

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR CORPORATE SERVICES

REPORT OF ASSISTANT DIRECTOR OF ENVIRONMENT AND REGULATORY SERVICES

Report prepared by: Lucy Stroud

Date Issued: 06 October 2011

1. LAND AT FARLEIGH HILL TOVIL

1.1 Issue for Decision

1.1.1 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 fulfill 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.

1.2 Recommendation of Assistant Director of Environment and Regulatory Services

1.2.1 That the Cabinet Member agrees to alter the 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 fulfill its legal obligations as set out in the Contract

1.3 Reasons for Recommendation

1.3.1 In April 2003 the Cabinet decided (report attached as an **Exempt Appendix**) 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 adjacent land-owner ('the Buyer'), as part of a proposed housing scheme (indicative plan attached as **Appendix III**).

1.3.2 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'.

- 1.3.3 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.
- 1.3.4 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.
- 1.3.5 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.
- 1.3.6 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 (attached as **Appendix I**) 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.

1.4 Alternative Action and why not Recommended

- 1.4.1 The Cabinet Member could decide 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.
- 1.4.2 It does not follow that if the Termination Dates are extended the Buyer will be in a position to fulfill 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.

1.5 Impact on Corporate Objectives

1.5.1 If the Contract is determined the Council may find itself exposed to a significant remediation cost implication that would impact upon its medium term financial strategy. Even though Kent County Council used and operated the site for a number of years since the nineteen-seventies, Maidstone Borough Council was, and remains, the freehold owner, and therefore has obligations under the Environmental Protection Act 1995.

1.5.2 Clearly, were the Council not prepared to extend the deadline, the Buyer would be able to rescind the contract resulting in the site not being developed for residential accommodation as the proposed development is intrinsically linked to the Council's land, and this would therefore impact upon the Council's targets for new housing.

1.6 Risk Management

1.6.1 As indicated above, the Council's intention is to dispose of this land for remediation and redevelopment. Should the Contract be terminated the Council may expose itself to significant on-costs. By agreeing an extension of time to the Principal Agreement as set out within this report, the Council reduces that risk substantially.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	X
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	X

- 1.7.2 **Financial**
If this Agreement is terminated, the Council may be exposed to considerable environmental management and pollution control costs, which have not been accounted for in the Council's medium term financial strategy. Outline costs were detailed in a Decision made by Cabinet 9 April 2003 and attached as the **Exempt Appendix**
- 1.7.3 **Legal**
Legal Services will be required to allocate resources for producing and finalising any amendment to the Agreement. Amending the Termination Dates will ensure the Contract remains extant.
- 1.7.4 **Environmental/Sustainable Development**
The proposed scheme will involve the removal of many tons of decomposing household waste for reprocessing, therefore reducing the amount of contaminated land in the Borough.
- 1.7.5 **Asset Management**
The proposed scheme will reduce the amount of contaminated land retained by the Borough.
- 1.8 Relevant Documents
- 1.8.1 Appendices
- 1.8.2 Appendix I (draft variation to Principal Agreement)
- 1.8.3 Appendix II (Council-owned land)
- 1.8.4 Appendix III (Development site)
- 1.8.5 Exempt Appendix
- 1.8.6 Background Documents
- 1.8.7 Cabinet Member for Corporate Services Decision 20th April 2007
- 1.8.8 Planning Application MA/01/0686 & MA/10/0256

IS THIS A KEY DECISION REPORT?

Yes

No X

If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because:

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Wards/Parishes affected:

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How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

Cllr Eric Hotson

Cabinet Member for Corporate Services
Telephone: 01580 892312
E-mail: erichotson@maidstone.gov.uk

Lucy Stroud

Corporate Property Assistant
Telephone: 01622 602015
E-mail: lucystroud@maidstone.gov.uk