

OUTLINE DISPOSAL PROCESS FOR PROPERTY ASSETS

To: Commercial & Investment Committee

Meeting Date: 30th June 2017

From: Chris Malyon, Deputy Chief Executive

Electoral division(s): All

Forward Plan ref: n/a **Key decision:** No

Purpose: To highlight some of the issues surrounding the proposed disposal methods of property assets to CHIC

Recommendation: a) To agree to declare surplus land and property on a case by case basis to achieve best consideration.

b) Not to offer land and property to District and Parish Councils in advance of offering to CHIC.

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1. BACKGROUND

- 1.1 This paper outlines the approach for selling land and property to the Council's wholly owned Development Company, the Cambridgeshire Housing and Investment Company. (CHIC)
- 1.2 Local authorities have power under the Local Government Act 1972 to dispose of land as they wish, including the sale of their freehold interest, granting a lease or assigning any unexpired term on a lease and the granting of easements, but any disposal must be for the *best consideration* reasonably obtainable (except in the case of short tenancies under 7 years), unless the Secretary of State consents to the disposal.
- 1.3 Government recognises that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue i.e. at less than best consideration. In disposing of land at an undervalue, Local Authorities must be aware of the need to fulfil their fiduciary duty in a way which is accountable to local people and this is achieved by acting consistently, recording evidence and transparency.
- 1.4 A County Council core policy is that all surplus property should be disposed of and that disposals should be at 'best consideration', to meet the requirements of s.123 of the Local Government Act 1972 unless Members approve otherwise.
- 1.5 Best consideration is commonly accepted to be the best price, which would be expected to follow an open marketing process, or as certified in a formal valuation by a Chartered Surveyor (a 'Red Book' valuation), although this could be represented by the equivalent financial value of a service or other value 'in kind'.
- 1.6 There are instances where the Council might want to consider a disposal at less than best consideration for example a sale or lease to a community group. Such a disposal previously required the consent of the Secretary of State (SoS) (other than for short tenancies noted above). However a General Disposal Consent (GDC) granted by the SoS, gives the Council the ability to forego up to £2m of value, if it can be demonstrated that the disposals meet certain economic social or environmental objectives.
- 1.7 The Council's Constitution now provides that the authority for all property disposals rests with the Commercial and Investments Committee, with an agreed delegation to the Director of Finance to exercise that authority for transactions where the capital value is less than £500,000, or the revenue value is less than £150,000.

2. MAIN ISSUES

2.1 The disposal process

- 2.1.1 Currently sites are disposed of on the open market using agents who are selected by competitive tender. Marketing sites on the open market is the accepted way of establishing best consideration. Independent valuations are not obtained for disposals on the open market, although the agent acting will provide their opinion of market value in a marketing report to the Council prior to marketing to guide decisions.
- 2.1.2 Where only one offer is received following marketing, the agent will provide a further report with their recommendation as to whether the offer represents best value. The Local

Member will be advised of the offer received and given the opportunity to comment. The agent may be required to place a notice in the local press, advertising the offer level received and inviting further interest.

- 2.1.3 The County's policy has been that all sites will be offered at market value to District and Parish Councils in advance of marketing for a disposal, except where GPC make alternative provisions when granting an authority to dispose. This may no longer be appropriate. All freehold disposals will take account of the Community Right to Bid process where the asset has been appropriately registered with the responsible Local Authority.
- 2.1.4 Independent valuations are sought to confirm best value where a sale is undertaken without marketing i.e. to a Special Purchaser (e.g. a ransom or marriage value situation or a sitting tenant); or on a first right of refusal basis as above. In the latter case the disposal is at the average of two independent valuations (with a third if there is greater than £50,000, or more than 10% difference between the two; the sale price would be the average of the highest two, and a maximum period of six months would be set for completion of the sale.
- 2.1.5 The Local Member is advised of all transactions proposed in their Division and their comments sought and reported in Committee papers as required.
- 2.1.6 The Council has no policy position on whether disposals should seek capital or revenue returns. Specific provisions may be included in the decision to declare surplus and authorise the disposal, where that decision is made by C & I Committee having regard to the general requirement of section 123 of the local Government Act 1972.
- 2.1.7 Each site will be viewed on its merits as to its suitability for disposal for alternative uses, the method of sale, and whether best consideration or other benefits can best be secured by sale or by lease.

