

**COUNCIL-LED GARDEN COMMUNITY UPDATE**

<b>Final Decision-Maker</b>	Policy & Resources Committee
<b>Lead Head of Service</b>	William Cornall, Director of Regeneration & Place
<b>Lead Officer and Report Author</b>	William Cornall, Director of Regeneration & Place
<b>Classification</b>	Public
<b>Wards affected</b>	All, but in particular Harrietsham & Lenham and Headcorn Wards. Lenham Parish Council and Boughton Malherbe Parish Council are affected.

**Executive Summary**

The proposal was last considered by this Committee in September 2019. The purpose of this report is to provide an update in respect of the progress made since then in pursuing a council-led garden community, near Lenham Heath (Heathlands) and, following consideration of this, to invite the Committee to agree that the project should continue to the next stage. This would mean committing resources to undertake further work to explore and develop the proposal at least until the next public consultation stage of Local Plan Review (LPR) to be undertaken by the Local Planning Authority (LPA) ie consultation on the LPA's preferred spatial distribution for future development in the borough. As in the case of previous reports to this Committee, the contents of this report relate to the Council's position as a potential property owner/ developer and not as LPA.

**Purpose of Report**

Decision.

**This report makes the following recommendations to this Committee:**

1. To continue to pursue a Council-led Garden Community in the target location with a view to acting as master-developer.
2. To note the at-risk expenditure to the end of Q3 of the current financial year.
3. To agree that the Council should continue to explore potential partners for its role as master-developer.
4. To note the criteria for options appraisal of the delivery vehicle for a council-led garden community.
5. To grant authority to the Director of Regeneration and Place to work with Mid Kent Legal Services and enter into renewed lockout agreements with the residual landowner group.

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<b>Timetable</b>	
<b><i>Meeting</i></b>	<b><i>Date</i></b>
Policy and Resources Committee	29 APRIL 2020

# COUNCIL-LED GARDEN COMMUNITY UPDATE

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<p><b>Impact on Corporate Priorities</b></p>	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> <li>• Embracing Growth and Enabling</li> <li>• Infrastructure</li> <li>• Safe, Clean and Green</li> <li>• Homes and Communities</li> <li>• A Thriving Place</li> </ul> <p>Accepting the recommendations will materially improve the Council's ability to achieve all the corporate priorities.</p>	<p>Director of Regeneration &amp; Place</p>
<p><b>Cross Cutting Objectives</b></p>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>The report recommendations support the achievement of all the cross cutting objectives.</p> <p>Through delivering much needed homes to include 40% affordable housing of which 70% would be for social rent. The emerging masterplan is landscape led with 50% of the total proposed as green space. Led by the ambitions set out in the Strategic Plan the Council can ensure that the design principles of development where it is the master planner reflect the commitment to reduce health inequalities amongst other things.</p>	<p>Director of Regeneration &amp; Place</p>

<b>Risk Management</b>	See section 5.	Director of Regeneration & Place
<b>Financial</b>	<ul style="list-style-type: none"> <li>Investment in the Garden Community forms part of the Council's five-year capital programme and budgetary provision exists for the expenditure described in the report and the future plans outlined here.</li> </ul>	Section 151 Officer & Finance Team
<b>Staffing</b>	<ul style="list-style-type: none"> <li>We will deliver the recommendations with our current staffing.</li> </ul>	Director of Regeneration & Place
<b>Legal</b>	<ul style="list-style-type: none"> <li>Acting on the recommendations is within the Council's powers</li> </ul>	Solicitor
<b>Privacy and Data Protection</b>	<ul style="list-style-type: none"> <li>No impact.</li> </ul>	Policy and Information Team
<b>Equalities</b>	<ul style="list-style-type: none"> <li>The recommendations do not propose a change in service therefore will not require an equalities impact assessment</li> </ul>	Policy & Information Manager
<b>Public Health</b>	<ul style="list-style-type: none"> <li>We recognise that the recommendations will not negatively impact on population health or that of individuals. The stage 2 vision document brief includes healthy town principles.</li> </ul>	Public Health Officer
<b>Crime and Disorder</b>	<ul style="list-style-type: none"> <li>The recommendation will not have a negative impact on Crime and Disorder.</li> </ul>	Head of Service or Manager
<b>Procurement</b>	<ul style="list-style-type: none"> <li>On accepting the recommendations, the Council will then follow procurement exercises for the appointment of the landscape-led master-planner. We will complete those exercises in line with financial procedure rules.</li> </ul>	Head of Service & Section 151 Officer
<b>Biodiversity</b>	<ul style="list-style-type: none"> <li>The brief should, and does, seek a biodiversity net gain within the</li> </ul>	Head of Policy Communications & Governance

