


## AUDIT AND RISK ASSURANCE COMMITTEE

26 July 2018

<b>Subject:</b>	Lion Farm Playing Fields
<b>Director:</b>	Executive Director – Resources – Darren Carter
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Peter Farrow Audit Services and Risk Management Manager <a href="mailto:peter_farrow@sandwell.gov.uk">peter_farrow@sandwell.gov.uk</a>

### DECISION RECOMMENDATIONS

#### **That Audit and Risk Assurance Committee:**

1. Note the contents of the report on Lion Farm playing fields, in particular the conclusions at paragraphs 3.21-3.25.

#### **1 PURPOSE OF THE REPORT**

- 1.1 At the March Audit and Risk Assurance Committee meeting, Members highlighted recent social media coverage which concerned the Lion Farm playing fields and the Committee requested that a report on this matter be presented to the next meeting.

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## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 The proposals in this report contribute to achieving the council's ambitions as follows:

*Ambition 3* - by creating a significant number of new jobs. Improvement in job prospects improves the local economy as well as the wealth and health of the workers and residents of the borough.

*Ambition 8* - by creating and enhancing facilities for residents by developing a retail centre with potential to include leisure and entertainment facilities.

*Ambition 9* – by making Sandwell a place where investors see opportunities to invest and grow their businesses.

*Ambition 10* – by improving facilities and working towards the redevelopment of underused sites.

## **3 BACKGROUND AND MAIN CONSIDERATIONS**

- 3.1 The main purpose of the report is to provide the Audit and Risk Assurance Committee with an update on the Lion Farm playing fields.
- 3.2 In 2012 an informal meeting was held with a developer who was interested in taking forward a proposal to create a high-end retail development and had identified a possible location in the borough which they felt would be accessible and developable. Further meetings took place and the outcome was that the decision was made to progress potential options to develop the Lion Farm Playing Fields as a designer retail village akin to the retail developments of Bicester Village in Oxfordshire and the Cheshire Oaks retail development in the North West.
- 3.3 On 19 December 2012, a confidential report "Junction 2 Development" recommending a 12 month development option (with authority given to the Area Director – Regeneration and Economy, to extend for a further 12 months) was approved by the Asset Management and Land Disposal Cabinet Committee. This gave the developer the option to progress the development proposal. The minutes from the Committee are accessible on the council website. In the report it was recognised in the Legal and Statutory Implications section that there was no restriction upon a council engaging in exclusive discussions with one party in respect to the disposal of council owned land as long as best value is ultimately achieved.

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- 3.4 The Asset Management and Land Disposal Cabinet Committee was attended by two members (which made it quorate) – former Councillor Mahboob Hussain chaired the meeting. Since this meeting, it has been noted (section 2.1.16 - 2.1.19 Wragge Report, April 2016) that former Councillor Hussain and his family had had previous business dealings with the developer. No declaration of interest was noted at the meeting.
- 3.5 The decision to progress with the option agreement was received by Cabinet on 9 January 2013 and then included on the Full Council agenda on 5 March 2013.
- 3.6 A number of issues were also included in the report, relating to the development proposal. These are summarised as follows;
- the site is allocated as community open space;
  - the site is partially utilised as football pitches and afforded protection by covenants put in place by the National Playing Fields Association (known as Fields in Trust);
  - the site is not allocated as a development site within the current adopted plan;
  - there could be highway/ traffic implications arising from the development.
- 3.7 In the early 1960s the council acquired the Lion Farm land with no restrictions on the use. The Fields in Trust (FIT) was established as part of the Queens Jubilee celebrations in 2012 and the FIT covenant was placed on the Lion Farm playing fields that year (as it was transferred from Portway when the Leisure Centre was opened). The Deed of Covenant was executed by the council's legal department on 8 May 2012. This covenant states that the council will keep the site as a public playing field for the purpose of organised games and athletics and it will not appropriate or use the same for any other purpose without the Trust's consent. Preliminary discussions have taken place with FIT and it is possible to move the covenant to other parcels of open space within the Borough subject to FIT's discretion.
- 3.8 The execution of the option agreement as endorsed at Full Council, was made by the council's legal department, on 21 May 2013. The option agreement provided for the freehold to be acquired by the developer should planning permission be secured for retail development. The 2013 Agreement contained a number of obligations for the developer to comply with, and these include:
- Use reasonable endeavours to acquire land, or options to acquire land, to facilitate or improve the developability of the site;
  - Undertake a desk top environmental investigation;

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- Use reasonable endeavours to obtain written agreement in principle from Highways and Planning;
- Carry out a site survey
- Keep the council updated.

- 3.9 The developer paid to the council an option fee when the 2013 agreement was completed, together with a contribution to the council's legal costs. This fee is an option fee and is not the price paid for the land which would be a separate transaction.
- 3.10 The Agreement gave the developer 12 months within which to begin preliminary development steps, with an option to extend for a further 12 months. The Agreement also provided for a secondary option agreement to be entered into between the parties, if the developer complied with the obligations set out above. Essentially this meant that the option agreement would be extended beyond the two year period whilst this was finalised. The original report gave a total of two years for the option (12 months plus a further 12 months), but the wording of the legal Agreement meant this could be extended. This was agreed with the developer but was not returned to Cabinet until November 2017. The main terms of the secondary option agreement were included within the 2013 Agreement, but the detailed wording was to be agreed between the parties (and still is to be agreed).
- 3.11 At the end of the first 12 month period in 2014, the developer served the appropriate notice to request an additional 12 months which was approved by the Area Director as part of the original delegation.
- 3.12 In 2015, within the option period, it was agreed that the developer had complied with the obligations, to the council's satisfaction, and the parties began to work together on finalising the wording of the secondary option agreement, in accordance with the original 2013 Agreement.
- 3.13 In the original report it was agreed (recommendation 2.2) that a report should be taken back to committee at the end of the original option agreement or sooner if appropriate to provide an update on the results of the feasibility studies. This further update was provided in the Cabinet Report of November 2017.
- 3.14 The council also undertook several preparatory steps, including acquiring an area of adjoining land, which could be utilised as an access from the Wolverhampton Road for the completed development. This transaction was agreed at the Land and Asset Management Committee on 15 September 2016 and subsequently received by Cabinet on 21 September 2016.

