

COUNCIL-LED GARDEN COMMUNITY UPDATE

Final Decision-Maker	Policy & Resources Committee
Lead Head of Service	William Cornall, Director of Regeneration & Place
Lead Officer and Report Author	William Cornall, Director of Regeneration & Place
Classification	Public
Purpose of Report	For decision
Wards affected	All, but in particular Harrietsham & Lenham and Headcorn Wards. Lenham Parish Council and Boughton Malherbe Parish Council are affected.

Executive Summary

The proposal was last considered by this Committee on 25th November 2020. The purpose of this report is to provide an update in respect of the progress made since then in pursuing a council-led garden community, near Lenham Heath (Heathlands) and to reach a decision in respect of the commercial nature of the Council's collaboration agreement with Homes England. As in the case of previous reports to this Committee, the contents of this report relate to the Council's position as a potential property owner/developer and not as Local Planning Authority (LPA).

This report makes the following recommendations to this Committee:

- 1) For the Council to enter into a collaboration agreement with Homes England for the purposes set out in this report, and for this agreement to reflect **Option 2B**; the Council to co-fund the circa £3m (Council share circa £1.5m) required to continue to promote Heathlands through the Local Plan Review, secure Planning Consent and the land options with the principal landowners and landowners north of the railway line (Land Option(s)) but limit financial exposure to this phase, and recover this investment through a **"Share of Planning Uplift"** over the duration of the circa 25-year delivery phase, with any profits realised to be reinvested within the new community itself.
- 2) For the Collaboration agreement to provide both officer and Member input both in the pre and post delivery phases, with those Members being the Chair and Vice Chair of this Committee.
- 3) To submit representations to the Regulation 18b consultation of the Local Plan Review with authority for content from the Chair and Vice Chair of this Committee.
- 4) To make a third stage submission on the Heathlands proposal by the end of the financial year to the Local Planning Authority with authority for content from the Chair and Vice Chair of this Committee.

Timetable	
<i>Meeting</i>	<i>Date</i>
Policy and Resources Committee	16 December 2020

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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling • Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve all the corporate priorities.</p>	Director of Regeneration & Place
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendations support the achievement of all the cross-cutting objectives.</p> <p>Through delivering much needed homes to include 40% affordable housing of which 70% would be for affordable rent. The emerging masterplan is landscape led with up to 50% of the total proposed as green space. Led by the ambitions set out in the Strategic Plan the Council can ensure that the design principles of development where it is the master planner reflect the commitment to reduce health inequalities amongst other things.</p>	Director of Regeneration & Place
Risk Management	See section 5.	Director of Regeneration & Place

Financial	Investment in the Garden Community forms part of the Council's five-year capital programme and budgetary provision exists for the expenditure described in the report and the plans outlined here.	Section 151 Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Director of Regeneration & Place
Legal	<p>The Council has statutory power of competence under section 1 of the Localism Act 2011 to do anything that individuals generally may do and under section 111(1) of the Local Government Act 1972, the Council has the power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.</p> <p>The Local Government Act 1972. (Section 120) gives the Council the general powers to acquire land and property for any of their functions, or for the benefit, improvement or development of their area. The Local Government Act 2000 introduced additional 'wellbeing' powers which provide councils with the power to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental wellbeing of their area. This includes the power to incur expenditure, including land acquisition.</p> <p>Acting on the recommendations is within the Council's powers as set out in the above statutory provisions.</p>	Principal Solicitor - Commercial
Privacy and Data Protection	No impact identified	Policy and Information Team
Equalities	An Equalities Impact Assessment will be completed if the proposal forms part of the draft spatial strategy of the Local Plan Review.	Equalities and Corporate Policy

Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	The recommendation will not have a negative impact on Crime and Disorder.	Head of Service or Manager
Procurement	N/A.	Head of Service & Section 151 Officer
Biodiversity	The revised masterplan brief seeks a biodiversity net gain within the proposed redline.	Head of Policy Communications & Governance

2. INTRODUCTION AND BACKGROUND

- 2.1 The Council is pursuing this project as it is consistent with its Strategic Plan priority of “embracing growth and enabling infrastructure” and the desired outcomes within it:
- The Council leads master planning and invests in new places which are well designed.
 - Key employment sites are delivered.
 - Housing need is met including affordable housing.
 - Sufficient infrastructure is planned to meet the demands of growth.
- 2.2 This report will provide an update on the progress made since the last report to this Committee and addresses the following areas:
- Promotion of Heathlands through the Local Plan Review (LPR)
 - Homes England partnership update
 - Principal Landowners
- 2.3 It will also set out the options available for the proposed collaboration agreement with Homes England (HE).
- 2.4 **Promotion of Heathlands through the LPR.** Public consultation on the latest Local Plan Review Proposals through the Preferred Approaches Document as well as concurrent consultation on the associated Sustainability Appraisal documents is now underway. The Council will be submitting representations that will cover the following matters; our general support for the Preferred Approaches, our initial thoughts on the draft policy relating to Heathlands, our initial thoughts on the Sustainability Appraisal and the various Topic Papers as well as our willingness to explore the various lines of enquiry suggested by Stantec in terms of the overall Heathlands concept. Authority to submit these representations will be from the Chair and Vice Chair of this Committee.
- 2.5 These representations will be supportive and high-level and once submitted our attention will then turn to making a third-stage submission to the LPA, at their request, so that the proposal is sufficiently developed for the next stage of the Local Plan Review, being Regulation 19 consultation. This submission will need to be made by the end of the current financial year and will include; an evolution of the second-stage masterplan (taking into account feedback to date from the LPA and

