to maximise the site's efficiency and fluidity however, we have designed it in such a way that only one entrance would be sufficient if required. The water main and its easement has been accommodated under the eastern access road which is standard practise, we have located the Public Open Space centrally in the site and along a north south access in order to maximise views to the north due to the site levels. The western and eastern boundaries have dwellings facing out to act as a frontage and utilise the green aspects of the swales to the west and golf course boundaries to the east. All dwellings have been sized to meet national space standards and benefit from south facing gardens to maximise direct sunlight with the exception of two plots.

10.2 In order to provide Cabinet with costs of the development, the Council continue to work with an Employers Agent who are following the Royal Institute of British Architects (RIBA) design stages. There will be other related professional fees for either option as we progress to stage 2 at an approximate cost of circa £300k this cost will be met from existing budget from the Capital programme.

11.0 Conclusion

11.1 It is Officers' recommendation that the Council proceed with option 4 and to proceed to RIBA Stage 2 with a view of submitting a planning application as soon as possible by either instructing the existing Employers Agent via the South West procurement framework or a housing subsidiary under 3 Rivers Development Limited.

11.2 To proceed to tender the development with a Traditional Design & Contract JCT 2016 with amendments that will be checked by independent construction solicitors that will be subject to obtaining full planning permission at a cost of circa £100k.

11.3 Table 3 Estimated timetable for delivery for instructing Property Services.

Complete Land transaction	06/10/20
Cabinet Meeting to proceed with design and tender	03/12/20
Issue Instruction for suitable Procurement framework process	11/12/20
Set up design workshops with the working group	15/12/20
Complete Design and submit planning application	Dec 2020-April 2021
Planning Application Process	April 2021- June 2021
Prepare Tender documents including Employers Requirements	April 2021-June 2021
Confirm type of construction contract	February 2021
Issue tender documentation via sw portal	May 2021
Tender verification	July 2021
Value engineering meetings	July 2021
Cabinet Contract Award	August 2021
Estimated start on site date	October /November 2021

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Circulation of the Report: Cabinet, Leadership Team.

List of Background Papers: None