

Public Agenda Pack



EXECUTIVE

Thursday, 23 January 2025

1.00 pm

Frome Town Hall, BA11 1EB

SUPPLEMENT 1 TO THE AGENDA

To: The members of the Executive

We are now able to enclose the following information which was unavailable when the agenda was published:

Agenda Item 4 Saxonvale, Frome (Pages 3 - 144)

To consider the recommendations contained within the report.

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Decision Report

Executive – 23 January 2025

Key Decision – yes



Saxonvale, Frome

Chair of Committee: Councillor Bill Revans, Leader of the Council

Executive Member: Councillor Mike Rigby, Lead Member for Economic Development, Planning and Assets

Local Members and Divisions affected: Frome East, Councillor Shane Collins, Councillor Helen Kay; Frome West, Councillor Martin Dimmery, Councillor Michael Dunk; Frome North, Councillor Adam Boyden, Councillor Dawn Denton

Executive Director: Chris Hall, Executive Director of Community, Place and Economy

Executive Summary

The Council owns a derelict former industrial site of approximately 12 acres in Frome known as Saxonvale.

Following the withdrawal of Acorn from the scheme following the executive meeting in July 2024 officers have been in negotiations with Mayday Saxonvale Development Limited to bring forward a proposal for an unconditional sale. This report and its confidential appendices set out the proposal and highlights other potential options for the future of the site.

Executive is asked to review the options and consider the updated proposal from Mayday Saxonvale Development Limited with a view to a disposal before 31st March 2025.

Recommendations

Executive is asked:

A) To note under section 123 of the Local Government Act 1972, Somerset Council has power to dispose of land not held for housing or planning purposes in any way it sees fit, providing it obtains the best consideration reasonably obtainable for that land (see legal and procurement implications below) and note the valuation of the site which is based on current planning policy conditions as a value reasonably attainable.

B) To note the site was identified as surplus at the Executive Meeting on 31st July 2024 following a recommendation from the Asset Management Group.

C) To agree the surplus site should be sold at a value above the reasonably attainable valuation.

D) To note and consider the funding letter supplied to support the proposal from Mayday Saxonvale Development Limited.

E) Subject to the above, to agree the council should proceed towards an unconditional sale of the site to Mayday Saxonvale Development Limited with a completion date prior to 31st March 2025 and to delegate responsibility for completing the necessary due diligence prior to sale and exchange on and completion of the sale, to the Interim Head of Strategic Asset Management in consultation with the Lead Member for Economic Development, Planning and Assets and the Interim Head of Legal Services. To ensure continued compliance with legal requirements and process as regards the Council's statutory duties on a sale under s123 an updated valuation of the land will be obtained on or before exchange of contracts'.

F) Agrees the case for Appendices 1, 2, 3, 4, 5, 6 and 7 to be regarded as exempt information and to be treated in confidence, as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

Exclusion of the Press and Public

PLEASE NOTE: Although the main report for this item is not confidential, supporting appendices available to Members contain exempt information and are therefore marked confidential – not for publication. At any point if Members wish to discuss information within these appendices, then the Executive will be asked to agree the following resolution to exclude the press and public:

Exclusion of the Press and Public To consider passing a resolution having been duly proposed and seconded and in accordance with Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, that the press and public be excluded from the meeting during consideration of those parts of this agenda item which relate to exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information. Reason: Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Reasons for Proposals

To enable the potential generation of a capital receipt in accordance with the Council's obligations under section 123 of the Local Government Act 1972.

Report Author: Adam Savery, Strategic Asset Management, Estates Strategy and Development

