

North Somerset Council

Report to the Council

Date of Meeting: 19th July 2021

Subject of report: Development Programme: Business Case and Commissioning Plan for development of council-owned land to the south of The Uplands, Nailsea

Town or Parish: Nailsea

Officer/Member presenting: Cllr. Mark Canniford, Executive Member for Placemaking and Economy

Key Decision: No

Reason: Council decision

Recommendation

- To approve the business case and Commissioning Plan for the procurement of a development partner for residential development on council-owned land to the south of The Uplands, Nailsea, as set out in Section 3 of this report.

1. Summary of report

- 1.1 This report sets out a business case for the delivery of residential development on council-owned land to the south of The Uplands, Nailsea. It recommends that the development should be taken forward through the procurement of a development partner and the creation of a Joint Venture, most likely a contractual Joint Venture. The council is proposed to input its land and £481,028 of grant received from the Land Release Fund. In return, the selected developer would deliver the scheme to agreed parameters and would pay the council an agreed land receipt and potentially a share of profits.
- 1.2 The report requests authorisation for a Commissioning Plan for the procurement of the development partner. The procurement process will be PCR 2015 compliant and due to its value will be advertised and open to all potential bidders. It is expected to take the form of a two-stage competitive tender, commencing with an Expression of Interest stage prior to Invitation to Tender.
- 1.3 The procurement is proposed to be carried out from August – November 2021, reporting back to the Executive in December with a recommendation as to the preferred development partner and seeking authority to enter into the Joint Venture or other contractual arrangements. This timescale meets funding requirements to enable a start on site by 1st April 2022.

- 1.4 The recommendations in this report are subject to the appropriation decision on the land in question, which is expected to be considered in advance of the Council meeting. In the event that the decision is made not to appropriate the land for development, the report will be withdrawn.

2. Policy

- 2.1 This proposal supports the Corporate Plan objective of creating a Thriving and Sustainable Place, in particular “the delivery of a broad range of new home to meet our growing need, with an emphasis on quality and affordability”.
- 2.2 The site is allocated for residential development in the adopted Local Plan. It has secured planning approval and was included in the list of potential sites in the Development Strategy adopted by council in February 2021.
- 2.3 North Somerset Council’s Development Strategy was adopted by Council in February 2020 and is a key part of NSC’s Capital Investment Strategy for 2020 to 2030. It sets out a core ambition to create a balanced programme of development and investment that also delivers on the wider corporate objectives of NSC, particularly in relation to affordable housing, sustainability and placemaking.
- 2.4 In taking forward development on its landholdings, the strategy emphasises that the council’s role is not to compete with the private sector or replicate their usual outcomes, but to deliver beyond the market norms. Objectives are to:
 - Deliver where the market fails.
 - Set higher standards and drive the market forward for better quality, more sustainable buildings.
 - Make the most of our assets and capture value to fund other council pressures and priorities – including reinvestment in the asset programme.
 - Provide homes, employment and other facilities that meet the needs of our communities – current and future.

3. Details

Development proposals

- 3.1 This report makes proposals for delivery of residential development on land owned by North Somerset Council to the south of The Uplands, Nailsea.
- 3.2 The site comprises approximately 2 hectares of land and has secured planning approval for 52 homes including 30% affordable housing.
- 3.3 Proposals for the site have been developed by a design team headed by Mikhail Riches Architects, winners of the 2019 Stirling Prize for Architecture for a 100% Passivhaus housing scheme using Modern Methods of Construction (MMC) with Norwich City Council.
- 3.4 Features of the proposals for The Uplands include:
 - A housing mix targeted at meeting local needs, including a higher than standard proportion of two-bedroom homes and eight bungalows.

- A landscape-led approach, with a high proportion of green space including communal shared gardens for some of the properties and new footpaths across the site linking into the adjacent woodland and bridleway.
- All homes meet Passivhaus certified standards: a very high standard of sustainability which also helps ensure good build quality and low energy bills.
- All homes are a minimum 10% above Nationally Described Space Standards and have been provided with additional storage space both internally and externally.
- Additional provision of adaptable and accessible homes, above the policy requirement.
- Electrical vehicle charging for all homes, as well as contributions to fund an electric vehicle car sharing club.

