

Executive

9th February 2017

Report of the Corporate Director of Health, Housing and Adult Social Care from the portfolio of the Executive Member for Adult Social Care and Health and the Corporate Director Economy and Place from the portfolio of the Executive Member for Finance & Performance.

Sale of Land at Fordlands Road as Part of the Older Persons' Accommodation Programme

This report deals with the sale of the site of the former older persons' home on Fordlands Road, Fulford to a purchaser who proposes to develop a residential and nursing care home on the site as part of the Older Persons' Accommodation Programme.

Recommendations

1. The Executive are asked to agree to accept the offer for the purchase of the freehold ownership of the Fordlands Road site by Octopus Healthcare who propose to develop a new residential and nursing care home (subject to obtaining planning permission and any other necessary statutory consents on terms acceptable to them) as part of the Older Persons' Accommodation Programme.

Reason: To receive a capital receipt for use by the Older Persons' Accommodation Programme and with the intention to also deliver much needed new residential and nursing care accommodation for older people, including those with dementia and other complex care needs.

Background

2. Executive agreed on 30th July 2015 to "encourage the development of additional residential care capacity in York... to meet the Council's needs".
3. The site of the former Fordlands Road Older Persons' Home is 0.37 hectares (0.91 acres), as shown on the attached plan at **Annex 1**.
4. The Fordlands site became available in 2012 when the Older Persons' Home closed (Cabinet, 10th January 2012). The Older Persons' Accommodation Programme (then called the EPH modernisation

programme) had originally planned to develop the site as the location for a new care home (Cabinet 15th May 2012). However, this plan was abandoned in 2013 (Cabinet, 4th June 2013) in preference for the development of council-funded care homes at Burnholme and Lowfield (each subsequently abandoned in 2015; Cabinet, 3rd March 2015).

5. The site has flood risk and there is a main-drain which runs across the south eastern corner of the site.
6. The site has remained empty since 2012 and the Council spends approximately £25,000 per year on maintenance and other costs.

The Offer

7. We have received a formal written offer from Octopus Healthcare for the purchase of the freehold of the Fordlands Older Persons' Home site. Octopus Healthcare wish (subject to obtaining planning permission and any other necessary statutory consents such as gas, electricity, water and foul sewer connections, on terms acceptable to them) to build a 62 bed residential and nursing home on the site, charging mid-market rates and providing accommodation with care for older people including those with dementia.
8. This proposed use of the site would be welcomed and gives life to the Executive decision of 30th July 2015 to “encourage the development of additional residential care capacity in York... to meet the Council’s needs”. This proposed use has the support of the Director of Health, Housing and Adult Social Care as delivering another, much needed, good quality care home (including dementia care) in a part of the city which has limited supply.
9. As part of the sanction from Executive (30th July 2015) to proceed with the Older Persons' Accommodation Programme and, in particular, to “encourage the development of additional residential care capacity in York”, staff have met with a range of residential care providers, developers and funders to discuss the Programme and share with them details of sites in the ownership of the local authority in order to encourage the provision of additional residential care capacity for the city. The offer for the Fordlands site has emerged from one such meeting, with Octopus Healthcare, held on 19th July 2016.

10. When Octopus Healthcare expressed initial interest in the site it was agreed that they would be given reasonable access to the site in order to assess its suitability for their needs and in order to ensure that any offer received was based on a good assessment of the site opportunities and constraints.
11. The detail and evaluation of the offer is contained in a confidential annex to this report.

Options

12. Three options are available
 - a) Do nothing. This is not proposed as the building has already been standing empty for some time, incurring costs.
 - b) Market as an open market sale opportunity. This option is not proposed as the current offer already delivers a capital receipt substantially in excess of the external valuation obtained in December 2016 and it is therefore considered unlikely that an open market sale for any use would deliver a higher capital receipt. This route would not guarantee the development of a care home on the site.
 - c) Accept the offer from Octopus Healthcare. This is the preferred option as it will provide a substantial capital receipt to the Council in excess of the valuation obtained in December 2016. In addition it is also expected to deliver an additional key benefit to the authority and city, namely additional care home capacity assuming the Octopus Healthcare plans for the site reach fruition (though construction and operation of a care home on the site is not a condition of the proposed disposal).
13. These options have been the subject of discussion with the relevant Portfolio Holders and they support the recommendation to accept the offer from Octopus Healthcare. The offer has also been discussed with the local Ward Member and while they express concern that the new building may generate concern from nearby residents during the planning process they welcome the continued use of the site as a care home rather than any other potential uses.

IMPLICATIONS

Financial

14. The Older Persons' Accommodation Programme anticipates capital receipts from the sale of redundant care home sites including the Fordlands site. The receipt will make a considerable contribution to the £4m of receipts required to fund current plans in the Programme.

Property

15. The property has remained empty for six years while alternative uses and re-development options have been sought. The flood risk and main-drain issues which place limitations on the use of the site have prevented any firm proposals coming forward until this proposal from Octopus Healthcare was received.
16. The site has been recently valued by external advisers and the offer from Octopus Healthcare presents good value for money.