ongoing landowner discussions), a refreshed financial viability model, a refreshed vision statement, a refreshed governance statement, a refreshed delivery plan, and a local consultation plan (which may involve the LPA itself). Authority to make this third stage submission will be from the Chair and Vice Chair of this Committee.

- 2.6 This third stage submission will need to be comprehensive and will be a significant determinant as to whether Heathlands will feature in the next iteration of the Local Plan Review (Regulation 19) that will be consulted upon in the summer of next year. The exact content of this third stage submission is still being refined with the LPA and it is proposed that this be made as a joint submission with Homes England.
- 2.7 **Homes England (HE) Partnership update.** HE has now received their due diligence reports from their external advisors, with which they are content, and they remain committed to the project.
- 2.8 The next proposed step for our partnership is to enter into a collaboration agreement with them which will cover the period from now through to the submission of a Planning Application for the scheme in approximately five years-time (assuming that the scheme is allocated within the Local Plan), and beyond into the delivery phase too. This collaboration agreement will cover the following areas:
- Establish commitment from both MBC and HE to co fund, on a 50:50 basis the ongoing promotion, Land Option and Planning Application costs up to an anticipated figure of circa £3m. This Committee has previously decided to meet these costs in their entirety, and they feature in the Council's capital programme. If costs look likely to exceed this figure both parties will seek authority for this additional expenditure.
 - The selection and appointment of any consultancy advice required after the agreement is in place. All reports and surveys commissioned after the Collaboration Agreement has been entered into will be for the joint benefit of MBC and HE.
 - Governance arrangements around shared decision making.
 - The resources in respect of staff time and grade that each organisation will contribute. There should be some political representation too, possibly the Chair and Vice Chair of this Committee.
 - Responsibilities in relation to exercising the Option Agreements. It is envisaged at this stage that Homes England will control the Option and will potentially fully fund the acquisition.
 - The responsibilities of both MBC and HE during the delivery phase of the development. This will likely include how preferred developers are selected, how the estate is managed (roads, parks etc) and a timetable for the delivery of the enabling infrastructure works. HE will lead on all these points but seek input from MBC to help shape the development.
 - The means by which the Council will recover its investment (see available options below).
- 2.9 The means by which the Council will recover its investment will be captured within the collaboration agreement, coupled with how both entities will work together in the delivery phase, are explored in the next section (Available Options).

- 2.10 **Principal Landowners.** There are no substantive updates to provide since the last Committee meetings. However key meetings with the representative of various landowners are scheduled to occur during the month of December.
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3. AVAILABLE OPTIONS

- 3.1 It is the delivery phase element of the collaboration agreement that requires most attention and consideration at the present time. This relates to the master developer phase whereby Land Options are exercised, infrastructure is delivered and development land parcels are sold on to housebuilders and other developers of commercial floorspace. The quantum of investment required over say a 25-year delivery period will be considerable, more than £100m as detailed in the financial appraisal that was approved by this Committee in July 2020. Consequently, the strategy approved by this Committee in July 2020 was to identify a partner/s with whom this investment could be shared.
- 3.2 It was always felt that Homes England would be our preferred partner owing to their skills, expertise, track record, resources, remit, and their effective Development Corporation status. Having secured Homes England as our partner, this gives the Council more flexibility as to how to deliver our objective of embracing growth and enabling infrastructure in terms of our required level of involvement / investment and risk exposure beyond the likely five-year period required to secure Planning consent before the delivery phase is entered.
- 3.3 In terms of the delivery phase, there are three different points on the risk / reward spectrum that the Council could opt for, as follows:
- **Option 1 - Master-developer 50:50 Joint Venture with Homes England.** This would mean that both parties remain equal and active partners across the likely 25-year delivery period of the project, funding the acquisition of the land and the key infrastructure elements, and recovering this investment through the onward sale of development land parcels to the housebuilder / developer sector. The parties would share risk and reward equally.
 - **Option 2 – MBC cease further investment prior to delivery phase.** In this scenario, the Council would simply co-fund the circa £3m required to secure Planning Consent and secure the Land Options but limit our financial exposure to this, and recover our investment through one of two variants depending on our risk appetite:
 - **Option 2A. Seek a “Priority Return”** whereby the Council has first call on any receipts from serviced land parcel sales that HE secures up to the sum invested by the Council (i.e. circa £1.5m). This would be the quickest and most secure route to the Council recovering its investment, but it would not be rewarded with any profit for its endeavours.
 - **Option 2B. Seek a “Share of Planning Uplift”** over the duration of the 25-year delivery phase. HE will be aiming to recover its own investment in the land and infrastructure plus