3.5 The proposals are supported by £557,510 Homes England Local Authority Accelerated Construction Funding (LA-AC, revenue) and £481,028 One Public Estate Land Release Funding (LRF, capital). In addition, the council has secured a further £55,000 capacity funding from Homes England to support the procurement of a development partner.

3.6 Failure to comply with the terms of funding can lead to clawback of grant. The terms include:

- A start on site by 1st April 2022 and completion by 1st March 2024.
- Use of panellised Modern Methods of Construction (MMC) throughout.
- A minimum of 30% affordable housing (this can include public subsidy support).
- Use of LRF funds to deliver capital enabling works, specifically site clearance, groundworks and access.
- Repayment of LA-AC grant if land receipts exceed the projected value at the time the grant was awarded.

3.7 Viability testing of the proposals indicate that the site can secure a high standard of quality as well as a good financial return to the council. Soft market testing by Jones Lang Lasalle found a high level of market interest in the proposal

Options for delivery

3.8 In taking forward the scheme, the council needs to have regard to a range of factors including control over quality, ability to deliver within timescales, financial returns and exposure to risk.

3.9 In considering the appropriate route to delivery, the following principles are considered fundamental:

- Given the quality aspirations of the scheme, and to ensure value is secured from the work to date, the view of officers is that the design team, led by Mikhail Riches, should be retained throughout the development period.
- The council's requirement is to develop a scheme of high-quality homes built to the best sustainability standards and achieve PassivHaus certification. This is in accordance with the Corporate Plan of an Open, Fairer and Greener North Somerset. In this the council is wanting to be seen as promoting, through this exemplar scheme, a new future for housing development in North Somerset.
- Although planning has been obtained, it is recognised that a development partner may wish to make changes. A degree of change would be acceptable provided that the overall objectives and outcomes are maintained.

- As well as its construction and sustainability aims, the council requires the scheme to be a commercial success and create a financial return to support other projects.
 - The LA-AC grant requires that a building lease be used in the event of the development being taken forward by a third party. This could be discussed with Homes England if viewed as likely to create a significant issue.
 - The terms and conditions of Homes England and Land Release Funding timelines agreed with Homes England under the Grant Funding Agreement (GFA) must be met, in particular the use of panellised MMC and start on site by 1st April 2022. In order to meet this programme, the contractor would need to be appointed by early December.
- 3.10 Options for delivery include direct delivery by NSC, a Joint Venture partnership, or direct disposal to the market. The advantages and risks of each of these approaches are set out in Appendix A.
- 3.11 Officers recommend that the option for a Joint Venture is pursued as the route to delivery, as this allows the council to retain a good degree of control over quality, sustainability and pace without full exposure to the risks of delivering the site itself (including capital exposure) or the need to establish a separate Development Company.
- 3.12 Soft market testing as to the potential appetite for a Joint Venture was carried out on behalf of the council by Jones Lang Lasalle (JLL) in September 2020, targeting SME developers likely to be able to deliver the required quality of product. Ten responses were received, including two unsolicited responses. These confirmed credible market led interest willing to adhere to the criteria set out. JLL report that they have received repeated and persistent enquiries about progress from respondents since the conclusion of the exercise.
- 3.13 There are different forms of Joint Venture, for example, contractual or corporate. It is envisaged that this JV would take a contractual form. Specialist legal and property advice has been secured on this matter and a final recommendation will be made in the Procurement Plan for this project.

Procurement of a Joint Venture partner

- 3.14 Jones Lang Lasalle (JLL) have been appointed to advise and support the council on the form of Joint Venture and the procurement of a development partner.
- 3.15 Given the value of the Joint Venture, the procurement process will need to be open to all potential bidders and will be run through the Find a Tender Service (FTS – the successor to OJEU). JLL will work with NSC to shape the process and marketing to target those developers most likely to be able to deliver the council's objectives as set out in paragraphs 3.4, 3.6 and 3.9 above.
- 3.16 It is anticipated the partner procurement will take the form of a two stage competitive tender, commencing with an Expression of Interest stage prior to Invitation to Tender, with shortlisting / elimination of unsuitable bidders between the stages. This will be finalised in discussion with JLL and legal advisors, and the process confirmed in the Procurement Plan. The Procurement Plan will also confirm the final evaluation criteria and weightings.

