

Summary Sheet

Cabinet and Commissioners' Decision Making Meeting – 10 October 2016

Title

Disposal of Land Off Upper Wortley Road, Grange Park, Kimberworth

Is this a Key Decision and has it been included on the Forward Plan?

No, but has been included on the Forward Plan with the title 'Rotherham Golf Academy'

Strategic Director Approving Submission of the Report

Damien Wilson, Strategic Director Regeneration & Environment

Report Author(s)

Jonathan Marriott – Estates Manager – Corporate Property Unit
Regeneration and Environment
Ext 23898 jonathan.marriott@rotherham.gov.uk

Steve Hallsworth - Leisure & Community Services Manager
Regeneration and Environment
[Ext 22483; steve.hallsworth@rotherham.gov.uk](mailto:steve.hallsworth@rotherham.gov.uk)

Ward(s) Affected

Keppel

Summary

To consider a request to purchase land at Grange Park, Kimberworth by the current tenants, Rotherham Golf Academy.

Recommendations

1. That the disposal of the Council's freehold interest in the land at Grange Park, currently leased to the Rotherham Golf Academy is approved at a sale price of £150k subject to agreeing heads of terms and conditions and obtaining Valuation Office verification as detailed within Option 3 at paragraph 4.3 below. If the necessary verification is not obtained then it is recommended that Option 4 at paragraph 4.4 below is pursued instead.
2. That the Assistant Director of Planning, Regeneration and Transport be authorised to approve the terms and conditions of the proposed disposal.
3. That the Assistant Director of Legal Services be authorised to negotiate and complete the necessary documentation.

List of Appendices Included

None

Background Papers

Business Plan – Proposals for Peter Cowan Golf Academy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Title

Disposal of Land Off Upper Wortley Road, Grange Park, Kimberworth

1. Recommendations

- 1.1 That the sale of land at Grange Park, currently leased to the Rotherham Golf Academy is approved at a sale price of £150k subject to the terms and conditions and verification as detailed within Option 3 at paragraph 4.3 below. If the necessary verification is not obtained then it is recommended that Option 4 at paragraph 4.4 below is pursued instead.
- 1.2 That the Assistant Director of Planning, Regeneration and Transport be authorised to approve the terms and conditions of the proposed disposal.
- 1.3 That the Assistant Director of Legal Services be authorised to negotiate and complete the necessary documentation.

2. Background

- 2.1 The Rotherham Golf Academy (RGA) leases land at Grange Park, Kimberworth from the Council in order to operate a golf driving range business. The business comprises the driving range and bays, with a clubhouse and Pro Shop, constructed by the tenant on commencement of the lease. The lease was granted for a term of 99 years (04/05/1995 to 03/05/2094). The rent under the terms of the lease is the higher of 7.5% of gross turn over, or £15,000, or a sum per acre of land that is equal to twice the annual rent of Grade 3(a) agricultural land. £15,000 is the rent that has regularly been obtained, and is demanded annually in advance each February.
- 2.2 RGA asked to purchase the site on a number of occasions between 2007 and 2015 but each of these has been refused. There was also a request in 2012 to change the terms of the lease as RGA felt they were limiting business growth. The previous offer price made by RGA was £50,000 with no restrictions or claw-back provisions. Previous discussion have also taken place including potential temporary and permanent rent reductions to reflect the current state of the golf market, as the existing lease has no provision for downward rent reviews.
- 2.3 As a result of ongoing discussions between the Council and RGA a sale of the freehold interest has been considered with a minimum value assessed by the Council as being £167,000. A revised counter offer was made by RGA to purchase the freehold interest for £150,000, subject to full settlement of outstanding rent and business rate arrears, and with robust claw-back provisions to protect the Council's long term interests. The claw-back will be negotiated and initially aim to seek 25 year term on 80% of the uplift in value in the Council's favour. However, the term and percentage can be further considered in lieu of the regenerative/social welfare benefit to the Borough of Rotherham. All monies owed must be paid in advance of the report going to Cabinet.

