

## **FARMSTEAD DRIVE, SPITALS CROSS, EDENBRIDGE -DEVELOPMENT**

Cabinet – 19 September 2023

**Report of:** Strategic Head of Property and Commercial

**Status:** For Decision

**Also considered by:**

- Finance & Investment Advisory Committee - 5 September 2023
- Council

**Key Decision:** Yes

**Executive Summary:**

In November 2021, Council approved the development of a scheme at Farmstead Drive in Edenbridge. Council provided approval to undertake further feasibility and design work, agreed the budget and appropriate delegations, subject to the scheme remaining viable and planning permission being obtained.

This report provides an update on the consultation undertaken with key stakeholders and members of the public and how this has been used to make improvements to the scheme design.

Since the Council decision, additional funding has been secured from the Brownfield Land Release Fund. However, as a result of recent global and market events, notably increases to construction and material costs, alongside the revised scheme design as a result of the public consultation, there has been an impact on the project's cost. Therefore, the initial budget required has increased, however, the scheme remains feasible and viable.

The report provides members with an update on these issues, proposed next steps and recommendations.

**This report supports the Key Aim of:** improvements to public realm and infrastructure, community facilities and meeting housing targets. The provision of new housing is a key priority and pressure for the District.

**Portfolio Holder:** Cllr Thornton, Leader of the Council, Cabinet Member for Improvement and Innovation

**Contact Officers:** Andrew Connors, Ext. 7018

**Recommendation to Finance and Investment Advisory Committee:**

- (a) The Finance and Investment Advisory Committee endorse the proposed recommendations to Cabinet and Council.

**Recommendation to Cabinet:**

- (a) Cabinet notes the impacts on the project budget outlined in this report, including; recent global events and economic pressures impacting regeneration and construction and changes to the scheme design, including the provision of fewer homes, additional parking, open space improvements and community facilities as a result of feedback from the public consultation;
- (b) Cabinet notes the scheme remains viable and recommends to Council the total project budget be increased by £2,741,785 to £10,351,405 and that the Capital Programme is accordingly amended;
- (c) Subject to approval of recommendation (b) by Council and planning approval being obtained, authority be delegated to the Strategic Head of Property and Commercial following consultation with the Chief Officer - Finance and Trading and the Head of Legal Services to enter into any necessary contracts to facilitate the development and construction of the proposed scheme in accordance with the Council's Contracts Procedure Rules and for the disposal of the residential and commercial units.
- (d) Cabinet approves the development sites as outlined red in the Plan (Appendix D) be appropriated for planning purposes in accordance with the section 122 of the Local Government Act 1972 (in reliance on section 227 of the Town and Country Planning Act 1990) consequentially facilitating the Council's powers under sections 203 to 206 of the Housing & Planning Act 2016 to override any outstanding interests;

**Recommendation to Council:**

Council approves the total project budget be increased by £2,741,785 to £10,351,405 in the Capital Programme to deliver this scheme which is to be funded as noted in the Financial Implications of this report.

**Reason for recommendation:** To provide much needed housing and also improved community facilities and open space in Edenbridge.

## Introduction and Background

### Development location

- 1 The development covers several parcels of land within the Spitals Cross Estate in Edenbridge. The main development site includes the current community hall (Fircroft Hall), a community shop (with ancillary flat above) and playground, together with associated open space and four other areas of poor quality open space in the Council's ownership outside of the main development site. The community hall is used as a social club and provides a resource for local residents on the estate.
- 2 Community facilities on the site are c.60 years old and are looking tired and dated. The buildings are reaching the end of their economic life and require substantial refurbishment/expenditure. The existing store and community hall are no longer fit-for-purpose and will require significant investment to ensure they meet current building regulations, are decarbonised and are environmentally sustainable. The Council is utilising this opportunity to provide a wider ranging community benefit redevelopment including replacement community hall and retail premises, as well as an enhanced play area, landscaping and car parking spaces to serve the wider estate. It will also make better use of the site by providing new housing, which would not only contribute to meeting local housing need/numbers but also cover the financing of the project.