	proposed redline.	
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The council is pursuing this project as it is consistent with its Strategic Plan priority of “embracing growth and enabling infrastructure” and the desired outcomes within it;
- The Council leads master planning and invests in new places which are well designed.
  - Key employment sites are delivered.
  - Housing need is met including affordable housing.
  - Sufficient infrastructure is planned to meet the demands of growth.
- 2.2 This report will provide an update on the progress made since the last report to this committee on 18<sup>th</sup> September 2019 and addresses the following areas;
- Community engagement
  - Environmental and technical surveys
  - Landowner negotiations and commercial structure
  - Local Plan Review context
  - Expenditure
  - Delivery options
- 2.3 **Community Engagement.** In accordance with the decision of this committee in September the council issued a press statement the following day outlining that it was exploring the Lenham Heath area for a council-led garden community, one week later a briefing meeting took place with two Ward Members and the Chair and Vice Chair of Lenham Parish Council.
- 2.4 The council also created a micro site for the Heathlands project on its website, giving stakeholders contextual information and a series of FAQs and responses. The initial Vision document for the proposal was loaded onto the microsite , in early November, which was when all the “call for sites” submissions were published.
- 2.5 Once all the information had been released, through discussion with the Parish Council and the Save Our Heath Lands (SOHL) group a community briefing was tentatively scheduled for December, but this had to be rescheduled until 24<sup>th</sup> January 2020, owing to the December General Election. This was attended by the report author and Cllrs Cox and Gooch. Soon after the meeting, a newsletter was loaded onto the microsite and posted to those homes and businesses within the proposed redline ie the area covered by the proposed council-led garden community.
- 2.6 Since September there has been more than one meeting per month with either the Parish Council and or SOHL, or with representatives from both entities. Neither the Parish Council nor the SOHL group support the

proposal, but every effort has been made to provide them with timely, considered, accurate and consistent information on the proposals as they develop. Also, several residents' letters have been received and responded to.

2.7 The offer has been made to both the Parish Council and the SOHL group that they can input into the brief for the stage 2 vision / masterplan document that is proposed for commissioning later in this report. This has not been yet taken up, but the offer remains on the table.

2.8 **Environmental & technical surveys**. The council has commissioned several high-level desk-based screening surveys to further explore the various risks and opportunities in terms of the location's development potential. These surveys are as follows;

- Transport & air quality survey
- Ecology & hedge survey
- Arboriculture & hedge survey
- Archaeological survey
- Flood risk and drainage
- Ground conditions survey
- Utilities survey
- Minerals survey
- Acoustic survey

2.9 Following a procurement process, RSK were appointed and their reports are near complete. Whilst their reports cannot be definitive, as more detailed surveys will be required in due course, they do present a broadly positive set of findings. I.e. the purpose of the screening reports is largely to alert clients to obvious constraints and opportunities, and where more detailed survey work would be required. The findings of the reports would also inform a refreshed masterplan of the location, giving more informed reasoning as to where development should and should not be focussed, to in effect create a "landscape-led" masterplan.