Contact Details: adam.savery@somerset.gov.uk 07980 666173

Background and purpose of report

1. In August 2018, the council purchased three parcels of land on the former manufacturing site which, when combined with its existing landholdings, created a developable site known as Saxonvale. The former manufacturing site has been derelict for many years and includes vacant buildings in poor condition.
2. The development of Saxonvale will provide homes and commercial space, strong linkages into the town centre; and overall significant improvements to the existing environment.
3. On 31st July 2024 Somerset Executive considered unconditional offers for the site from both Acorn Group and Mayday Saxonvale Development Ltd. This approach was considered to represent the best strategy to make a significant contribution to the council's financial imperative to generate timely capital receipts against the target of £80m whilst meeting the council's wider objectives for the regeneration of the site.
4. Executive resolved to proceed with a sale to Acorn. However, the following day Acorn withdrew their offer.
5. Following the withdrawal of Acorn the council did not have approval to proceed towards a sale to another third party and officers were instructed to negotiate with Mayday Saxonvale Development Limited to investigate an unconditional sale and to bring it back to Executive for consideration.
6. It is important to note that following an unconditional sale, beyond the regulatory powers of the local planning authority, the council will have no responsibility or control over the site and its future development. That responsibility will rest with the new owner. The reasons for pursuing an unconditional sale are set out later in the report.
7. As the potential purchaser is not an established property development company officers have sought clarification on the arrangements in place to fund the purchase of the site. Confidential Appendix 1 relates.
8. Heads of Terms have been agreed at officer level and are shown at Confidential Appendix 2 to this report for information.
9. The updated proposal from Mayday Saxonvale Development Ltd has been considered by our independent property consultants (CBRE) and their report is attached as Confidential Appendix 4.

10. The findings of this report have been shared and discussed with Mayday Saxonvale Development Limited and they have issued their response which is shown as Confidential Appendix 5.
11. As part of the response Mayday have revised their proposed delivery schedule and a summary is attached as Confidential Appendix 6.
12. The proposed governance model is shared as Confidential Appendix 7.
13. Mayday Saxonvale group will summarise their proposals in public session at the meeting in order to provide stakeholders and public present with an overview.
14. Homes England Funding

In 2018, the Council was successful in obtaining Homes England (“HE”) Grant Funding to contribute to site remediation and decontamination works. The Council spent £3.6m of the grant funding which comes with the following conditions:

- Delivery of 249 homes on the Site.
- Delivery of construction (once it commences) on Site at a pace faster than the local market average for similar residential developments.
- Provide a minimum of 25% Affordable Housing.
- To use modern methods of construction.

The grant cannot be novated to any potential purchaser and failure to deliver the outcomes would be financially detrimental to the Council if agreement to a variation of the outcomes cannot be secured with Homes England.

Noting point 6 above, the proposal from Mayday Saxonvale Development Limited acknowledges and meets the conditions of the grant and undertakes to deliver them through an approved delivery agreement.

Links to Council Plan and Medium-Term Financial Plan

15. Disposal of the site would achieve a Capital receipt which would contribute to the capital receipts target of c. £80m, required to finance the capitalisation directive and funding for the Improvement and Transformation Programme.

Other options considered

16. **Offer the site to the open market, seeking unconditional and conditional (subject to planning) offers.**

This option was considered by the Council’s Asset Management Group prior to the Executive in July 2024 but the strategy to seek an unconditional sale was preferred for the reasons set out in paragraph 3 above. With due regard to its obligations under s123 of the Local Government Act 1972, the council commissioned a red book valuation of the site based on current planning

restrictions in order to measure best reasonably achievable consideration; the confidential appendices to this report demonstrate how the s123 obligations are met through the preferred approach. Nonetheless, the alternative option of retaining the site at this time and adopting an open market strategy remains open to decision makers, who should consider this as part of the decision-making process.

17. Conditional sale to Mayday.

The council has approached this process as a land deal to mitigate the risk of challenge. (See Legal Implications) While placing conditions on the disposal would retain an element of council control over the development and regeneration of the Saxonvale Site, the presence of inappropriate conditionality in the sale would change the disposal from a land transaction into a procurement exercise. Under such circumstances a ring-fenced approach would be inappropriate.

The council is keen to see the site developed as soon as possible. A full procurement exercise would add another 3-6 months to the process meaning any capital receipt for the site would not be achieved in the 2024/25 financial year. A procurement process would also increase risk for potential developers, which may make developments less viable and decrease the capital receipt achieved for the site.

18. Mothball the site

The council could choose to retain ownership of the land for the medium / long term. This would be contrary to the council's aspirations to redevelop the site and the acknowledged housing crisis facing the community of Frome. It would also indefinitely delay any capital receipt from the site.

Key considerations for the Council

Scrutiny comments / recommendations:

19. Given the high profile of the site and its disposal, an advanced scrutiny may be misinterpreted as a decision-making meeting. It was felt this could hinder the scrutiny process.