### Council approvals to date

- 3 Several design options were considered for the site and the preferred scheme design option for Farmstead Drive was approved by Cabinet on 14 October 2021 and Council on 17 November 2021.
- 4 The development aims to provide:
  - energy efficient new homes including both flats and houses with private gardens;
  - re-provide the community hall to meet net-zero commitments resulting in an energy efficient and modern fit-for purpose new community hall;
  - re-provide the convenience store;
  - re-provide the play area and provide improved amenity space;
  - enhance the urban fabric; and
  - providing parking for the new development (23 spaces) as well as four new areas of parking for the wider estate (41 spaces).
- 5 At the November 2021 meeting, Council provided approval to

undertake further feasibility and design work, agreed the budget and appropriate delegations, subject to the scheme remaining viable and planning permission being obtained.

### Progress to date

- 6 Local resident and key stakeholder consultation events and public exhibitions were held on the scheme's design development in April and December 2022.
- 7 The design was consequently modified to reflect site constraints and comments received from the Environment Agency and other statutory consultees. It was also tweaked to take into account various comments made by local residents, the FTRA and local councilors. In particular, the scheme now also includes additional parking provision (an additional 41 parking bays) for Spital Cross residents. The proposed site layout (subject to planning) is detailed at Appendix A.
- 8 The proposals have been designed with energy efficiency in mind from the outset and seek to incorporate passive design measures such as protruding floors to create summer shading, angled rooftops to allow for low-angle winter sun penetration and a thermal mass which reduces the need for heating and cooling. Other energy efficiency measures will be incorporated including low energy lighting, water efficiency measures, exhaust air source heat pumps, efficient mechanical ventilation systems with heat recovery and PV panels.
- 9 A new playground will be located in the north of the site extending to approximately 344 sqm., There will be further soft landscaping and open space, which will also be an informal play area extending to approximately 450 sqm.
- 10 The Council submitted a detailed planning application in May 2023, which was determined at Development Management Committee on 17 August 2023. Members resolved to grant planning permission subject to the completion of the s106 legal agreement and in accordance with the relevant applicable planning conditions.
- 11 The planning application is accompanied by an independent viability assessment that confirms that it is unfortunately not viable for the scheme to provide any affordable housing. This takes into account the significant costs associated with constructing the new community hall, the new retail unit, new landscaping, improved public open space, play areas and satellite parking sites, all of which represent significant planning and community benefits for the local community and residents but come at significant cost. On top of

this are the costs associated with CIL and s106 Contributions requested by KCC towards primary and secondary education.

- 12 In March 2023, the Council completed a procurement exercise to appoint Oakwood Building Contractors under a Pre-Construction Services Agreement to help finalise detailed designs for the scheme and also arrive at a fixed price lump sum construction cost for the scheme.
- 13 The Council successfully applied to the One Public Estate Brownfield Land Release Fund, securing £375,000 grant funding; which has required the need to adopt an accelerated procurement process.
- 14 The Council has also submitted an Expression of Interest (EOI) to the Get Building Fund and is seeking additional grant funding of £300,000. If the EOI is successful, we will be required to finalise a Business Case for submission, with final determination in September/October 2023.

#### Key deliverables

- 15 The Farmstead Drive development will deliver 23 new high quality, environmentally efficient and sustainable homes as well as significant other community benefits including:
  - a new Community Hall;
  - convenience Store;
  - public open space;
  - car parking for the new development (23 spaces), and;
  - construction of 4 new areas of car parking for the wider estate (41 spaces).

#### Current project status

- 16 The Council has also procured a preferred contractor in compliance with procurement regulations and the Council's standing orders.
- 17 During the intervening period since approval was granted back in November 2021, the scheme has been impacted with significant cost pressures These include:
  - global events and economic pressures impacting regeneration and construction (as further outlined in Appendix B and the financial implications section of the report);
  - changes to the scheme design and provision of fewer homes, additional parking, open space improvements and community facilities as a result of feedback from the public consultation,

- and;
  - a significant Community Infrastructure Levy (CIL) contribution of £162,385 and s106 contribution of £166,978 at the request of KCC towards primary and secondary education.
- 18 The scheme remains feasible albeit now marginally viable.
- 19 Subject to the receipt of planning permission and Council approval for the additional expenditure (£2,741,785) required, enabling works are due to commence November 2023 and construction is envisaged to complete in January 2026.