3.17 The expected timeline for the procurement is as follows:

Date	Action/milestone
13 th July	Full Council approval of Commissioning Plan
By 30 th July	Executive Member approval of Procurement Plan
Aug - Nov	Procurement process for Joint Venture partner
8 th December	Approval of preferred partner and delegation of authority to enter into Joint Venture contract (Executive)
Jan – Mar 2022	Conclusion of legal agreements and developer mobilisation
1 st April 2022	Start on site
1 st March 2024	Practical completion

4. Consultation

4.1 Public consultation on the proposals for this site has taken place over a number of years:

- i. Planning policy consultations on the Sites and Allocations Plan (SAP), which led to the allocation of the site for residential development in the plan adopted in April 2018.
- ii. Two rounds of public consultation run by the Development Team in 2020 prior to the submission of a planning application. The first consultation was through a public event; the second, due to Covid, was carried out on line.
- iii. Statutory planning consultations in determining the application.
- iv. Public consultation on appropriation of the land, i.e. the change of use in the purpose for which the land is held.

4.2 Reports summarising the consultation responses and the council's response to the points raised are available as follows:

- Sites and Allocations Plan: <https://www.n-somerset.gov.uk/my-services/planning-building-control/planning-policy/sites-policies/sites-policies-plan-part-2-site-allocations-plan-examination>
- Development Team consultation and planning application consultations: <https://planning.n-somerset.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QFKEOMLPHBT00>
- Appropriation: Executive Member decision: <https://www.n-somerset.gov.uk/council-democracy/councillors-committees/decisions-meetings/executive-member-decisions/2021-executive-member-decisions/june-2021-executive-member-decisions>

4.3 Market consultation and engagement has taken place through the soft market testing by JLL described above.

- 4.4 Members have expressed a desire to be more closely involved in the procurement of development partners. It is proposed that an informal working group of relevant Executive and local members be established to be consulted on the design of the procurement and the relative priorities in the selection of a partner. The membership and terms of this group will be agreed with the Executive Member for Placemaking.

5. Financial implications

Costs and funding sources

- 5.1 The design and development of the proposals for this site have been funded through £557,510 Local Authority Accelerated Construction grant received from Homes England.
- 5.2 A further £55,000 has been awarded by Homes England to fund the work to procure a development partner and enter into a Joint Venture. It is possible that additional funding may be needed to meet the full costs of procurement and legal negotiations. An allocation of up to £50,000 has been made from the Driving Growth reserve to cover this, if required.
- 5.3 Capital works at the site will be supported by £481,028 grant from the One Public Estate Land Release Fund. This is proposed to be passed to the developer through the Joint Venture and must be used to deliver capital enabling works, specifically site clearance, groundworks and access.
- 5.4 The construction costs of the development are initially estimated at £12m. Other costs such as planning and finance are estimated in the order of £2.7m. These costs would be met by the development partner, other than for the £481,028 Land Release Fund detailed above.
- 5.5 The council will incur ongoing costs to monitor the delivery of the scheme as it is brought forward. This will include staff time in contract management, as well as specialist support to check building quality etc. The specifications for the procurement of a developer will include that the partner must make reasonable provision to pay NSC for its costs in this regard.
- 5.6 The terms and conditions of the Homes England and One Public Estate funding sources are detailed in section 3 above.

Receipts

- 5.7 The estimated financial return from this site is expected to be in the realm of £2 – 3m, but the procurement process will seek the maximum receipt within the quality parameters required. The receipt could also be lower, subject to the market's response and the final costs of development. The receipt may be a single payment, or phased over the build period.
- 5.8 The Gross Development Value of this site (i.e. the total income from the house sales) has been estimated at £19m. This needs to cover the costs set out in paragraph 5.4 above, as well as the land value and development profit.
- 5.9 In the event that the council secures a financial return of more than £2.9m after covering its costs, it would be required to repay the LA-AC grant.

Authorisation requirements

- 5.10 The value of this contract exceeds £10m. The following approvals are required in taking forward the proposals:
- Approval of Commissioning Plan: Full Council.
 - Approval of Procurement Plan: Executive Member, advised by Director and Head of Strategic Procurement.
 - Award of Contract: Executive.
- 5.11 The financial implications included within this report are estimated and at this stage in the process are not fully known as they will be determined by the type of joint venture entered into by the council. The full financial implications and details on the financial governance will be included for approval within the executive report for award of contract, expected in December.
- 5.12 The award of contract decision will also include the formal approval to dispose of the site to transfer the Land Release Fund grant to the developer.

