

MAIDSTONE BOROUGH COUNCIL

**RECORD OF DECISION OF
THE CABINET MEMBER FOR CORPORATE SERVICES**

Decision Made: 14 October 2011

LAND AT FARLEIGH HILL, TOVIL

Issue for Decision

To consider a request to alter the Termination Date contained within a Principal Agreement ("the Contract") for the sale of part of the Council's land situated at Farleigh Hill Tovil ("the Land") and dated 8th November 2007 between the Council and Patrick Joseph Burke, Pamela Anne Burke & Pensioneer Trustees (London) Ltd 'the Buyer', in order to permit the Buyer an opportunity to fulfil its legal obligations as set out in the Contract for remediation of part of the former municipal household waste site which makes up the whole of the Land.

Decision Made

That the alteration of Termination Dates defined within the Contract, from the original dates of 7th February 2009 and 7th November 2010 to 23 June 2014 and 7 November 2014 respectively , in order to give the Buyer an opportunity to fulfil its legal obligations as set out in the Contract, be agreed.

Reasons for Decision

In April 2003 the Cabinet decided to proceed with the disposal of part of the Borough Council owned land at Farleigh Hill, Tovil (edged red upon the indicative plan attached as Appendix II to the report of the Assistant Director of Environment and Regulatory Services), to the adjacent land-owner ('the Buyer'), as part of a proposed housing scheme (indicative plan attached as Appendix III to the report of the Assistant Director of Environment and Regulatory Services).

Heads of Terms for sale of the Land were considered and agreed by the Cabinet Member for Corporate Services in a Decision dated 20th April 2007, and a Contract dated 8th November 2007 'the Contract' was entered into between the Council as 'Seller' and Patrick Joseph Burke, Pamela Anne Burke & Pensioneer Trustees (London) Ltd as 'Buyer'.

The Land is part of a former household waste disposal site and under the terms of the Contract the Buyer agrees to undertake substantial remediation works prior to its development for residential housing. The Contract permits the Buyer, by way of a Licence, to enter upon the land to carry out these remediation works.

The downturn in the residential property market has meant that the proposed remediation works have been deferred until an improvement in the market returns, and the Buyer can no longer meet the originally agreed termination dates set out in the Contract.

The Contract currently provides that on the initial Termination Date of 7 February 2009 either party could end the Contract should remediation works not commence, with a further Termination Date of 7 November 2010 applying, should these remediation works not then be completed.

As stated, there has been a delay due to the economically depressed residential housing development market and the Buyer is currently seeking renewal of the outline planning consent granted in 2001 (MA/01/0686), under application MA/10/0256 and a resolution to grant (subject to a s106 Agreement) was made 1st July 2011. The Buyer has proposed a variation, as set out at Appendix I to the report of the Assistant Director of Environment and Regulatory Services, to the Principal Agreement, deferring the termination dates from 7 February 2009 to 23 June 2014 and from 7 November 2010 to 7 November 2014, respectively. This variation is linked in with the application to renew the planning consent.

Alternatives considered and why rejected

It could be decided to take no action with regard to this matter. This would mean the Council could determine the Contract, resulting in the Council continuing to own and maintain land identified as polluted and a source of potential problems to adjoining land that may result in the Council having to carry out further remediation works at a future date.

It does not follow that, if the Termination Dates are extended, the Buyer will be in a position to fulfil its obligations set out in the Contract since this depends on the health of the housing market, but without an extension of time this land sale, as currently agreed, will definitely end.

Background Papers

Cabinet Member for Corporate Services Decision 20th April 2007
Planning Application MA/01/0686 & MA/10/0256

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 21 October 2011
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