Consultation and feedback

20. Through the process the council has engaged with:
 - CBRE for independent expertise to assess the proposal and provide advice
 - Mayday Saxonvale Development Limited
 - Homes England
 - Frome Members of Somerset Council
 - Frome Town Council

Financial and Risk Implications

21. Disposal of the site will achieve a capital receipt for the Council and savings in revenue expenditure currently being incurred to secure the site. The financial offer is commercially sensitive and shown in Confidential Appendices 1 and 2. Executive should have regard to the analysis presented on deliverability and viability, development funding and other criteria to assess and judge the risk of the unconditional offer received not proceeding to a sale, and therefore put at risk the achievement of a capital receipt.
22. With due regard to its obligations under s123 of the Local Government Act 1972, the council commissioned a red book valuation of the site based on current planning restrictions in order to measure best consideration. This is available in Confidential Appendix 3. The offer is in excess of this valuation.
23. The sale will incur fees from our external experts, these will be based on the agreed sale price. As this is a revenue cost, provision for these costs have been made in the 2024/25 Q1 budget monitoring forecasts.
24. The council is currently incurring monthly revenue costs in the region of £2,160 for the services of an external security company to monitor the site 24/7 via motion sensor cameras and to provide on call security guards to attend site in the event of trespass. Conclusion and completion of an unconditional sale would remove this cost and financial burden.
25. There is a public car park (Merchants Barton) within the demise of the site. The proposal from Mayday addresses the re-provision of public car parking spaces. The detail and timeframes involved in that provision are not known and will be determined through due diligence prior to contract exchange. There may be an associated loss of revenue income, but this cannot be quantified at this stage. However, with surplus capacity available at other car parks the potential loss of income is not considered to be significant.
26. If the conditions of the Homes England Grant Funding are not met in the future, the Council may be liable to repay some of the funding. Therefore, part of any Capital receipt received may need to be held in provision (a reserve) for such eventuality. The amount of the provision will be quantified through further due diligence in the event of a land sale and will be determined by the Interim Head of Strategic Asset Management in consultation with the s151 Officer.

Legal and Procurement Implications

27. There are a number of legal implications arising from this report, including a number of statutory requirements that must be properly taken into account to mitigate the risk of legal challenge from third parties and/or challenge by the Council's auditors.

Under section 123 of the Local Government Act 1972, Somerset Council has power to dispose of land not held for housing or planning purposes

in any way it sees fit, providing it obtains the best consideration reasonably obtainable for that land. Disposals for less than best consideration are controlled and may require the consent of the Secretary of State. Determining best consideration is not an exact science, but an independent valuation gives the Council a base line figure against which to assess proposals.

28. There is a great deal of case law around the operation of section 123 and the position was recently assessed (2023) in the case of Cillarda Group Holdings Ltd v West Northamptonshire Council. The Judge in that case reviewed existing case law and noted that:

- consideration means the price payable for the land. That price may simply be a sum of money offered for the land or it may consist in part of such a sum and in part of other elements such as rights in the nature of easements or a right to re-purchase reserved by the selling authority but only if those such elements have a commercial or monetary value which is capable of being assessed by land valuation experts;
- elements of social value (for example, increasing the likelihood that the land will be developed in line with the Council's planning policies) do not count;
- the duty of a local authority under section 123 only to dispose of land for the best consideration reasonably obtainable is subject to the same considerations of prudence and common-sense as apply to the duties of trustees, who have an overriding duty to obtain the best price they can for their beneficiaries and have a limited discretion to act with proper prudence which might for example, in the case of an increased offer at a late stage, mean they could properly refuse a higher offer and proceed with a lower offer;
- the policy embodied in section 123 is to ensure, so far as reasonably possible, that public assets are not sold at an undervalue, save on the authority of the Secretary of State. Depending on the facts, it may on occasion be open to a local authority to regard a lower offer with a substantially higher prospect of proceeding to completion as more commercially valuable than an offer for a higher sum which has a substantially lower prospect of coming to fruition, although in those circumstances proper consideration would need to be given to whether or not Secretary of State consent would be required;
- a Council's decision on what constitutes consideration that is 'the best that can reasonably be obtained' can only be challenged on public law grounds, in other words because that Council
 - failed to take proper advice or
 - failed to follow proper advice for reasons which cannot be justified or
 - although following proper advice, followed advice which was so plainly erroneous that in accepting it the council must have known, or at least ought to have known, that it was acting unreasonably;
- although there is a duty to probe and explore any offer that may be made there is also a danger of too much probing or that indecisiveness may lead to the loss of a bargain;

- the obligation is to achieve a particular outcome, namely the best price reasonably obtainable. The policy aim is to protect public assets in the public interest. Section 123 is not concerned with procedural fairness towards or between rival bidders.