6. Legal powers and implications

- 6.1 The Local Government Act 1972 gives the Council the power to dispose of land held by it in any manner it wishes provided that the council achieves the best consideration that can reasonably be obtained.
- 6.2 The procurement process will be compliant with the Concessions Contracts Regulations 2016. The council has appointed external legal advisors to advise on the procurement process and to prepare the relevant contract documentation.
- 6.3 The procurement process will be compliant with the Public Services (Social Value Act) 2012 by ensuring it seeks additional social value during the tender process.
- 6.4 The council must ensure that the disposal and delivery of the site is in line with the contractual terms and conditions of the Homes England and One Public Estate funding of the scheme.

7. Climate change and environmental implications

- 7.1 This development seeks to be an exemplar of environmental sustainability. Features of the scheme include:
- All homes to be Passivhaus certified. This represents a very high standard of sustainability which also helps ensure good build quality and low energy bills.
 - The scheme will not include any provision of domestic gas.
 - A landscape led approach, with a high proportion of green space.
 - Electrical vehicle charging for all homes, as well as contributions to fund an electric vehicle car sharing club.
 - Planning policies require a Habitat Regulations Assessment demonstrating ecological mitigations and enhancements.

- 7.2 The procurement process will emphasise the importance of this sustainability ethos and target development partners who will be willing and able to deliver to the required standards. This should also emphasise the need for the development partner to target occupiers who are interested in a sustainable lifestyle.

8. Risk Management

- 8.1 Key risks and mitigations are as identified in the table below:

Risk	Mitigation
The procurement timeframes (outlined above) are delayed or unachievable, which impacts the ability to meet grant funding requirements, including start on site date.	Specialist legal and property advice on designing the process to ensure compliance with timescales. Close monitoring of progress. Any potential for delay will need to be communicated to funders at the earliest possible stage.
Insufficient interest from developers, or lack of interest from suitable companies who are willing/able to meet the criteria set by NSC and funding partners.	Soft market testing has identified strong demand. Specialist consultants are advising on structures, procurement and marketing to optimise interest from suitable partners.
Financial return is less than expected.	Specialist consultants advising on design of process and requirements to maximise interest and return within the criteria set by NSC.
The appointed partner defaults on the scheme or fails to deliver some of the specified requirements.	Legal and property advice to ensure a robust Joint Venture arrangement that protects NSC's interests and requirements. JV agreement to ensure strong governance of the partnership/contract and to include funding for compliance monitoring.
Staff resource is inadequate to support process.	Consultants supporting process. Monitoring/management of staff time and priorities.

9. Equality implications

Have you undertaken an Equalities Impact Assessment? Yes, see appendix B

- 9.1 The decision on a Commissioning Plan, in that it relates to a procurement process, has minimal Equalities implications. However, for completeness, an Equalities Impact Assessment for the wider impact of developing the site follows at Appendix B.
- 9.2 The procurement of a development partner will include a contractual requirement for the partner to ensure compliance with Equalities legislation. Criteria for the procurement will seek to protect the aspects of the development which are of benefit

in relation to equalities impacts, for example the provision of additional adaptable and accessible homes.

- 9.3 The Planning Consent for this site complies with the requirements of the Local Plan and other planning policies, which have been subject to EIA assessments.

10. Corporate implications

- 10.1 This proposal supports the Corporate Plan objective of creating a Thriving and Sustainable Place, in particular “the delivery of a broad range of new homes to meet our growing need, with an emphasis on quality and affordability”.
- 10.2 The resourcing of the procurement of a development partner and delivery of development will be led by the Development Team, with support from procurement and legal colleagues.
- 10.3 The scheme is estimated to generate a financial return of £2 – 3m (but could be either higher or lower) which will support delivery of the council’s wider capital programme and priorities.

