

Decision Report

Committee: Executive

Meeting or Proposed Decision Date – 31st

July 2024

Key Decision – yes



Report Title – Saxonvale, Frome

Chair of Committee: Cllr Bill Revans

Executive Member(s): Cllr Ros Wyke, Lead Member for Economic Development, Planning and Assets

Local Member(s) and Division(s) affected: Frome East, Cllr Shane Collins; Frome West, Cllr Martin Dimmery, Cllr Michael Dunk; Frome North, Cllr Adam Boyden, Cllr Dawn Denton

Executive Director: Jason Vaughan – Executive Director of Resources & Corporate Services (Section 151)

Executive Summary

The Council owns a derelict former industrial site in Frome known as Saxonvale and recently requested development proposals and financial offers to purchase the site on an unconditional basis from Acorn Developments and Mayday Saxonvale Development Limited.

This report sets out potential options for the future of the site and compares the two proposals submitted.

Executive are asked to review the options, consider the two proposals, and recommend a preferred option for the future of the site

Recommendations

Executive are asked:

A) To note the red book valuation of the site based on current planning policy conditions

B) To review the options for the future disposal of the site, consider and compare the offers from Acorn Group and Mayday Saxonvale Development Limited for the purchase of the Saxonvale site, and consider whether to progress a sale, retain the site or pursue an alternative option.

C) If a sale is agreed, to delegate responsibility for completing the necessary due diligence prior to sale and exchange on and completion of the sale to the Service Director – Strategic Asset Management in consultation with the Lead Member for Economic Development, Planning and Assets and the Interim Head of Legal Services.

D) Agrees the case for Appendix 1, 2 and 3 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supporting appendices available to Members contain exempt information and are therefore marked confidential – not for publication.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 & 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. In 2018 Mendip District Council entered into a Sale and Overage Agreement (SOA) with Acorn Property Group, a conditional agreement for the sale of the site, in phases subject to various conditions.

The SOA contained various timings that Acorn were to adhere to, with a cut off date after which the SOA would be terminable by either party.

As the pre-conditions have not been satisfied, stalling at the planning phase, the agreement is capable of termination without penalty by either party. It will not terminate unless a party serves notice of termination.

4. In March 2024 the Asset Management Group (AMG) considered options for the site. In the context of the Council's financial emergency the group was keen to see Saxonvale developed after decades of dereliction. AMG decided to pursue a disposal strategy for the site to seek unconditional offers from both Acorn Group and Mayday Saxonvale Development Ltd based on the following:
 - Both developers have well progressed plans for the site;
 - Both developers have invested significant time and money in their proposals over a number of years; a driver for them to develop the site in a timely manner and make a return on their investment;
 - Seeking bids from the two developers was felt most likely to achieve a Capital Receipt for the site within the 2024/25 financial year;
 - An unconditional sale would achieve a higher capital receipt than a disposal with conditions;
 - Placing the site on the open market would increase the risk of speculative offers which may not see the site developed in a timely fashion, and was less likely to provide a level of capital receipt in the timescale and with the certainty required.

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 councils' wider objectives for the regeneration of the site. These best and final offers would be considered by the executive to inform their decision on the future of the site.

5. Bids were requested on 01/05/2024 with a deadline of 14/06/2024 for return based on the following criteria:

<p>1. Purchasing Entity (Purchaser/ Investor Details)</p>	<p>Reference the leading organisation, including any supporting funding partners / investors, as appropriate. Provide details of key contacts – name; role; address; contact details etc.</p>
<p>2. Development Vision & Proposals</p>	<p>Set out your organisation's Development Vision. Attach and append any design proposals which may be relevant. Statement on how this Vision will contribute to the delivery of the Council's long term aspirations for Saxonvale.</p>
<p>3. Professional Team & Key Individuals</p>	<p>Set out your current / proposed project team including key individuals who will be responsible for executing the transaction (land agents and legal advisors); and taking forward site delivery (planning, commercial, technical delivery team etc.).</p>
<p>4. Experience & Track Record</p>	<p>Set out your organisations relevant experience, including in the delivery of major developments of brownfield land and urban regeneration.</p>
<p>5. Financial Proposal & Transaction Structure</p>	<p>Set out the proposed Purchase Price.</p> <p>The Council is open to a variety of proposals and transaction structures, provided the Purchaser Selection Criteria (a, b & c) are met – this could involve: an unconditional sale; a conditional sale (subject to planning); Joint Venture; Land Option agreement.</p> <p>Set out your organisation's preferred transaction structure, including: Deposit; Overage; Deferred Payment(s); Milestone Payment(s); Anti-embarrassment clauses (e.g. "sell-on") etc. which are intended to protect the Council's commercial interests.</p>
<p>6. Compliance with Homes England Funding (see below table)</p>	<p>The Council require a commitment from the purchaser to confirm its ability to comply with the Homes England grant funding commitments – and that this funding, and the legal obligations have been reflected within the financial proposal (and development appraisal).</p>