Legal

17. Section 123 of the Local Government Act 1972 authorises the Council to dispose of non-housing land without the consent of the Secretary of State (for Communities and Local Government) provided that the best consideration reasonably obtainable is being achieved. The valuation advice obtained by the Council confirms that the price offered by Octopus Healthcare (conditional upon them being able to obtain planning permission on terms acceptable to them) is in excess of the most recent market valuation of the site.
18. The original offer received from Octopus Healthcare stated they intend to build a new care home on the site but did not restrict use of the site to only such a purpose. Octopus Healthcare have since indicated that they would be prepared to give a covenant to the Council that they would not use the site for any purpose other than a use falling within Class C2 of the Town and Country Planning Use Classes Order 1987 (which encompasses residential institutions including residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres) unless and until a new care home has been constructed on the site. At that point they would want the covenant to be released, after which they could in theory use/redevelop the site for some other purpose instead. However, If Octopus expend considerable time and expense in obtaining planning permission, buying the site and then building a care home, it is unlikely that they would not operate the

facility a care home but the Council would have no legal power to require/force them to build or operate a care home on the site. The Council should also be aware that such a covenant/restriction may be released or modified by the Upper Tribunal (part of the courts and tribunals system) under section 84 of the Law of Property Act 1925 if the owner of the land can persuade the U.T. that the restriction prevents a reasonable use of the land or that a release or modification of the covenant will not materially harm any legitimate interests of the beneficiary of the covenant.

19. If the Council wants to ensure that the buyer of the site has a legal obligation to the Council to build a new care home on this site and to operate it for a specified minimum initial period then we would need to select and appoint a developer/operator after following a procurement process that complies with the Public Contract Regulations. The imposition of such a positive contractual obligation on the buyer might result in a lower purchase price being obtained.

Human Resources

20. There are no human resources implications.

Equalities

21. An Equality Impact Assessment for the Programme and its parts is in place and is regularly updated. It particularly highlighted the positive implications of the Project for the health, security and wellbeing of all residents. This has and will continue to be updated as the project progresses.
22. An Older Persons' Accommodation Project Board and a Reference Group have been established to act as a sounding board for the development of plans as the implementation of the Project unfolds. The project team also continues to use established channels to communicate with, and gather the views of, members of the local community, partners, stakeholders and staff.

RISKS

23. The key risks of this proposal are:

- a) The robustness of the offer both in terms of flood risk and Section 106 payments has been questioned and challenged and the offer is confirmed by Octopus Healthcare as stable and net of flood and Section 106 costs.
- b) That a care home is not built on the site. The purchaser confirms that are happy to see a clause added to the sale document to include a covenant against the land that would restrict the property to C2 (care home) use classification until they have been granted formal Practical Completion on the building. Upon reaching this milestone the covenant would fall away.
- c) The potential challenge to an off-market sale is a risk. The acceptance of this offer is permissible under law as there are clear strategic and financial benefits of the proposed offer. Further, Executive has given sanction to seek additional residential care home development and by accepting this offer we give life to that sanction.

Contact Details

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Wards Affected: Fulford & Heslington Ward			
For further information please contact the authors of the report			

Background Papers

19 July 2011	Report to Cabinet giving formal approval for the commencement of the Programme.
1 Nov 2011	Report to Cabinet giving the results of consultation and proposed a programme of closures, supported by a further consultation period on proposed closures of Oliver House and Fordlands.
10 Jan 2012	Report to Cabinet agreeing the closure of Oliver House and Fordlands Road care homes and the progressing of the business case to build a new care home on the Fordlands site and the examination of the option to build a care village at Lowfield.
15 May 2012	Report to Cabinet noting the successful homes closure and transition for residents and authorising procurement of partners to develop a new care home at Fordlands and a care village at Lowfield.
4 June 2013	Report to Executive seeking agreement on modernisation programme. The Council to fund the building of the two new care homes and so retain ultimate ownership of the buildings and the land with the care homes designed, built, operated and maintained by an external provider. This report highlighted limitations and constraints associated with developing the Fordlands site and it was agreed that new council-funded care home development would instead focus upon the Burnholme and Lowfield sites.
3 Mar 2015	Report to Executive seeking agreement to abandon the previous procurement plans and approval of revised proposals based on creating new Extra Care Housing and reforming the Council's existing ECH stock; building a new care home on the Burnholme site as part of wider health and community facilities; and working more closely with current care providers to deliver more specialist dementia accommodation across the city.
30 July 2015	Report to Executive seeking approval of the Business Care for the Older Persons' Accommodation Programme and agreement to: <ul style="list-style-type: none"> a) fund 24/7 care at Auden House [Fishergate ward], Glen Lodge [Heworth ward] & Marjorie Waite Court [Clifton ward] Extra Care schemes; b) build a 27 home extension to the Glen Lodge Extra Care scheme; c) build a new Extra Care scheme at Oakhaven in Acomb [Holgate ward]; d) procure a new residential care facility as part of the wider Health & Wellbeing Campus at Burnholme [Heworth ward]; and e) encourage the development of additional residential care capacity in York including block-purchase of beds to meet the Council's needs.

Annexes

Annex 1 – The Site of the Former Older Persons' Home at Fordlands Road

Annex 2 – Evaluation of Offer - **Confidential**