

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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## FINANCE AND CORPORATE SERVICES PORTFOLIO HOLDER

21 AUGUST 2018

### A.1 OPTION TO REPURCHASE LAND AT KIRBY ROAD AND MILL LANE, WALTON ON THE NAZE

(prepared by Andy White)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE NOTE

To consider whether to exercise an option to buy back land sold in 2014 as shown on the attached plan (Appendix A).

##### EXECUTIVE SUMMARY

- The Council disposed of land to a developer on 12 March 2014. To facilitate access to development land adjoining including homes, a supermarket and other facilities.
- The contract included two options to repurchase land:
  - Brown Option
    - for TDC to buy land to facilitate access to a potential redevelopment of the Mere if a planning permission is gained for the Mere within 20 years. The price will be pro rata to the price we charged for all of the land in 2014. That land is shown brown on the plan attached.
  - Property Option
    - An option to buy back all of the land sold, less any Access Land, for £1, if a specific sized supermarket is not open for trade on the identified site before 12 March 2018.
- No supermarket has been commenced on the identified part of the site and supermarkets under construction on adjoining land fall short of the required size.
- If the Council wishes to exercise the option it must do so by 12 September 2018.
- The developer has sold two parts of the land to other companies; the Land Registry titles of those two companies still have reference to the option provisions in favour of the Council but further investigations are required to determine the extent of the land that can be repurchased.
- Accordingly it is understood that the Council may serve notice to repurchase the land from the three current owners for £1.00 should it choose to do so.

##### RECOMMENDATION(S)

**That The Portfolio Holder:**

- a) Confirms that the Council should exercise the Property Options against the three owners to the extent possible and buy back the land;**
- b) Authorises the Deputy Chief Executive to Serve the necessary option notices; and**
- c) Authorises the Deputy Chief Executive to repurchase the land in accordance with the option agreement and such other terms that he considers appropriate.**

#### PART 2 – IMPLICATIONS OF THE DECISION

##### DELIVERING PRIORITIES

The redevelopment of the site could contribute towards the following priorities:-

- Balance our budget
- Make the most of our assets
- Local regeneration

- First rate leisure facilities

## FINANCE, OTHER RESOURCES AND RISK

### Finance and other resources

The option price to repurchase the land is £1. Acquisition may facilitate future capital receipt and/or facilitate the support of other projects and reduce the cost of facilitating other schemes. The Council will need to expend fees on due diligence searches and enquiries together with legal requirements because there is no provision for this to be covered by the seller however this is offset against the value of the land and future potential uses and is usual for land purchases.

### Risk

Not Exercising	Exercising
If the Council is called upon to exercise the Brown Option it will have to pay a price pro rata to the original price and will be limited to the extent coloured brown on the plan whereas if it exercised the Property Option it will pay £1 and acquire all of the land.	The Council will be liable for maintenance costs of the land post acquisition. This potential is limited because much of the land is taken up by drainage ditches which have been adopted by Anglian Water.
If the Council does not exercise the options it will not have the potential to generate income from any other adjoining development that may occur.	The developer and other owners may feel that the Council's decision is detrimental to plans they may have for the site. This may lead to adverse publicity or to dispute.
The Mere owners and the wider public may feel that an opportunity to support regeneration of the Mere has been missed.	Service of the notice binds the Council to complete the transfer of the land in accordance with the Transfer Deed of 12 March 2014 which requires the completion of the option purchase by the latest of 20 working days from service of the notice or the agreement of the new transfer agreement; it is likely the latter will apply. Other terms include the provision of a standard indemnity in respect of matters appearing on the Land Registry title and the transfer will also be subject to the Reservations set out in paragraph 5 of Schedule 2 to the Transfer Deed. It is unlikely that full due diligence will have been completed prior to the service of the notice but this is mitigated to some extent because the Council was a previous owner of the land.
	The land may have been subject to an option to tax for VAT purposes since the Council sold it. The immediate effect is limited to an additional £0.20 which may be reclaimable but the longer term position may require rescinding of any option to tax or charging of VAT on future transactions.
	The Land to be repurchased is to exclude any Access Land: land that has already been used to create new carriageway or footway and will be subject to rights to maintain such carriageway and footway. The estimated extent of that land is shown on the plan, but this is subject to agreement as part of the repurchasing process.
	Repurchased land will be subject to the previously existing restrictive covenants that affected the land prior to its sale in 2014 and some rights of drainage and access since granted.

## LEGAL

Section 120(1) (b) of Local Government Act 1972 provides for the Council to acquire land by agreement either within or outside the District for any purpose within that or any other Act or for the benefit improvement or development of the area.

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets are for the benefit of the district.

It is the writer's opinion that balancing the risks set out above, it is in the Council's interest to exercise the Property Option because the potential benefits of acquisition outweigh the potential disadvantages of acquisition.

#### **OTHER IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

#### **Area or Ward Affected**

Walton

#### **BACKGROUND**

The Council disposed of land to a developer on 12 March 2014. To facilitate access to development land adjoining including homes, a supermarket and other facilities.

The contract includes two options to repurchase land:

##### **1. Brown Option**

- An option for TDC to buy the strip that was identified together with owners of the Mere in order to facilitate access to a potential redevelopment of the Mere if a planning permission is gained for the Mere within 20 years. The price will be pro rata to the price we charged of all of the land in 2014.
- That land is shown brown on the plan attached. The contract also contains a condition that if the developer sells any of the brown land they must get a certificate from TDC that the option is passed on to the new owner. We haven't been approached by the developer or any new owner in this respect.

##### **2. Property Option**

- An option to buy back all of the land sold, less any land used for access works, for £1, if a specific sized supermarket is not open for trade on the identified site before 12 March 2018.
- No supermarket has been commenced on the identified part of the site and supermarkets under construction on adjoining land fall short of the required size.
- If the Council wishes to exercise the option it must do so by 12 September 2018.
- The developer has sold two parts of the land to other companies: the Land Registry titles of those two companies still have reference to the option provisions in favour of the Council but further investigations are required to determine the extent of the land that can be repurchased.. One part of that land has been subject to development and the other has not.
- Accordingly it is understood that the Council may serve notice to repurchase the land from the three owners for £1.00 should it choose to do so.

#### **CURRENT POSITION**

It is proposed that that the Council exercises the option(s) to buy back the land.

#### **FURTHER HEADINGS RELEVANT TO THE REPORT**

None

<b>APPENDICES</b>
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Appendix A – Location Plan
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