7. Financial Viability & Deliverability	Provide details to evidence the deliverability and financial viability of your proposed scheme – to include accommodations schedule; mix of uses; scheme plans; development appraisal (including revenue and cost assumptions); plus phasing and development funding assumptions.
8. Development Funding	Provide details of how your organisation intends to fund the transaction, and routes for future development finance (include evidence of any funding support, where appropriate).
9. Timescales & Programme	Set out the timing of any key transaction conditionality, including clarification on any due diligence which will need to be undertaken both <u>pre-exchange</u> and <u>post-exchange</u> of legal contracts. Clarify any internal or external approval processes required to commit to the purchase. Set out a realistic delivery programme for executing the transaction – from agreement of heads of terms, exchange of legal contracts through to legal / transaction completion.

These criteria were developed to support the assessment of the likely level of a capital receipt, and the viability and timeliness of a capital receipt, to inform a judgement on 'best consideration' as explained in paragraph 21 below.

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.

6. The Council received proposals from both parties and this report compares those proposals for members. Much of the detail is commercially confidential and is included in Confidential Appendix 1.
7. Both bidders will summarise their proposals in public session at the meeting, in order to provide stakeholders and public present with an overview.

Links to Council Plan and Medium-Term Financial Plan

8. 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

9. **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 but the strategy to seek unconditional offers from Acorn Group and Mayday Saxonvale Development Ltd was preferred for the reasons set out in paragraph 4 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 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.

10. **Ring fenced conditional best offers from Acorn and 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 may not be achieved in 2024/25. 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.

11. **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.

12. **Continue with the Sale and Overage Agreement with Acorn**

The scheme detailed in the SOA was drawn up in 2018. With the impact of Brexit and the Covid pandemic, the initial proposed returns are no longer achievable and any financial return, by the nature of the phased development would not be received in the current financial year. Given the council's financial emergency and the £80m capital receipts target this option has not been pursued.

Key considerations for the Council

Scrutiny comments / recommendations:

13. Following discussion with the Chair of the Corporate and Resources Scrutiny Committee there was concern given the high profile of the site and its disposal, that an advanced scrutiny board may be misinterpreted as a decision-making meeting. It was felt this could hinder the scrutiny process.
14. For this reason, the Scrutiny call in process will be used if necessary, following the decision of the Executive Board on 31st July 2024.

Consultation and feedback

15. Through the process the council has engaged with:
 - CBRE for independent expertise to assess the proposals and provide advice
 - Ashfords LLP solicitors
 - Acorn Group
 - Mayday Saxonvale Development Limited
 - Homes England
 - Frome Members of Somerset Council
 - Frome Town Council

Financial and Risk Implications

16. Disposal of the site will achieve a Capital receipt, which will contribute to the Medium-Term Financial Plan funding strategy. The detail of the two financial offers are commercially sensitive and are shown in Confidential Appendix 1. Executive should have regard to the analysis presented on deliverability and viability, development funding and other criteria to assess and judge the risk that either or both of the unconditional offers received may not proceed to a sale, and therefore put at risk the achievement of a capital receipt.
17. 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 2. Both bids are in excess of this valuation.

18. 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.
19. 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.
20. There is a public car park (Merchants Barton) within the demise of the site. Both proposals address 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.
21. 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 Service Director – Strategic Asset Management in consultation with Service Director – Finance and Procurement.
22. A risk register is provided as Confidential Appendix 3. This has been produced with officer ranking of the risks identified by CBRE in their report in Confidential Appendix 1.

Legal and Procurement Implications

23. 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.

24. 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 (a) failed to take proper advice or (b) failed to follow proper advice for reasons which cannot be justified or (c) 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.

25. There are no procurement implications.

HR / Workforce Implications

26. 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

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

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

Community Safety Implications

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

30. 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.

31. 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.

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

Climate Change and Sustainability Implications

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

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

35. Both parties have submitted planning applications which set out their sustainability plans. These are publicly available on the Council's planning portal.

Health and Safety Implications

36. 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.
37. The site as it stands could present a health and safety risk to any person on site. Ref 30 above, the main group at risk is teenagers who enter the site infrequently.
38. 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.
39. 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.
40. 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 31 above.

Health and Wellbeing Implications

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

Social Value

42. 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

43. None

Appendices

- Confidential Appendix 1 – CBRE Report
- Confidential Appendix 2 – Valuation

- Confidential Appendix 3 – Detailed risk register

Report assurance

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	25/07/2024
Finance & Procurement	Nicola Hix	25/07/2024
Workforce (*)	Dawn Bettridge	
Asset Management (*)	Oliver Woodhams	25/07/2024
Executive Director	Oliver Woodhams	25/07/2024
Executive Lead Member	CLr Ros Wyke	
Consulted:	Councillor Name	
Local Division Members		
Opposition Spokesperson(s)	Relevant Opposition Spokesperson	
Relevant Scrutiny Chair(s)	Relevant Chair	