2.10 In terms of key findings of the surveys, these are as follows;

- A focus on sustainable transport is suggested, with a steer that neither a motorway junction nor High Speed 1 stop would be appropriate for this scale of development. The survey points to latent capacity at key junctions to the A20, subject to realistic improvement measures to one (junction), and the potential to better utilise the existing train stations at Lenham and Charing and connecting these to the new community via a local bus loop, which could include guided elements and electric vehicles. The findings do indicate the possibility of a new railway stop when the new community reaches an appropriate critical mass. This shift away from "big-kit" infrastructure would also improve the overall cashflow of the whole development proposal, and so bring about a reduction in peak debt that would make the proposal more attractive to potential partners. I.e. this is not a direction to reduce infrastructure spend but rather an alternative more sustainable transport planning strategy which would also produce a smoother spend profile.

- There is an area of the proposed location that has a high level of archaeological sensitivity, and development would need to be directed away from this location, and so perhaps the provision of green space driven towards it. Such an approach would also best protect the setting of listed buildings in this vicinity too.
- There is already a live sand quarry within the proposed redline. This is nearing completion and so once backfilled could be suitable for development. Furthermore, another area is likely to be allocated in the KCC Minerals Local Plan, so this sand would need to be extracted before development could occur, unless the LPA determined that the benefits of the development outweighed the benefits of the mineral extraction. So, whilst minerals do present a constraint to some degree, there is the notion that development could follow extraction in certain locations, and positive preliminary discussions have taken place with KCC to this effect at officer level.

2.11 The findings will in the longer term form the basis for further, more detailed studies, but shorter term build a further level of confidence in the technical deliverability of the overall proposal, and can inform the creation of a landscape led masterplan for the new community. Ultimately, a proposal of this scale is an iterative process that must be taken in a series of manageable steps.

2.12 **Landowner negotiations and commercial structure.** The landowners have taken overarching legal and land valuation advice, and the council has met these costs. The council is taking legal advice from Pinsent Mason and land valuation advice initially from Savills.

2.13 The land transactions for a sizeable proposal such as a garden community could be approached broadly in one of three ways;

2.13.1 Promotion Agreement (PA); a form of joint venture between the landowners and the developer (being the council) with the aim of aligning all the landowners' interests. The developer Council would pay an initial fee to the landowners on completion of the PA, and then seek to promote the site through the Local Plan Review process, with the aim of eventually securing planning consent. If planning consent is eventually secured, the land would be marketed to residential developers, in tranches, and assuming the minimum price per acre agreed in the PA is met, the net proceeds of sale are returned to the landowners. The proceeds of sale would include the developer's promotional costs and fees.

2.13.2 Option Agreement; an option agreement gives the developer (Council) the right to buy land in the future in particular circumstances (generally the grant of a satisfactory planning permission). Typically, the developer will pay (on grant of the Option) an Option fee based (on a percentage of the agreed market value) and the balance of the agreed value only if they choose to exercise their Option to buy within a fixed term period, often 10-15 years.

2.13.3 Conditional Sale; Under a conditional sale agreement, a landowner is obliged to sell and the developer (Council) is obliged to buy if certain

conditions are satisfied (again, generally the grant of a satisfactory planning permission).

- 2.14 The Heads of Terms for an agreement between the landowners and the Council were developed from October 2019 and reached a near final draft stage in January 2020, proposing a Promotional Agreement form of contract. The three smallest landowners, making up approximately 13% of the existing proposed site in total, have now indicated that they do not wish to participate. It will however be possible recast the redline to take this into account
- 2.15 The five larger landowners have confirmed in writing (via their advisors) their interest in treating with the council, inasmuch making their land available to the council, subject to further negotiations. Now there is a reduced number of landowners, a clearer picture is starting to form for a preference for a more definite form of transaction, perhaps more likely an option agreement, that would provide them with more certainty around timing and quantum of receipt per acre. This being the case, there would be a need in all likelihood for the Council to attract a partner developer to work with and who could fund the transaction in this way. The loss of three landowners could impact on the overall size of the development, for example in terms of the number of homes, as could the survey findings referred to previously. This would all be explored in detail in the proposed next phase of work.
- 2.16 **Local Plan Review (LPR) context.** If the committee remains minded to pursue this proposal, the overriding goal would be that it is eventually "allocated" for development in the LPR, which is scheduled to complete in 2022. The proposal was submitted into the "call for sites" process in May of last year. Therefore, the next milestone to be achieved would be for the proposal to feature in the Regulation 18b stage of the LPR, being the preferred spatial development option plus alternatives, which looks likely to reach the public consultation stage late in the current calendar year. This is a matter for the LPA who will be assessing several potential sites for new garden communities.
- 2.17 Realistically, for that milestone to be achieved from the master developer and land promoter perspective, the council will over the course of the coming months need to provide evidence to the Local Planning Authority (LPA) including that;
- The proposal is deliverable inasmuch that the land required, in the main, is indeed available for development. Accordingly, the council will need to make further progress with the five principal landowners and potentially make progress too in terms of bringing on board a development partner.
  - The proposal is realistic and achievable in how the masterplan responds to the site's various opportunities and constraints as identified by the RSK environmental and technical surveys. Therefore, it would be advisable to engage a firm of landscape-led master-planners to prepare a second stage vision document that can be submitted to the LPA over the coming months. I.e. this commission would effectively visually interpret the findings of the RSK work and make informed judgements in