- 2.4 The tenant has stated that this freehold acquisition would enable RGA to explore development options for the car park area in order to improve the overall feel and security of the business and to support the long term business activity aims.
- 2.5 Colleagues in Planning have stated that, under the existing designation of the land as green belt, any development would be considered inappropriate unless very special circumstances could be demonstrated. However the reason the golf course and associated facilities were allowed in the green belt is that development is allowed for:
- “appropriate facilities for outdoor sport, outdoor recreation and for cemeteries - as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it”*
- 2.6 Planning colleagues have also stated that only development which could be linked, in planning terms, to the provision of the golf facilities and which would preserve the openness of the site could be supported in the location. They have also stated that in relation to amending the site’s designation in order to support development, it has already been considered in the Local Plan. It was taken through the assessment methodology used for consideration of all sites in the Borough and was not considered suitable for development. The car park / driving range is therefore retained as Green Belt in the publication version of Sites and Policies which has been submitted to Government for independent inspection later this year.
- 2.7 RGA offers golf based recreational opportunities to a wide range of people, including free access to a special needs group who use the accommodation on a regular basis, taking advantage of the both the golfing and social facilities for as long as they require. RGA makes every effort to ensure the group are made welcome, including allowing them to bring their own food and drink onto the site and try to ensure they always have a very positive experience.
- 2.8 In order to consider RGA’s request to purchase the freehold interest at less than best consideration, a full business case was requested from RGA. This was to include full details of the existing business including accounts, the full history of the business and its current visions and aims and future investment strategy. Further information was also requested in respect of the economic, environmental, regeneration and reputational benefits the proposed sale could offer to the Borough, along with details of any community and environmental benefits that this may generate.
- 2.9 A business case, details the current position along with the visions for the future business. This plan, though not a comprehensive business case, concentrates on the reputational benefits of retaining the business in Rotherham with some elements of the potential economic, community and environmental benefits.

3. Key Issues

- 3.1 The Estates Team is of the opinion that the market value of RGA's leasehold interest to the Council, based on capitalising the current minimum rental income of £15,000 per annum, is £167,000. This is also the current value held on the Council's Asset Register.
- 3.2 The above market value is the minimum value based on the existing lease terms. However, should the rental value increase by a recalculation of the gross turnover at 2.1 above, this overall value could increase. However, the average rental value, if calculated using the gross turnover for the last few years, would have equated to £13,500 which, capitalised on the same basis at 3.1 above, equates to £150,000.
- 3.3 The Estates Team is also of the opinion that if the land area were valued on a purely agricultural land basis, not considering the existing lease in place, this would be in the region of £125,000 which would have been the case at the onset of the lease
- 3.4 An independent valuation prepared by the District Valuer in November 2015 in order to verify any potential sale price between the Council and RGA valued the freehold interest of the land, excluding the tenant's improvements at between £250,000 and £300,000.
- 3.5 The difference in the Market Value of the Council's holding value on the Asset Register of £167,000 and that of the District Valuer £250,000 - £300,000 is due to the basis of the valuation.
- 3.6 In arriving at the Council's holding value the rental income has been capitalised, whilst alternatively the Valuation Office has considered comparable evidence of land transactions of golfing facilities throughout the region, and applied a rate per acre. Where golfing facilities have been offered to the market, these have not had such leases in place and have been offered as going concerns without any form of restrictions (such as robust clawback provisions). Therefore this reflects the difference in value, with the holding value being more sensitive to rental income under the terms of the lease.
- 3.7 A truer reflection of value would be obtained from the Valuation Office if it were to be provided with the full heads of terms and details of the robust clawback provisions, once agreed. As the transactional evidence used in its initial valuation would have been for open market land transactions without such conditions or clawback provisions, verification from the Valuation Office would take these conditions and clawback provisions into consideration along more local factors such as the potential reopening of the nearby landfill site of Droppingwell Lane.
- 3.8 RGA has recently obtained a reduction in its Business Rates Rateable Value, reducing from £34,500 down to £25,500 with effect from the 1st April 2015. This reduction will be on the basis that the potential annual rental value of the operating business (both land and building) has reduced. This does not have an impact on the Council's holding value which is based upon rental income under the terms of the lease.

3.9 The Council retain the revenue income of currently £15,000 per annum from the lease and this income would be lost as a result of the sale.

4. Options considered and recommended proposal

The following options have been considered

4.1 **Option 1** That the offer from RGA for £150k is rejected and the lease continues under its existing terms. If this option is pursued there is the possibility that the tenant's business could fail and the Borough would lose a well-respected golfing operation which attracts professional golfers worldwide. This could subsequently have a detrimental effect upon the reputation of the Borough as a whole. For this reason it is not recommended that this option is pursued.

4.2 **Option 2** That the sale is not approved but that the Council offers to re-gear the existing lease to assist RGA in its redevelopment and business ambitions. This re-gearing could include a number of options such as offering a temporary rent free period of say 3-6 months; reducing the minimum rental payment permanently; and/or potentially amending or removing the gross turnover percentage and consider alternative rental basis. There could also be relaxation of the user clauses to permit alternative developments (subject to planning considerations).

If this option is pursued, with a re-gearing on the minimum rental payments, both temporary and permanently, it would assist RGA in the immediate term. As the business expands and develops further in the medium to long term, with a relaxing of the user clauses, the Council may well see an increase in revenue if the rents are capable of increasing.

However with a reduction in the current rent, this will see an immediate reduction in value of the asset to the Council to a figure lower than its current holding value. The Tenant may not however seek to further invest in the business without owning the freehold and therefore the potential increase in rent may not materialise.

