

Taunton Deane Borough Council

Full Council – 13 December 2016

Land at Creedwell Orchard Housing Estate, Milverton

This matter is the responsibility of Councillor John Williams, Leader of the Council

Report Author : Tim Child, Asset Manager

1 Executive Summary / Purpose of the Report

The purpose of this report is to consider and obtain support to a further variation of an Option Agreement with S Notaro Limited (SNL) for the purchase of land at Creedwell Orchard Housing Estate to adjust the arrangements for triggering the option. The change is almost immaterial but does contradict a Full Council decision on 12th April 2016. This variation is needed following further negotiation by SNL in respect of when they would exercise the option Agreement.

2 Recommendations

- 2.1 The Full Council is recommended to approve the following amendments to the option agreement dated 27 February 2014 and to be made by deed of variation:

Trigger Date – The option must be exercised within 120 days of the current planning appeal decision being made.

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
If the Option Agreement is not amended SNL will not exercise its option to purchase the Council's land and, therefore, no significant capital receipt for the Council will be forthcoming. It may be possible that ultimately SNL will be able to develop its land using an alternative access.	5	4	20
<i>The mitigations for this are to amend the trigger date.</i>	2	4	8

Risk Scoring Matrix

Like liho	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
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	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 An Option Agreement was entered in to with SNL on 27 February 2014 for a period of 10 years following Executive approval given at its meeting on 13 July 2013 in respect of Council owned land at Creedwell Orchard, Milverton. The extent of this land is shown edged in red and hatched on the indicative plan, attached at Appendix 1. The land is to be used to provide access to that land shown edged in blue on the attached indicative plan which is owned by SNL and has the benefit of an extant planning permission for 72 dwellings, comprising a mix of houses and bungalows.
- 4.2 Since the completion of the Option Agreement it had come to light that the formula for the sale price of the Council's land is based upon an incorrect valuation. In order to address this issue, it was agreed with SNL that the Council re engage the services of the District Valuer (DVS) to advise further on the value of the Council's land. As a result of the DVS negotiations with SNL, a revised "Base Sum" had been provisionally agreed and this amount has been certified by the DVS as representing best consideration for the Council.
- 4.3 The scenario outlined above in 4.2 was then presented to Full Council on 4th August 2016 and it was resolved to revise the "Base Sum".
- 4.4 In an earlier Full Council of 12th April 2016 it was resolved that the "Trigger Date" within the Option Agreement be amended to provide that the option to purchase the Council's land must be exercised within 120 days of 12 October 2016 rather than within 120

days of the determination of the planning. The amendment of the “Trigger Date” was intended to set a timetable for negotiations to be completed and a revised sale price formula based upon the correct extant planning permission floor areas to be agreed. This would, therefore, remove the link between the planning process and deriving the capital receipt and then enable SNL to exercise the option. There is a live appeal against a planning decision made on 15 October 2015, which has been acknowledged by the Planning Inspectorate and an Inquiry took place during week commencing 7th November 2016 with a decision expected by late November / early December. The Council will obtain a capital receipt irrespective of what the outcome of the appeal is, assuming the option agreement is exercised by SNL.

4.5 Following the decisions made by Full Council on 12th April 2016 and 4th August 2016 SNL have sought further negotiation on the terms of the option. Agreement (subject to contract and Council decision) has been reached as follows:

4.6 That the proposed amendment to the trigger and exercise date be cancelled and that we revert to what is in the existing option, that the option is exercised within 120 days of the current planning appeal decision being made. If the option is not exercised and monies paid, the option will fall way. As the planning appeal is yet to be determined, although a decision is expected imminently, this actually buys SNL a further period of approximately 6 weeks to exercise the option. If this were to be accepted, it has been agreed that any ability to extend the 120 day period by further appeal or challenge specifically be excluded i.e. SNL would need to make a decision one way or another to exercise the option agreement within 120 days of determination of the appeal itself. This compromise position was reached following SNL seeking to extend the period to exercise the option agreement until 2024 or such earlier date as it chooses to exercise, but no longer being linked to the grant of a planning consent as being a trigger.

5 Links to Corporate Aims / Priorities

5.1 The eventual capital receipt obtained from the sale of the land, which is to be reinvested in to affordable housing will greatly assist the Council in fulfilling its Corporate Aim of Quality sustainable growth and development

6 Finance / Resource Implications

The financial implications of the possible delay of six weeks are not material.

7 Legal Implications

The proposal forms part of the proposed variation of the Option Agreement, which is being dealt with by the Council’s external Solicitors. Moreover, the proposal will place the parties in the position as if the previous variation to the Option Agreement approved by Full Council on the 12th April 2016 had not been implemented. Namely, it will remain that the option will require to be implemented within 120 days of the “Trigger Date” as defined in the Option Agreement.

8 Environmental Impact Implications (if any)

8.1 None associated with this report.

9 Safeguarding and/or Community Safety Implications (if any)

9.1 None associated with this report.

10 Equality and Diversity Implications

10.1 None associated with this report.

11 Social Value Implications

11.1 None associated with this report.

12 Partnership Implications

12.1 None associated with this report.

13 Health and Wellbeing Implications

13.1 None associated with this report.

14 Asset Management Implications

14.1 This is an Asset Management generated report.

15 Consultation Implications

15.1 None associated with this report.

16 Scrutiny Comments / Recommendation(s)

16.1 This was presented to Community Scrutiny on 28th November 2016. Community Scrutiny were supportive and recommended to Full Council to approve that the Trigger Date be revised so that the option must be exercised within 120 days of the current planning appeal decision being made. This was as per the recommendation within the Scrutiny Report and now within this Full Council Report.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – Yes**
- **Executive – No**
- **Full Council – Yes**

Reporting Frequency : **Once only** **Ad-hoc** **Quarterly**

Twice-yearly **Annually**

Contact Officers

Name	Tim Child	Name	
Direct Dial	07808 847360	Direct Dial	
Email	t.child@tauntondeane.gov.uk	Email	

Appendix 1