2.2 Sales to CHIC

- 2.2.1 The County Council has established a company limited by shares, Cambridgeshire Housing and Investment Company (CHIC), to take forward the County Council's aspiration to generate both revenue and capital returns through the development of the County Council's surplus property assets. CHIC was incorporated on 17th June 2016 and the County Council is the sole shareholder. These returns will help the County Council help finance public service obligations. CHIC will borrow from the Council in order to purchase land and property and the debt will be repaid at market interest rates. The basis of funding will be 95% cash and 5% equity; advice has been that a company should not be solely debt financed.
- 2.2.2 Whilst being wholly owned by the County Council, CHIC is a full arm's length property development and investment company that operates in the private sector with a 'for profit' motivator. As such the County Council must structure any sales to CHIC as if dealing with any other purchaser in the market in order ensure that the County Council is acting consistently, transparently and in line with its disposal policy.

- 2.23 Obtaining best consideration from a site should be achieved through the most appropriate sale method for that particular site. There are broadly three main methods of sale; Options, Promotional Agreements, Private Treaty Sale.
- 2.2.4 Methods of sale, with their associated risks and benefits, are detailed in **Appendix 1**. For example, it may be appropriate for some sites to be sold, on a private treaty basis, with the benefit of outline planning permission and others with the benefit of detailed planning permission for a number of reasons. For example on a large site which will be developed in phases outline planning will be obtained for the larger site and then detailed consent for each phase. The method of sale and timing of the sale will be established by the Council on a site by site basis having regard to the individual circumstances of the case.
- 2.2.5 Most of the Council's surplus assets have a higher alternative use value which can be extracted by securing planning permission for that alternative use or through the use of conditional contracts. I.e. conditional on obtaining planning consent. Generally, there is more certainty the further along the planning process the sale takes place, which is reflected in the purchase price. For current sites which have or are near to obtaining planning permission, best consideration would be best achieved through a straight private treaty sale following the grant of planning permission. Valuations become more straight forward and accurate as one proceeds through the planning process as more variables are removed.
- 2.2.6 For example, if CHIC wishes to acquire a site with planning permission, directly from the County Council, without it being marketed, then an independent valuation undertaken on behalf of the County Council will be used to establish the Market Value.
- 2.2.7 The valuation of development sites is subject to numerous market assumptions. These assumptions should be broadly similar but can differ slightly therefore it is extremely unlikely that any two valuations will produce exactly the same figure. Developers such as CHIC will have their own opinion of what a site will be worth, which will be based on assumptions such as an acceptable level of developer's profit and their own investment appraisal. These developer's assumptions may be in the range of market practices which will provide CHIC with a margin of flexibility against which CHIC can determine if it can agree to the County's required price for a site.
- 2.2.8 It must be made clear that the County Council will not be in a position to negotiate over the price stated in the independent valuation. If CHIC does not agree to the purchase price, then the site would have to be marketed to establish best consideration. CHIC would have the same opportunity as any other developer to submit a bid which may work to CHIC's advantage, as it potentially could acquire the site at a lower value, but the County Council would have ensured that it has obtained best consideration via the process.
- 2.2.9 Commercial & Investment Committee's approval is required to declare a site, with a value in excess of £500k, surplus. This should be done on a case by case basis. Commercial & Investment Members may wish to consider whether specific provisions to seek capital or revenue returns or both need to be included in the decision to declare surplus and authorise the disposal having regard to the general requirement of section 123 of the Local Government Act 1972.

2.2.10 Commercial & Investment Member approval is not required to the method of sale or purchase price as this is derived from the process of obtaining best consideration. It is the duty of appropriately qualified County Council Officers to advise and ensure that best consideration is achieved.

3. ALIGNMENT WITH CORPORATE PRIORITIES

3.1 Developing the local economy for the benefit of all

Returns from the sale of land to CHIC will support Council services. Housing, both affordable and private, will support the growth of the economy.

3.2 Helping people live healthy and independent lives

As above.

3.3 Supporting and protecting vulnerable people

See above

4. SIGNIFICANT IMPLICATIONS

| Implications | Officer Clearance |
|---|--------------------------|
| | |
| Have the resource implications been cleared by Finance? | Yes Chris Malyon. |
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| Has the impact on Statutory, Legal and Risk implications been cleared by LGSS Law? | No. |
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| Are there any Equality and Diversity implications? | No |
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| Have any engagement and communication implications been cleared by Communications? | No. |
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| Are there any Localism and Local Member involvement issues? | No |
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| Have any Public Health implications been cleared by Public Health | No |

| Source Documents | Location |
|-------------------------|-----------------|
| Appendix 1 | |