### **Pre-Application Discussions and Public Consultation**

- 20 It has been important for local stakeholders and residents to have a voice and be able to influence change and our approach to the project's design.
- 21 Local residents and key stakeholders were consulted throughout the scheme's design development and public exhibitions were held in April 2022 and in December 2022.
- 22 The public consultation events were well attended and feedback received was exceptionally valuable. The design team have taken the feedback provided and, where feasible and required, various improvements were made to the scheme. Key findings can be found in the Farmstead Drive Consultation Report.
- 23 Based on the stakeholder and public consultation responses, the initial plans were revised to include;
- fewer new homes;
  - additional parking spaces for residents throughout the Estate;
  - improved play provision;
  - a community hall that enables flexible use;
  - a new, modern community shop, and;
  - other improvements including better signage and landscaping.
- 24 The proposals were also discussed with town and district councilors and statutory consultees including KCC, the Environment Agency, Southern Water, UK Power Network, BT and Kent Police to mention a few. Pre-planning discussions were also held with the local planning authority.

### **Procurement**

- 25 The Council undertook an Invitation to Tender exercise to appoint a contractor using the LHC Framework. A two stage Design and Build call off was selected for this project. The first stage is the Pre-

Construction Services Agreement to undertake detailed design work and the second stage would be for the actual works. The Council has subsequently appointed Oakwood Building Contractors Ltd as Principal Contractor and as Principal Designer and is expected to undertake all duties as required under the CDM Regulations 2015.

- 26 The early involvement and procurement of the contractor has helped the Council to fulfill the requirements associated with being in receipt of Brownfield Land Release grant funding for this scheme and improves the buildability and cost-certainty of the design.
- 27 Oakwood have been busy working with their sub-contractors and the Council and it's appointed Employers Agent and Cost Consultant via the PCSA to develop the design further and work towards aiming to achieve a construction works fixed price lump sum figure for the scheme.

**Delivery Programme**

- 28 The project's indicative delivery programme, assuming planning consent is granted, is outlined in the table below. Oakwood's fixed lump sum construction cost is based upon an on-site period of 94 weeks.

<b>Milestones</b>	<b>Date</b>
Planning Determination	17 August 2023
Full Council Approval	17 October 2023
Works JCT Contract Award	November 2023
Start on site	January 2024
Practical Completion	January 2026

**Project Costs**

Supporting information at Appendix B - exempt from publication under paragraph 3 "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"

- 29 The sales values used by the external viability consultant are based on Q1 2023 values. Construction costs and interest rates have increased substantially given global market conditions. At the time of the Council's decision in November 2021, interest rates from the PWLB were circa 1.5% and have now increased to 5%. Construction materials have also experienced significant inflationary pressures of up to 30% since January 2022. Changes to the scheme design have also been required following consultation with key stakeholders via the planning pre-application and public

consultation process. One notable element which comes at significant cost is providing the additional car parking to serve the wider estate which a mainstream private sector developer would not be providing.

- 30 These have consequently impacted on the scheme's financials since last reported to Cabinet in September 2021. Our updated cost plan prepared by our cost consultants in consultation with Oakwood suggest that the scheme remains feasible and breaks even with a marginal surplus.
- 31 It is important to note that the cost plan reflects Oakwood's fixed price construction lump sum (including PCSA costs) as well as project design, planning, consultation and survey fee costs already incurred by the Council for the work associated with reaching RIBA Stage 3 and submission of the planning application. Oakwood has agreed to provide the Council with a fixed lump sum contract price. This means that they are prepared to take the full risk on significant cost elements to the scheme and is inclusive of risks associated with:
- ongoing inflation;
  - all utility diversions, disconnection and new connection costs;
  - structural re-designs;
  - assivhaus savings.
- 32 As a result, the cost plan has a very high degree of cost certainty and this price will be locked into. Details of the development appraisal can be found in Appendix B.

## **Appropriation**

- 33 The process of appropriation allows the Council to state that land held for one purpose may now be used for a different purpose. In this case it is for the Council to consider declaring that the land is required for facilitating the development and ensuring proper planning in the area. In order to appropriate the land, the Council should be satisfied on the requirements of sections 122 of the Local Government Act 1972 and section 203 of the Housing and Planning Act 2016.
- 34 Appropriation for planning purposes has an additional effect in protecting the Council from unexpected and disruptive injunctions, overriding civil disputes that could otherwise constrict the development. Although the Council has taken reasonable steps to identify potential limitations on the land over time the site has become subject to assorted rights and covenants while the Council's former, extensive, holdings have become fragmented



including under the transfer to West Kent Housing in 1989 and various Rights to Buy. It is possible that undocumented rights may have arisen, although no harms have been identified from this project.

