

South Lakeland District Council
Delegated Executive Decision
Date of Proposed Decision: 10 September 2020
Sale of Council-owned land to
East of Manorside, Flookburgh

Portfolio:	Cllr Jonathan Brook - Housing and Innovation Portfolio Holder
Decision Maker:	Simon Rowley - Director of Customer and Commercial Services
Report Author:	Sion Thomas – Operational Lead Delivery and Commercial Service
Ward:	Cartmel
Forward Plan:	Not applicable

1.0 Expected Outcome

- 1.1 Agreement of the principle of and detailed terms for the sale of Council owned land to the east of Manorside, Flookburgh in order to facilitate the development of an adjacent allocated residential development site.

2.0 Proposed Decision

- 2.1 It is recommended that the Director of Customer and Commercial Services:-**

(1) Authorises the sale of Council owned land to the east of Manorside, Flookburgh, for the sum as per the valuation by Lambert Smith Hampton and as noted in the Part II Appendix 1 to this report, to facilitate residential development of an adjacent area of land which has been allocated for housing in the South Lakeland Local Plan Land Allocations DPD.

(2) Delegates the negotiation and documentation of the terms of the sale to the Operational Lead for Delivery and Commercial Services in conjunction with the Lead Specialist for Legal, Governance and Democracy.

3.0 Background and Proposals

- 3.1 Following the housing stock transfer of 2012, the Council retains freehold ownership of a small area of housing amenity land at Manorside, Flookburgh.

- 3.2 Land to the immediate east of the Council's land has been allocated for residential development within the Council's 2013 Land Allocations Development Plan Document ('LADPD'). This allocation has been assessed as capable of accommodating 'around 30 dwellings' and extends to 1.11 hectares (2.74 acres) (Site allocation reference LA1.3).

- 3.3 The key to the delivery of this planning allocation will be the securing of appropriate vehicular access. The allocated site can potentially be accessed from Manorside or directly from Market Street (B5277).

- 3.4 A prospective developer is in the process of finalising an 'option to purchase' with the owner of the allocated housing site. The developer has also approached the Council with a request to purchase the subject land under the terms of an 'option to purchase' at Manorside in order to facilitate vehicular access to the development site.
- 3.5 The Council's property agent (Lambert Smith Hampton – 'LSH') has been tasked with leading negotiations with the developer. LSH have attempted to reach agreement in accordance with the principle of 'ransom value', in the context of the extent of alternative access options to the development site. The value of the land is as noted within the Part II Appendix 1 to this report. *Appendix 1 is subject to the provisions of Section 100B(2) of the Local Government Act 1972, and excluded from inspection by members of the public as the Appendix contains information as described in Schedule 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006, as follows – Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Paragraph 3)*
- 3.6 If access to the development site could only have been achieved over the Council's land, negotiations for the sale / right of access over the Council's land would have started at 50% of the increase in value of the development site (i.e. half of the difference between residential development land value and existing use value). This arises from the basis that value could not have been unlocked without the agreement of both parties (allocated site landowner and the Council as 'ransom' landowner), so any benefit should be shared equally. This approach accords with relevant case law and the 'best consideration' requirements of s123 of the Local Government Act 1972.
- 3.7 Pre-application advice from the Council's Development Management Team confirmed that the allocated site could 'in theory' be accessed directly from Market Street (B5277), or from Manorside, subject to county highways approval.
- 3.8 This advice led to the negotiation approach moving to assessment of 50% of the estimated construction cost saving of utilising the proposed access route from Manorside, versus the alternative option of access from Market Street.
- 3.9 Following a robust evaluation of the respective costs of each option by LSH it was provisionally agreed that the estimated cost differential between the two access options was that as noted within Part II Appendix 1 with Manorside being the cheaper option of the two.
- 3.10 The developer has subsequently agreed to the valuation with the Council's land therefore having a capital value of 50% of this figure LSH, as the Council's RICS Registered Valuer, have confirmed that in their view this capital value represents 'best consideration' in accordance with s123 of the Local Government Act 1972.
- 3.11 The developer is looking to enter into an 'option agreement' to purchase this land from the Council, which will run for a maximum period of three years. In theory this will provide the developer with a sufficient period of time to complete due diligence on the development site and secure planning consent. This is a mechanism widely used by developers in such situations to secure an exclusive right to purchase land whilst minimising risk and removing the need for significant upfront capital outlay.

- 3.12 Provisional heads of terms that have been agreed between LSH (on behalf of the Council). Agreed terms include the payment by the developer of an upfront 'option agreement fee' of £1,000.
- 3.13 Established local authority policy on the sale of such small ad-hoc areas of land is generally that:
- each case should be treated on its own merits; and
 - a sale would usually be approved where:
 - the land is not required for service provision
 - the land has no conceivable development potential (be it either existing or future) either in isolation or in conjunction with adjoining Council retained land
 - disposal will not result in an adverse effect on retained Council property
- 3.14 In recommending the decision on whether to dispose of this land none of the above three reasons to resist the decision to dispose are present.
- 3.15 Part of the subject area of land, whilst currently in housing amenity use, is temporarily let to a local resident on a garden tenancy basis. This arrangement can be terminated upon 3 months' notice, in the event that the proposed sale of the land proceeds.