terms of redefining the redline, justifying what types of development should go where, and similarly with the transport and green and blue infrastructure too. This work would also bring more clarity as to what overall scale of development could be achieved, and importantly respond to community concerns, in terms of minimising any impact on existing homes, businesses and hamlets and the community's views on amenities and facilities to be prioritised in the masterplan.

- 2.18 It was the LPA that requested that the surveys be undertaken at this juncture, and so it would seem wise to produce a second stage vision document to set out the justification for the proposal in as clear, detailed and compelling terms as possible.
- 2.19 **Expenditure.** The council has incurred expenditure of £201,000 on various consultancy fees to 31<sup>st</sup> March 2020 in order to develop the proposal to this point. In the last report to this committee expenditure was forecast to be £50k less than this figure at this juncture. The additional monies that have been spent relate to the commissioning of the environmental and technical surveys, which were required earlier in the process than envisaged, rather than being an unforeseen cost as such. Expenditure on the project is in line with the capital programme approved by this Committee on 22<sup>nd</sup> January 2020 and by Council on 26th February 2020.
- 2.20 Returning to the immediate goal of maximising the chances of the proposal featuring in the LPR at Regulation 18b at the end of the calendar year it is envisaged that expenditure would rise to circa £300k at this point. These additional monies would be spent on the second stage vision document and legal and associated advisory costs to bring the five principal landowners to signed heads of terms stage, ideally with a suitable partner/s identified too.
- 2.21 The council is currently exploring the possibility of gaining contributions to these ongoing project costs from the Ministry of Housing Communities and Local Government (MHCLG), Homes England and the South East Local Enterprise Partnership (SELEP). There is a reasonable chance of securing some contributions throughout the course of the financial year, but this cannot be guaranteed. Officers will also liaise with KCC with a view to the Heathlands proposal being referenced in the Kent & Medway infrastructure proposition that KCC is making to government, that seeks enhanced infrastructure monies to support ambitious housing growth targets across the county.
- 2.22 As master developer, the Council will in time need to commit further investment as part of commercial negotiations with the landowners, but not before the next update report is brought to this committee in Q3.
- 2.23 **Delivery options.** The council has also taken legal advice from Pinsent Mason in respect of the various delivery options / structures. These have been analysed against several key evaluation criteria to assess the opportunities and constraints of each option and evaluate each option against these. The options themselves are as follows;
- MBC in house delivery
  - MBC arm's length vehicle

- Jointly owned vehicle
- Locally Led New Town Development Corporation

2.24 Each of the possible delivery options have been considered against the following criteria;

- **Consistency** with MBC's stated aims and objectives, as per the strategic plan, and perhaps in the context of climate change and biodiversity.
- **Engagement** to include with public sector partners.
- **Governance**, possibly in terms of skills, speed, and transparency.
- **Geographic coverage**, if indeed there were any cross-boundary considerations.
- **Planning powers**
- **Finance**, possibly in terms of sourcing third party investment, and overall risk exposure and management.
- **Accounting treatment**, possibly to include treasury management considerations.
- **Timing**, taking into account the possible project plan for the proposal.
- **Ease to do business with**, possibly in terms of potential delivery partners.
- **Scale**, once there is a clearer understanding of this, assuming the second stage vision document is commissioned.
- **Public perception**, possibly in terms of transparency and ease of stakeholder engagement.

