

# Taunton Deane Borough Council

**Executive – 16 November 2011**

## **Land at Creedwell Orchard Housing Estate, Milverton, Taunton**

### **Report of the Principal Estates Surveyor, Southwest One Property and Facilities Management**

(This matter is the responsibility of Executive Councillor Jean Adkins).

#### **Executive Summary**

The purpose of this report is to give Members the opportunity to discuss and to consider the sale of a small area of land forming part of Creedwell Orchard Housing Estate, Milverton to enable an access to be provided to a residential development on an adjoining 9.5 acre site with an extant planning permission for 80 dwellings. The report sets out some background on the history relating to the development site and the financial implications for the Council (contained in a Confidential Appendix to the report) together with officer recommendations.

#### **1 Background**

- 1.1 The area of land extending to approximately 9.5 acres, as shown edged in bold on the attached plan (Appendix A), is owned by S Notaro Ltd, property developers and it has the benefit of an extant planning consent for 80 dwellings (further referred to as “the development site” in this report).
- 1.2 In December 1975 the Borough Council granted conditional outline planning permission for residential development on the development site owned by S Notaro Ltd with an application for the reserved matters being approved in August 1979. In June/July 1981 works were undertaken on site to lawfully implement the planning permission that had been obtained for the 80 dwellings. These works comprised the excavation of foundation trenches for one of the plots that were subsequently backfilled for health and safety reasons but this does not alter the fact that the planning permission has been implemented and remains extant. Under this planning consent there are no requirements to make contributions towards affordable housing.
- 1.3 Bach Homes, which then had an option to purchase the development site, applied to the Council in November 2006 for a Certificate of Lawful Existing Use or Development (CLEUD) in respect of the planning consents that had previously been granted. The application was submitted on the basis the planning permission was validly implemented and therefore remained extant. In the balance of probability it was proven that the foundation trenches had been dug which in turn amounted to a material operation comprised in the development. Accordingly, in May 2007 the Borough Council granted a Certificate of Lawfulness for the proposed construction of 80 dwellings.

- 1.4 Originally it was proposed to access the development site at points A and B as shown on Appendix A. The land required for access at point A, the extent of which is shown cross hatched on the plan, is owned by the Borough Council and that land required for access at point B is now owned by a third party. However, it is now evident that the development site need only be accessed at point A, subject to redesigning the service road layout to the satisfaction of the Highway Authority.
- 1.5 Following the issue of the Certificate of Lawfulness for the development site, Bach Homes, which then had a development option on the land, made formal approaches to the Council to request to purchase or acquire an option to purchase the Council's land to enable an access to be created at point A. In February 2008 a member steer was given to the then Asset Holdings Manager to commencing negotiations with Bach Homes with a view to provisionally agree terms and conditions for the sale or Option Agreement to purchase the Council's land.
- 1.6 The Council's land, which extends to approximately 364 sq m (0.09 acres), is situated on the Creedwell Orchard Housing Estate and it has been used for a number of years to site three private garages owned by local residents. Each garage site is subject to an annual licence with each agreement being determinable by the Council upon giving three months' notice to expire on the last day of any calendar month.
- 1.7 Following negotiations with Bach Homes, terms and conditions were provisionally agreed by the Asset Holdings Manager for an Option to purchase the Council's land to provide access to the development site at Point A. Work then started on preparing a report accordingly to the Executive for its meeting in May 2008 but this was not completed as the Milverton Parish Council requested that the Certificate of Lawfulness was revoked by the Council. No further discussions took place with Bach Homes whilst this request was considered which subsequently became subject of a Judicial Review as the Council remained of the view that the Certificate of Lawfulness was valid. The Council successfully defended itself in this action and the Judicial Review was formally withdrawn in February 2011.
- 1.8 Following the withdrawal of the Judicial Review, S Notaro Ltd, through its agent Steve Rosier, made a new approach to the Council to see whether it would be prepared to recommence negotiations for the sale of the land required for access, as soon as possible.