4.3 **Option 3** That Commissioner resolves to accept RGA offer of £150,000 and dispose of the Council's freehold interest subject to robust claw-back provisions and restrictive covenants contained within the transfer. This would also be subject to obtaining the necessary verification from the Valuation Office that the private treaty transaction is reasonable, based upon the agreed heads of terms and considering the existing lease provisions and robust clawback provisions. This will also be subject to all rent and Business Rates charges being fully up to date in advance of this Cabinet meeting.

4.4 **Option 4** That the Council offers the entire site which includes the lease interest to the open market, giving both RGA and any prospective purchaser the opportunity to bid for the site. With full marketing this would ensure that full market value is obtained based on the existing lease in place.

- 4.5 It is recommended that Option 3 is pursued though of course subject to Valuation Office approval and the detailed terms of the robust clawback provisions. If this is not obtained or approved then it is recommended that Option 4 is pursued. Option 3 would generate a receipt of £150,000 for the asset which is close to the £167,000 valuation and higher than the £125,000 value without the current lease being in place. In addition to this the attached Business Plan highlights economic, social and environmental benefits to Rotherham. Such benefits include tourism, global promotion/image, job creation and the support and involvement of local organisations (e.g. charities, vulnerable groups, schools, sports clubs).

5. Consultation

None

6. Timetable and Accountability for Implementing this Decision

- 6.1 RGA would like to purchase its freehold interest as soon as possible.
- 6.2 Once the options have been considered and a course of action agreed, the Estates Team will be instructed to commence negotiations accordingly.

7. Financial and Procurement Implications

- 7.1 If Option 1 is pursued then the £15,000 revenue will continue to be received by the Council. If however the business fails then the Council could be left with the maintenance and security costs of the asset until it is either disposed or an alternative tenant is obtained.
- 7.2 If Option 2 is pursued this will see a £15,000 reduction in the revenue income received by the Council in the medium term, and a reduction in the Asset Register's holding value. However over long term this could result in an increase in revenue, dependent upon the performance of the tenant and a potential increase in capital value if the rents are capable of increasing. This looks unlikely in the current economic climate.
- 7.3 If Option 3 is pursued, then this would result in a capital receipt of £150,000 in the 2016/17 year. This option will however result in a revenue pressure in Leisure & Green Spaces of £15,000 per annum from loss of rental income.
- 7.4 If Option 4 is pursued, then this would result in a capital receipt in the 2016/17 year. This option will again result in a revenue pressure in Leisure & Green Spaces of £15,000 per annum from loss of rental income. This pressure will be covered by unconnected property savings within Corporate Property.
- 7.5 It is anticipated that costs of obtaining Valuation Office verification of the purchase price will be in the region of £800, which is to be met by RGA.

- 7.6 It is also anticipated that Council's legal and professional fees in dealing with the disposal will be in the region of £1,000, which is to be met by RGA
- 7.7 There are no holding costs associated with this asset as all such costs are met by RGA under the terms of the lease.

8. Legal Implications

- 8.1 The full legal implications can be confirmed once the Valuation Office verification valuation and proposed clawback provisions are supplied and agreed. They will centre around the fact that, on the face of it the Council does not appear to be obtaining "best consideration" and how this risk is mitigated which is covered in paragraph 13 below.
- 8.2 Depending upon any further information received regarding the Valuation Office's current valuation of the property at between £250-300k, there is a possibility of the proposed sale detailed at Option 3 constituting State Aid as the value of the land price discount is approaching the Euro 200,000 threshold. While it is likely that the proposed sale will be within the de minimis level, this point should not be overlooked.

9. Human Resources Implications

- 9.1 None Considered

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 RGA provides a range of facilities and activities for young people and vulnerable adults.

11 Equalities and Human Rights Implications

- 11.1 None considered

12. Implications for Partners and Other Directorates

- 12.1 None Considered

13. Risks and Mitigation

- 13.1 There is a risk associated with S123 of the Local Government Act in disposing the freehold interest at a purchase price which is less than best consideration. This risk can be mitigated by considering the business case supplied by RGA and the Economic/Community/Environmental gains identified within this.
- 13.2 This above risk can further be mitigated by obtaining independent verification from the Valuation Office that the disposal on the terms and condition agreed with the necessary robust clawback provisions represents a reasonable value, considering the existing terms of the current lease.

14. Accountable Officer(s)

Damien Wilson, Strategic Director Regeneration & Environment

Paul Smith, Corporate Property Manager, Corporate Property Unit

Jonathan Marriott, Estates Manager, Corporate Property Unit

Approvals Obtained from:-

Strategic Director of Finance and Corporate Services: - Jonathan Baggaley, Finance Manager, Regeneration and Environment and Capital – Awaiting Business Case from client. Refer to 4.3 Option 3.

Director of Legal Services: - Lesley Doyle, Solicitor Legal & Democratic Services

This report is published on the Council's website or can be found at <http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>