a profit by capturing the Planning Uplift that would be achieved between exercising the land options and disposing of serviced land parcels (with the benefit of Outline Planning permission) to developers. Rather than take a Priority Return (as per Option 2A) HE would offer the Council a share in the Planning uplift of each development land parcel over the duration of the delivery period, say 40 parcels of 100 homes. Whilst there can be no guarantee about the level of financial returns, the Council would generate returns over the entire duration of the project and could recover its initial investment of circa £1.5m within the first six years of the delivery phase.

This option would offer the potential of an income stream for the council for future re-investment. It is proposed that if this option is the Council's preferred route then this would enable the council to invest in Heathlands in a way consistent with our Strategic Objectives including delivery of affordable housing and custodianship to ensure maintenance of a good quality public realm.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The view of the Corporate Leadership Team (CLT) is that Option 2B is most appropriate as it caps the Council exposure at circa £1.5m in what are challenging financial times but allows for an attractive return upon this investment over the longer term, which should be reinvested in the new community itself in alignment with the council's strategic objectives.
- 4.2 The Council would have a seat at the negotiating table, both officer and Member, in terms of delivery phase strategic / steering board or similar, and also carve out a key role in terms of the long term governance and stewardship of the new community once established.
- 4.3 The Council will also endeavour to negotiate rights of first refusal to acquire at market value the affordable rented housing on the site and commercial property elements, and these opportunities could indeed be a means to reinvest any surplus realised whilst aiding the delivery of Heathlands.
- 4.4 Even though this option would mean a lesser role for the Council in the delivery phase, the Council through its initial investment and active involvement in the early years will have taken a lead role in establishing the blueprint for Heathlands, inasmuch it would have seen the project through to Planning consent with a fixed design code and infrastructure delivery plan etc. In addition, HE set clear design benchmarks for all developers tendering for purchase of the serviced land parcels. They are then closely monitored throughout the process to ensure compliance with their design and delivery obligations.
- 4.5 Furthermore, this option will mean that the Council will have met its driving objective for the project in terms of embracing growth and enabling infrastructure, without the need to continue to invest significant sums in the project for the longer term.

- 4.6 The CLT do not favour Option 2A as it means the Council would not be financially rewarded for its ideas and endeavours in developing the proposal and would not be able to invest to bring about the delivery of Heathlands and achieve its wider strategic objectives.
- 4.7 The CLT do not favour the joint venture route (Option 1) owing to its complexity and cash exposure, both of which now seem unnecessary given that Homes England have been secured as the partner. Indeed, Homes England do not favour this option because:
- The extra complexity and administrative burden, that may cause delays to the project and require considerable internal resource to manage effectively.
 - HE and MBC would need to create either a limited company or form an LLP with its own Board and separate company accounts. This point is linked to the above, and a significant amount of oversight will be needed to enable two public-sector organisations to form a for-profit private enterprise. From an Officer perspective, it is also felt that this is an extremely compelling factor.
- 4.8 Accordingly, it could well be that Option 1 may not be commercially deliverable inasmuch that Homes England do not favour it. Officers could of course seek to negotiate such an arrangement were this the preference of the Committee, but there can be no guarantees that these negotiations would be fruitful.
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5. RISK

- 5.1 In terms of the risks around the different options for the delivery phase of the collaboration agreement, these have been explored within the previous section of this report, so this section focusses upon the broader project risks.
- 5.2 When this proposal was presented to this Committee in September 2019, the likely risks were set out as follows:
- At risk consultancy expenditure.
 - A period of uncertainty for the community affected.
 - Possible negative perceptions of a broader role for the Council in the context of acting as master developer.
 - Maintaining cohesion amongst the landowner group.
- 5.3 These risks have to some degree crystallised and largely remain. However, the level of cohesion amongst what is a now smaller landowner group, is now strong.
- 5.4 Further risks that have since been added and remain are:
- Terms cannot be agreed with the landowners (principal and minority).
 - Challenge from individuals or organisations that oppose the principle and/or the specific details of MBC's council-led garden community.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 Nothing further to report.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 The next steps will be to:

- Advance the commercial negotiations with the five principal landowners and landowners north of the railway line in line with previous reports.
 - Enter into the collaboration agreement with HE.
 - Make representations to the LPA at Regulation 18B consultation stage of the LPR.
 - Engage with LPA to refine the Heathlands concept.
 - Make the third stage submission to the LPA by 31st March 2021.
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8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

None.