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- 3.15 A retail report was commissioned by the developer which showed the potential for the Lion Farm playing fields in terms of footfall and economic impact.
- 3.16 In 2017, the developer was made aware of a rival retail scheme being progressed at Cannock Chase that had the benefit of full planning permission and the developer was keen to approach and secure potential tenants before they signed lease agreements at this development. It was agreed that further cabinet approval was needed to move ahead with the scheme and vary the existing option as appropriate.
- 3.17 A Cabinet Report – “Regeneration Opportunity - Junction 2” - was approved at the meeting on 15 November 2017, which authorised the Monitoring Officer to vary the existing option agreement on terms and conditions to be agreed with the Executive Director - Neighbourhoods. These minutes were reported to Full Council on 16 January 2018. It was agreed in the report that terms were to include (in summary):
- stakeholder consultation;
  - the developer to re-provide the playing pitches to ensure a much better offer for local residents is available as part of the refreshed Playing Pitch Strategy;
  - the developer to prepare a detailed case for the development, indicating the impact on existing town centre such as West Bromwich;
  - the developer to submit a full planning application by a date to be mutually agreed;
  - the site to be developed as a premier retail/leisure development that would attract ‘high end’ outlet centres;
  - work with the Black Country LEP to ensure access points and traffic flows can be managed.
- 3.18 The report noted that an estimated £200 million investment could be forthcoming and that around 2,000 jobs would be created within the development.
- 3.19 Discussions have taken place with Sport England and FIT regarding playing pitches and/or greenspace that would need to be re-provided. A number of other sites are presently being considered across the borough. Any re-provision of pitches would lead to improved facilities with 4G pitches being included where appropriate.
- 3.20 The Council is now in ongoing discussions with the developer regarding the site.

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## Conclusions

- 3.21 The actions taken by the council are in accordance with the relevant legislation. Clearly there have been changes to policies and procedures since 2012, including the introduction of a new protocol for the disposal of council owned land and buildings. However, the option agreement is still in accordance with these principles.
- 3.22 It is recognised however, that there are some areas of governance that could have been improved in the early part of the development. A number of improvements have already been made with the new processes, although there are still some lessons to be learned:
- Enhanced member training has improved the awareness of the need to declare interests or raise any issues of uncertainty with the Monitoring Officer;
  - The need to ensure that resolutions are enacted in a timely manner i.e. the second resolution of the 2012 report to provide a follow up report wasn't progressed until 2017;
  - A clearer record of the decision-making process to support report recommendations presented to members is essential;
  - As the scheme progresses, the requirements of the new protocol for the disposal of council owned land and buildings will need to be incorporated.
- 3.23 Procurement regulations do not apply to acquisition or disposal of land. Instead this falls under section 123 of the Local Government Act 1972 to secure best value. This explains why it is not necessary to seek expressions of interest when disposing of land.
- 3.24 To date there has been no disposal of any of the land by the council. If any disposal does take place the land will be valued in accordance with section 123 of the Local Government Act 1972, and the 2013 Agreement provides for the land to be valued after planning permission is granted. This will deliver a much-enhanced capital receipt to the council due to the uplift in the land value. As previously highlighted, the council would seek expert external valuations to assist with this.
- 3.25 No planning application has been submitted by the developer and consultation will take place prior to submission.

## **4 THE CURRENT POSITION**

- 4.1 The report does not require a decision and therefore, no position analysis is necessary.

## **5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)**

- 5.1 The outcomes of the individual reports have been discussed with the relevant stakeholders and reported to the respective Director.

## **6 ALTERNATIVE OPTIONS**

- 6.1 The report does not require a decision and therefore, alternative options do not need to be considered.

## **7 STRATEGIC RESOURCE IMPLICATIONS**

- 7.1 There are no direct financial and resource implications arising from this report.

## **8 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 8.1 The actions taken by the Council are in accordance with the relevant legislation.

## **9 EQUALITY IMPACT ASSESSMENT**

- 9.1 It was not necessary to undertake an Equality Impact Assessment.

## **10 DATA PROTECTION IMPACT ASSESSMENT**

- 10.1 It was not necessary to undertake a Data Protection Impact Assessment. Data gathered during audit reviews is used and retained in accordance with current legislative requirements.

## **11 CRIME AND DISORDER AND RISK ASSESSMENT**

- 11.1 There are no direct risk implications arising from this report.

## **12 SUSTAINABILITY OF PROPOSALS**

- 12.1 There are no direct sustainability issues arising from this report.

**13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)**

13.1 There are no direct health and wellbeing implications from this report.

**14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

14.1 There is no direct impact on any council managed property or land from this report.

**15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

15.1 The purpose of the report is to inform the Audit and Risk Assurance Committee on the Lion Farm playing fields. As such, no decision is required.

**16 BACKGROUND PAPERS**

16.1 None.

**17 APPENDICES:**

None.

**Darren Carter**  
**Executive Director – Resources**