4.0 Consultation

- 4.1 The Council's Solicitor – Specialist (Legal, Governance and Democratic Services) has been involved in discussions with LSH during the negotiation process and is satisfied that a time-limited 'option agreement' with subsequent potential purchase represents an appropriate conveyancing solution in this instance.
- 4.2 As part of the consultation, the portfolio holder for finance and resources, and portfolio holder for Housing and Innovation has been consulted.

5.0 Alternative Options

- 5.1 To sell the land upfront without an 'option agreement'. The adjoining allocated development site does not yet have planning consent and the developer has not yet completed due diligence site enquiries and investigations. Consequently the upfront sale of the subject land by the Council would increase risk to an unacceptable level from the perspective of the developer. The developer would also be reluctant to expend significant upfront capital outlay.
- 5.2 To offer the land for sale on the 'open market.' This option would not be appropriate in this instance as the proposed developer purchaser has control of the adjoining allocated development site. The subject land would have little value in existing use without the potential to serve as a vehicular access for the adjoining development site.

6.0 Links to Council Priorities

- 6.1 Council Plan priorities:
- Housing and Communities:
 - Creating balanced communities by:
 - delivering affordable homes to meet need (through the facilitation of the adjoining allocated development site) with:
 - new affordable homes to rent (Adopted local policy will require ten affordable homes on the adjoining site, including five affordable rent units)
 - a range of housing to attract and retain young people

6.2 Council Performance Indicators:

- The number of completed permanent dwellings each quarter within South Lakeland
- The number of new affordable homes for rent provided this quarter

7.0 Implications

Financial, Resources and Procurement

7.1 The Council will receive an upfront 'option agreement fee' of £1,000. There will then be a deferred capital receipt as noted within Part II Appendix 1 less the £1,000 already paid for the option agreement in the event that the option is 'exercised' within the proposed three year 'option period.'

7.2 The purchase price has been negotiated on a Market Value basis by LSH.

Human Resources

7.3 Not applicable.

Legal

7.4 Sale by Private Treaty, subject to an 'option agreement' with a three year exclusivity period for the proposed purchaser.

7.5 Purchase price negotiated on Market Value basis in order to demonstrate best consideration (under S.123 of the Local Government Act 1972, as amended).

Health, Social, Economic and Environmental

7.6 Have you completed a Health, Social, Economic and Environmental Impact Assessment? No

7.7 If you have not completed an Impact Assessment, please explain your reasons:

- The impact of the effect on the environment will be assessed in detail as part of the Development Control process relating to a detailed planning application which will be required in order to develop the adjoining allocated housing site.
- It is not considered necessary to give further consideration to this aspect as part of the subject decision, which is specifically concerned with the principle and terms of disposing of land.

Equality and Diversity

7.8 Have you completed an Equality Impact Analysis? No

7.9 If you have not completed an Impact Assessment, please explain your reasons: It is not necessary as no change to the use of the land is proposed.

7.10 Summary of equality and diversity impacts: Not applicable.

Risk

Risk	Consequence	Controls required
The proposed purchaser could choose not to exercise the 'option agreement' and fail to complete the purchase of the subject land.	The Council would receive an initial 'option fee' of £1,000. The 'option agreement' would lapse after three years and the purchase 'balance' would not be received by the Council. The land would	Under this scenario ownership of the land would ultimately be retained by the Council. It is probable that the land will subsequently be sold to the party who eventually

Risk	Consequence	Controls required
	effectively be tied up for the duration of the option agreement, which means the Council could not deal with the land or sell the land to another party during the three year option period.	develops the adjoining development site. The proposed purchaser will fund all legal fees incurred by the Council, whether or not the land is subsequently sold.

Contact Officers

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Michael Wallwork – Senior Estates Surveyor / Valuer / Planning Viability Consultant, Lambert Smith Hampton, Email: mmwallwork@lsh.co.uk

Background Documents Available

None

Appendices Attached to Report

Appendix Number	Detail
1	Part II – Valuation Report

Tracking Information

Signed off by	Date sent
Legal Services	05.06.20
Section 151 Officer	05.06.20
Monitoring Officer	05.06.20
SMT	TBC

Circulated to	Date sent
Director	05.06.20
Human Resources Manager	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	05.06.20
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A

Note – Report authors must consult the relevant Portfolio Holder, members of the Senior Management Team, the Monitoring Officer, and any other interested parties before a decision can be taken. If any objections are received, they must be reported at the meeting before the decision is taken.

Signed by:-	Title:-