- 35 The legal tests for the Council to consider are set out below.

#### Consultation

- 36 As part of the site is also open space land, section 122(2A) of the Local Government Act 1972 requires the Council to advertise its intention to appropriate the land for two weeks in a local newspaper. The Council must then consider the responses before making any decision to appropriate. The consultation process commenced on 24 August 2023.
- 37 The results of the consultation were not available at the time that this report was written and will not be available by the date of the Finance and Investment Advisory Committee. Any recommendation by the Advisory Committee must therefore be subject to this consultation. Detail of the consultation responses will be provided as supplementary papers for Cabinet, who will need to consider the appropriation afresh in light of them.

#### *Appropriation will facilitate the carrying on of development or redevelopment or achieve the interests of proper planning*

- 38 The previous use of the site was for an old retail convenience store and community hall in need of significant investment, open spaces and play area, culverted main river to the northern border of the site crossing diagonally across the site and several mature trees.
- 39 The proposed development has a detailed planning application which was approved (subject to a S106 and conditions) on the 17<sup>th</sup> August 2023.
- 40 The appropriation would allow confirmation that the land was no longer required for its former purpose but was to be utilised for the carrying out of a specific, suitable development which has been given due permission.

#### *The development is likely to contribute to the economic, social or environmental well-being of the area*

- 41 The proposed development would provide high quality new housing for Edenbridge. Further, the development also facilitates replacing the old outdated retail convenience store and community hall facility with more modern up to date facilities for the local

community. It will also be providing additional parking to serve the wider estate and enhanced and improved play and open space areas.

*Whether the use of Section 203 (to override rights) is proportionate with any interference with the human rights of those involved*

- 42 In all its functions the Council must consider the impact of its decisions, ensuring that any negative or any positive impacts are balanced against each other and that any final decision is proportionate.
- 43 In this case Section 203 necessarily engages the rights to private property (Article 1 of the First Protocol of the ECHR) and Family Life (Article 8). The Council must therefore consider the balance in the decision to appropriate and whether the steps are only those necessary to achieve the legitimate aim. Should an interference arise in practice then it is considered that the role that the development would provide with much needed housing in the District and in facilitating the new community facilities outweighs the impacts that the development would have. The steps are necessary but proportionate.

*Contact with third parties with interests*

- 44 Parties have not been individually contacted for the reasons set out above, while the certainty needed for the development would not in practical terms allow correspondence with all potential parties within existing timeframes.

### **Other Options Considered**

- 45 The 2021 Cabinet and Council report outlined the various alternative development options. Pertinent to this report, is that there are alternative procurement approaches that could have been deployed but were discounted. In particular, the Council could have continued down the route of a traditional design and build route, obtain planning permission and then tendered for a contractor. This route does not support a condition of the grant funding which required the Council to be in contract with a contractor by 31 March 2023, and the procurement approach and entering into the Pre Construction Services Agreement adopted with Oakwood facilitates this condition.

### **Risk Assessment**

- 46 A table outlining the key risks relating to this project are outlined in Appendix C.

## Key Implications

### Financial Implications

- 47 Council approved the provision of £7,609,620 in the Capital Programme to deliver the scheme back in November 2021. Due to the reasons set out in this report there is now a requirement for additional funding of £2,741,785 to cover the total project costs.
- 48 The scheme is intended to be funded (ultimately) from capital receipts and from the sale of the residential units and rental income from the commercial buildings (see Appendix B for more information).
- 49 The table below shows the expected expenditure over the duration of the project.

	2021/22	2022/23	2023/24	2024/25	2025/26	Total
	£	£	£	£	£	£
<b>Expenditure</b>	50,418	285,705	2,291,123	5,763,417	1,960,742	10,351,405

- 50 The 23 residential units will be disposed of in the open market and price points have been recommended by the Council's property consultant.
- 51 At today current sales values (Quarter 1 2023) for both the residential homes and rental values of the commercial units would be approximately £9,948,059. By applying a modest growth and including the £375,000 BLRF Grant this would see the GDV increasing to £10,379,809 yielding a small surplus of £28,404.
- 52 As the Council is not selling and is retaining the commercial buildings the rental would recoup the rest of the scheme costs. The rental unit values total £57,948 (pa).
- 53 Until the receipts from the sales of the residential units are received, short- term borrowing will be used to fund the scheme. The potential financing costs are outlined in Appendix B.
- 54 Consideration will need to be given to the VAT implications of the project. Dependent on the use of some of the elements of the project it may require specific VAT treatment. Further VAT advice will be sought.