## **2 Current Situation**

- 2.1 After much further discussion and consultation with members of the Executive it has been agreed that negotiations with S Notaro Ltd should re commence for the sale of the land to provide access at Point A on Appendix A with Southwest One provisionally agreeing the final terms and conditions.
- 2.2 It has been provisionally agreed with S Notaro Ltd that the level of consideration the Council is likely to obtain from the sale of its land is set out in Confidential

Appendix B (paragraph 1). This has been agreed on the proviso that the requirements contained in the Section 52 Highway Agreement relating to the extant planning consent can be varied to provide that only a single point of access to the development site is required without the need to carry out any road widening works in Creedwell Orchard. The land is held by the Housing Revenue Account and by formally resolving to reinvest the capital receipt from its sale in to affordable housing, the Council should be able to retain 100% of the proceeds of sale. The terms and conditions of sale will ensure that the Council will receive a share of further value that might be obtained through the intensification of the use of its land providing the access to the development site and beyond. It is further provided that S Notaro Ltd will replace the garages currently situated on the Council's land and transfer the buildings and land back to the Council. The present licensees will be given first option to use and occupy the garages on new agreements.

2.3 Final details of the development scheme, including density and any Section 106 affordable housing provisions are determined through the planning application process, in which the Parish Council and local residents have the opportunity to make representations.

2.4 As an alternative to selling the Council's land to provide access to the development site, which will clearly produce the highest value, the land could be suitable for development with one or two dwellings, subject to obtaining planning permission. The level of capital receipt that might be obtained under these circumstances is illustrated in Confidential Appendix B (paragraph 2). Furthermore, Milverton Parish Council has also expressed an interest in acquiring the Council's land for use as a play/amenity area and details of the formal offer that it has made to the Borough Council for its consideration are also included on Appendix B. However, if the Council were minded to sell the land as a small development site in isolation or to the Parish Council at this level of price, the opportunity to obtain a very substantial capital receipt for reinvestment in to affordable housing would be lost.

### **3. Finance Comments**

3.1 Proceeding with the disposal of the land to S Notaro Ltd could provide the Borough Council with a very significant capital receipt for reinvestment in to affordable housing.

### **4. Legal Comments**

4.1 The Council is obliged to obtain best value from the sale of any property assets in accordance with Section 123 of the Local Government Act 1972, except in instances where it is exercising its statutory powers under the Local Government Act 2000 in the promotion or improvement of the economic, social or environmental well being of the area.

### **5. Links to Corporate Aims**

5.1 The disposal of this site will assist in fulfilling the Council's Corporate Aim of Affordable Housing.

## **6. Environmental and Community Safety Implications**

- 6.1 The planning process will ensure that there is no adverse affect to wildlife and the surrounding built environment. Similarly, issues such as potential flooding and traffic management will also be addressed through this process.

## **7. Equalities Impact**

- 7.1 Any development will be subject to Building Regulations and this will address issues such as Disability Discrimination Act compliance.

## **8. Risk Management**

- 8.1 There are not considered to be any significant health or financial risks, with the purchaser being responsible for undertaking all site investigations and applying for any planning permissions that may be necessary for the proposed use of the Council's land and in respect of the development site. It is, however, recognised that abortive costs may be incurred in the event of an agreed sale, subject to contract, not completing.

## **9. Partnership Implications**

- 9.1 None

## **10 Recommendation**

- 10.1 Members of the Executive are recommended to give approval to the following actions:-
- (a) Selling the freehold interest in the land shown cross hatched on the attached plan to S Notaro Ltd to enable an access to be created to serve the development site shown edged in bold as shown on Appendix A, on terms and conditions agreed by Southwest One.
  - (b) That the proceeds of sale are directly re-invested in to affordable Housing.
  - (c) Rejecting the offer made by the Milverton Parish Council to purchase the Council's land.

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