11. Options considered

- 11.1 Options for the delivery of this site are considered in section 3 above and are further detailed in Appendix A.
- 11.2 The option not to develop/deliver the proposed scheme has been discounted for the following reasons:
- The proposal is for development on an allocated site and has secured planning consent. Failure to deliver would increase the gap in the council’s housing supply, which would need to be met elsewhere. The opportunity to deliver high quality, sustainable housing that meets local needs would be lost.
 - Significant revenue resources have been expended in the preparation of the scheme. Failure to deliver would lead to a requirement to repay grant funding received to date. This would damage the council’s reputation for delivery and potentially undermine our ability to secure further funding in the future.
 - The council would lose a potential financial income, which is needed to support other capital projects and priorities.

Author:

Jenny Ford, Head of Development

Appendices:

Appendix A: Options for models of delivery

Background papers:

Council report on Asset, Accommodation and Development Strategies, Feb 2021:
<https://apps.n-somerset.gov.uk/Meetings/ByCommittee/15/2020/100>

Uplands planning application: <https://planning.n-somerset.gov.uk/online-applications/applicationDetails.do?keyVal=QFKEOMLPHBT00&activeTab=summary>

Options for models of delivery

Option	Description	Advantages	Risks
Direct delivery by NSC	<p>NSC would take on the developer lead role.</p> <p>The council would contract out the construction to a suitably qualified construction company and instruct relevant professionals to assist in the drive for quality, specification and marketing.</p> <p>A development company or similar would have to be put in place to hold and dispose of the resulting homes.</p>	<ul style="list-style-type: none"> • Full control over the quality of the development and homes built. • NSC would receive the full land value and profits from the development. 	<ul style="list-style-type: none"> • NSC would need to provide the capital for the development, in the realm of £10 – 15m, which would tie up capital funding that might be needed for other schemes. • Staffing resources required to manage the delivery of this scheme and disposal of homes would be significant and would detract from work on other priorities. • Current staff do not have significant experience in direct delivery of housing schemes. • The council would need to establish a mechanism for the holding and disposal of properties. • The full financial, delivery and reputational risks would sit with the council.
Joint Venture	<p>The council would seek a developer partner who would drive forward the development, including the appointment of contractors and sourcing finance. The NSC would receive a land receipt and would seek to share the resulting development profit, after accounting for the partner's costs.</p>	<ul style="list-style-type: none"> • NSC would retain a good degree of control over quality of the development and homes, whilst allowing some flexibility in the design and development in response to the market. 	<ul style="list-style-type: none"> • NSC must accept some of the risks of the development without being in complete control of the project. • Financial return less than if choosing direct delivery.

		<ul style="list-style-type: none"> • The developer would provide the capital for the development and would manage delivery. • Less resource-intensive in terms of NSC staff time. • No requirement to set up a development company. • NSC might be entitled to a share of the development profit, as well as the agreed capital sum for the land. 	
Disposal to market	NSC would sell the land as a commercial transaction, with limited conditions as to the details or timing of delivery.	<ul style="list-style-type: none"> • Would maximise the likely land receipt and the timing of the receipt would probably be earlier than under other options. • A commercial transaction would remove any ongoing financial risks and reduce the reputational risks, once initial sale was completed. 	<ul style="list-style-type: none"> • Very limited control over timescales or product: by law, commercial transactions cannot include detailed specifications of what needs to be delivered. • A high risk of breach of funding conditions. • No opportunity for a share of developer profit.

1. Proposal

Directorate: Place

Service area: Development Team

Lead Officer: Jenny Ford, Head of Development

Links to a budget reduction proposal: No

Date of assessment: 21.06.2021

Description of the proposal:

Proposed development of 52 homes on land owned by NSC to the south of The Uplands, Nailsea.

2. Summary of changes:

- Delivery of 52 high-quality, Passivhaus certified homes.
- 30% of homes to be affordable.
- 30% of all homes to meet M4(2) building regulations as “accessible and adaptable buildings”. 53% of affordable homes to meet M4(3) standards which means they are fully accessible for wheelchair users.
- Landscaping of site including new footpaths.
- Loss of informal open space as a result of development.
- Impact of development on surrounding areas, e.g. loss of amenity, increased traffic.

3. Customer equality impact summary

Will the proposal have a disproportionate impact on any of these groups?

Insert X into one box per row, for impact level and type.