## Legal Implications

- 55 The Council has freehold title of the site. The land is currently occupied by a Resident's Association at the Community Hall. The commercial tenant in the retail premises has been given notice to vacate of which the notice period has expired and vacant possession was obtained in May 2023. The Residents Association have been served notice to remain in occupation of the existing community hall until midday on 10<sup>th</sup> November 2023 to coincide with the date possession would be required under the construction timeline.. New leases will need to be entered into prior to occupation within the new development.
- 56 The residential units are to be disposed of with 125 year leases on the open market. As a result, the Council will need to establish a management company to hold the freehold and to manage the communal areas.
- 57 Planning permission has been granted (23/00925/FUL) subject to a S106 agreement and conditions. The Council will need to obtain further statutory approvals (e.g. building control approval) and these are known to the Project Team.
- 58 Due diligence assessments have identified that, subject to consultation responses, it would be suitable to appropriate the site for planning purposes including to ensure proper planning. The Council is authorised to appropriate land that it owns under Section 122 of the Local Government Act where no longer required for the purpose for which it was previously held. The Council may not appropriate any land which consists of open space land unless it has published its intention in a local newspaper for at least two consecutive weeks and given due consideration to any responses received.
- 59 The Council has procured a contractor using a public framework agreement that is compliant with public procurement regulations and the Council's standing orders. The JCT Form of contract is being used and the contract has been staged to safeguard the Council's position from unnecessary costs.
- 60 The Council will need to comply with the OPE Land Release Fund grant conditions. While the conditions are not overly onerous, a key requirement is for the Council to be in contract by the 31 March 2023. The Council has consequently procured a contractor using the LHC Framework and has accordingly staged the contract by entering into a first stage Pre-Construction Services Agreement. This was executed on the 28 March 2023.

- 61 There are no state subsidy implications associated with the proposed scheme.
- 62 The legal implications of appropriation are as otherwise set out in the report.

### Equality Assessment

- 63 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. A positive impact on end users is, however, anticipated. In particular, it is worth noting that appropriate “equalities requirements” will be specified in the various contracts to be entered into for the demolition and construction of the scheme. In addition, the scheme is designed to promote an inclusive environment.

### Net Zero Implications

- 64 The decisions recommended through this paper have a remote or low relevance to the council’s ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

### Sustainability

- 65 A sustainability checklist has been completed and was previously reported. The scheme will aim to be delivered in line with SDC’s Net Zero ambitions.

### **Conclusion**

- 66 This dynamic scheme will result in the optimisation of Council land for much needed housing and environmental improvements at the Spitals Cross Estate which has not seen investment since its inception 60 years ago. It presents a unique regeneration opportunity for Edenbridge that will set a new design and sustainability benchmark for future growth.
- 67 This scheme brings substantial community benefits and improvements in the form of a new, modern fit for purpose community hall, retail store, improvements to landscaping, green space, play areas, new homes and additional car parking.

<b>Appendices</b>	<ul style="list-style-type: none"> <li>• Appendix A –Proposed Site Plan</li> <li>• Appendix B – Cost plan and development appraisal (Gold Papers exempt from publication exempt under paragraph 3 “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”</li> <li>• Appendix C – Outline Risk Assessment</li> <li>• Appendix D – Site Plan for appropriation purposes.</li> </ul>
<b>Background Papers</b>	<ul style="list-style-type: none"> <li>• Planning application ref: 23/00925/FUL</li> <li>• Cabinet Report dated 14 October 2021</li> <li>• Farmstead Drive Consultation Report, Jan 2023</li> </ul> <p>The following background documents are exempt from publication. The applicable reason for this redaction is paragraph 3 of Schedule 12A of the Local Government Act 1972: Information relating to the financial or business affairs of any particular person (including the authority holding that information). This is because it could prejudice the returns of a commercial tender that the Council will be undertaking and provides commercially sensitive information</p> <ul style="list-style-type: none"> <li>• Playle and Partners (July 2023): Farmstead Drive Cost Plan</li> <li>• Turner Morum (July 2023): Farmstead Drive Development Viability Appraisal</li> </ul>

**Detlev Munster, Strategic Head of Property & Commercial**