2.25 There is no need to decide on the optimum approach at this stage. All four are potentially suitable, but the right choice will be informed by what if any partners the council would need to deliver the project, and informing this, what type of deal can eventually be concluded with the principal landowners. As such, this topic will be revisited in depth in the next report that will likely come during quarter 3 of the current financial year, if indeed the committee decide to continue.

2.26 For a project of this scale and ambition, Homes England (HE) are the obvious partner of choice, with funds to spend and a specialised team in place to drive the delivery of new garden communities. Two positive meetings have taken place so far with HE, at director & CEO level, and they have been impressed with the council's approach and progress made to date.

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### 3. AVAILABLE OPTIONS

- 3.1 Option 1 is to continue to pursue a council-led garden community, Heathlands, continuing to invest financially in the proposal up to £300k by the end of the 2020/21 financial year.
- 3.2 Option 2 is to continue to pursue a council-led garden community, Heathlands, but instead seek to minimise further spend up to the end of the financial year. This could mean however that the quality of the masterplan

and availability of the land are not adequately justified to the LPA, so risking the proposal not reaching the Regulation 18b stage of the LPR.

- 3.3 Option 3 is to no longer pursue a council-led garden community, Heathlands. This would mean it would be more difficult to secure the council's priorities contained within its new strategic plan. If the council stepped away it is possible that another entity might instead pursue it. Regardless, the work undertaken to date would at the very least have deepened the council's understanding of a potential growth area for future LPRs.

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#### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The preferred option is 1, as it is consistent with the council's strategic plan and would offer the best possibility of the proposal being supported by the LPA at Regulation 18B stage of the LPR. The council has taken a bold step in pursuing the proposal, has made reasonable progress to date, and so it would be sensible to continue to invest prudently to see it through to the next key milestone in the LPR, with the best likelihood of success.

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#### **5. RISK**

- 5.1 When this proposal was last presented to this Committee in September 2019, the likely risks were set out as follows;

- At risk consultancy expenditure to March 2020.
- A period of uncertainty for the community affected.
- Possible negative perceptions of a broader role for the Council in the context of acting as master planner.
- Maintaining cohesion amongst the landowner group.

- 5.2 These risks have to some degree crystallised, and were the council to continue, would largely remain. That said, the level of cohesion amongst what is a now smaller landowner group, is growing. If the preferred option is chosen, the level of financial exposure would be further increased, albeit there is the possibility of external contributions to mitigate this as discussed earlier in the report.

- 5.3 In moving to the next stage, the key risks to consider will be;

- Terms cannot be agreed with the landowners.
- That a suitable partner/s cannot be identified.
- That the LPA does not support the proposal at the next stage of the LPR.

- Challenge from individuals or organisations that oppose the principle and/or the specific details of MBC's council-led garden community
- That the second stage vision document, taking into account the RSK survey findings and the loss of three landowners might yield a compromised proposal.

## **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

6.1 As detailed earlier in the report, the Lenham Parish Council have confirmed in writing that they do not support the proposal.

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## **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

7.1 The next steps would be to;

- Enter into renewed lockout agreements with the residual landowners, ideally to the end of the current financial year.
- Commission the landscape-led masterplan, aka the stage 2 vision document.
- Advance the commercial negotiations with the five principal landowners.
- Continue to promote the proposal to the LPA through the LPR.
- Continue discussions with Homes England, and potentially other suitable partners too.
- Continue dialogue with Lenham parish council and other community groups
- Provide an update report to this Committee towards the end of Q3.

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## **8. REPORT APPENDICES**

None.

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## **9. BACKGROUND PAPERS**

None.