H = High, M = Medium, L = Low, N = None

+ = Positive, = = Neutral, - = Negative

Impact level

Impact type

	H	M	L	N	+	=	-
Disabled people		X			Yes		Yes
People from different ethnic groups			X				Yes
Men or women (including those who are pregnant or on maternity leave)			X			Yes	
Lesbian, gay or bisexual people			X				Yes
People on a low income	X				Yes		
People in particular age groups		X			Yes		Yes
People in particular faith groups				X			

	H	M	L	N	+	=	-
People who are married or in a civil partnership				X			
Transgender people			X				
Other specific impacts, for example: carers, parents, impact on health and wellbeing, Armed Forces Community etc. Please specify: Parents Carers Young people Health & wellbeing Community Homelessness/rough sleepers					Yes		Yes

4. Explanation of customer impact

a) Negative impacts:

Change and reduction in open space could have negative impacts for those who benefit physically and mentally from the use of such space. Particular impacts identified are:

- i. Disabilities: open space has positive benefits for many people with disabilities, in particular those suffering from mental health issues. Development proposals could also add to mental health stress and anxiety for some people.
- ii. Several of the groups identified as suffering potential negative effects above are because those people in those groups are known to have a higher prevalence of mental health issues than in other population groups. As with (i), this means that there could be negative impacts as a result of the development. The government's JSNA mental health kit identifies the following groups as at high risk of mental health problems (see <https://www.gov.uk/government/publications/better-mental-health-jsna-toolkit/3-understanding-people>):
 - o Black and minority ethnic groups (BAME).
 - o People living with physical disabilities.
 - o People living with learning difficulties.
 - o People with alcohol and/or drug dependence.
 - o Prison population, offenders and victims of crime.
 - o People who are lesbian, gay, bisexual or transgender.
 - o Carers.
 - o People living with sensory impairments.
 - o Homeless people.
 - o Refugees, asylum seekers and stateless persons.
- iii. People in particular age groups: the population of the surrounding area has a demographic with a relatively high proportion of older people. Consultation responses suggest that many enjoy the use of the open space and the peace and quiet it offers. These groups would experience a negative impact through the loss of space.

- iv. Those who are pregnant, on maternity leave, parents, carers, and young people are also thought to be frequent users of the space who may experience a negative impact if it is lost.
- v. In general, the open space offers health and wellbeing benefits and offers opportunity for positive community activity.

b) Positive impacts

The proposed change of use to development and the associated development proposals offer a number of benefits of relevance:

- The provision of 30% affordable housing, which will be available to those on a low income as well as those with specific needs including homelessness and rough sleepers.
- 30% of all homes will meet M4(2) building regulations as “Accessible and adaptable buildings”. This exceeds the planning policy requirement of 17%. 53% of affordable homes will meet M4(3) standards which means they are fully suitable for wheelchair users. This exceeds the planning policy requirement of 10%. The availability of these homes offers significant benefits for people with disabilities and for older people who want to be able to move into an adaptable property.
- New and improved pedestrian routes through the site will be suitable for people with disabilities and other mobility issues, increasing their access to the site and the adjacent bridleway.
- A number of the homes have been designed to be suitable for ‘downsizing’, targeted at older people who may wish to stay in the area but who lack a suitable range of choice of properties.
- The housing mix is in line with local need as specified in the Local Plan. This includes a higher than normal proportion of smaller, two-bedroom homes which may be of benefit to younger people seeking to access the housing market.
- Other aspects of the proposals offer benefits for health & wellbeing and community:
 - Homes are proposed to meet Passivhaus standards which will lead to low energy bills, which are of benefit to those on low incomes. Good insulation of homes also brings health benefits.
 - Homes will exceed National Described Space Standards by a minimum of 10%.
 - The proposal is “landscape led” with a relatively high proportion of green space including communal gardens for some properties.

5. Staff equality impact summary

Are there any staffing implications for this proposal? No

Explanation of staff impact: None expected.

6. Consolidation savings

Please complete for medium or high impact areas

Does this budget saving include many service areas/savings/projects? No

If so, please identify the areas included in this proposal that could potentially have a medium or high impact for equality groups.

Service area	Value of saving
N/a	
	Total

7. Review and sign-off

Service Manager review

Insert any service manager comments here:

N/a

Is a further detailed equality impact assessment needed? Yes

If 'yes', when will the further assessment be completed?

To inform decision on award of contract and disposal of land, expected December 2021.

Service Manager: Alex Hearn, Assistant Director, Placemaking & Growth

Date: 22/06/2021