29. There are no procurement implications.

HR / Workforce Implications

30. There are no direct implications as a result of the submission of this report. The disposal of the site will be managed with existing staff resources.

Equalities Implications

31. Having considered the positive and negative impact of the decision we do not foresee any requirement for an equalities impact assessment.

32. The site has been vacant and derelict for many years and is not occupied or used by any person or company.

Community Safety Implications

33. There are no direct implications as a result of the submission of this report.

34. The Saxonvale site has been vacant and derelict for many years. Since the council took ownership in 2018 crime levels have been low and on the evidence of security footage is primarily restricted to teenagers who infrequently trespass and occasionally carry out minor vandalism to derelict properties, mainly in the form of graffiti.

35. It was notable that trespass ceased when contractors were on site carrying out enabling and decontamination works in 2022. While a decision to dispose of the site will not directly impact Community Safety, a new owner actively developing the site will hopefully reduce trespass.

36. There are no direct links to existing projects or services from other community safety partners.

Climate Change and Sustainability Implications

37. There are no direct implications as a result of the submission of this report.

38. The site is currently derelict, and any future developer will be bound by policy and legislation relating to domestic and commercial dwellings.

39. Mayday Saxonvale Development Ltd have submitted planning applications which set out their sustainability plans. These are publicly available on the Council's planning portal.

Health and Safety Implications

40. Prior to the council's ownership the site posed a significant Health and Safety risk. On taking possession in August 2018 the council erected hoarding around the site and secured the buildings to prevent trespass. A security company was commissioned to install and remotely monitor motion sensor cameras across the site, both external and inside the remaining building structures.
41. The site as it stands could present a health and safety risk to any person on site. Ref 34 above, the main group at risk is teenagers who enter the site infrequently.
42. The risk of walking in the open areas of the site are minor. Ground based contaminants have been mitigated following the works carried out utilising Homes England funding to decontaminate the site, and there are no uncovered openings.
43. The buildings on site are secured, but unauthorised access is occasionally obtained through forceful entry. The buildings have been stripped of exposed and dangerous asbestos, but trip hazards remain, along with the presence of pigeon guano.
44. The disposal of the site will remove the Council's control of security measures, but it is felt a new developer being active on site will deter trespass ref 35 above.

Health and Wellbeing Implications

45. There are no direct Health and Wellbeing implications as a result of the submission of this report.

Social Value

46. There are no direct Social Value implications as a result of the submission of this report. The council will have no direct control over the development.

Background Papers

47. None

Appendices

- Confidential Appendix 1 Funding
- Confidential Appendix 2 Saxonvale Heads of Terms
- Confidential Appendix 3 Valuation
- Confidential Appendix 4 Saxonvale Frome – CBRE Scheme Assessment
- Confidential Appendix 5 Mayday Saxonvale CBRE Report Response
- Confidential Appendix 6 Delivery Programme
- Confidential Appendix 7 Mayday Saxonvale Governance Delivery Framework

Report assurance checklist

	Officer Name	Date Completed
Legal & Governance Implications	Jill Byron	17/01/2025
Finance & Procurement	Nicola Hix	16/01/2025
Workforce (*)	N/A	
Asset Management (*)	Simon Lewis	16/01/2025
Executive Director	Chris Hall	20/01/2025
Executive Lead Member	Mike Rigby	20/01/2025/
Consulted:	Councillor Name	
Local Division Members		
Opposition Spokesperson(s)	Sue Osborne	Cllr Osborne has not been able to comment ahead of publication. Her views will be provided as an update to the meeting.
Relevant Scrutiny Chair(s)	Stephen Pugsley	20/01/2025

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