

CABINET

DATE: 23rd September 2025

PART 1 - PUBLIC DOCUMENT

TITLE OF REPORT: Grant of an option agreement for the sale of land to facilitate access to strategic housing site GA2.

REPORT OF: Principal Estates Surveyor

EXECUTIVE MEMBER: Executive Member for Enterprise

COUNCIL PRIORITY: THRIVING COMMUNITIES / RESPONSIBLE GROWTH / SUSTAINABILITY

1. EXECUTIVE SUMMARY

Site GA2 is a strategic housing site in the Local Plan. It lies to the north-east of Great Ashby in the parish of Weston and is allocated for a new neighbourhood of approximately 600 homes under Policy SP18. The Masterplan was approved at Cabinet and subsequently ratified by full Council in November 2024. It is proposed that a new access road to the development will be created from Mendip Way. To create the access road, the developer will need to acquire land owned by third parties, including the Council.

This report seeks Cabinet approval to the heads of terms for an option agreement to give the developer a right to acquire land owned by the Council to facilitate the access to GA2, in collaboration with the other four owners.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1. Approves the Council entering into an option agreement for the sale of the Council owned parcel of land edged red on the plan at Appendix B in accordance with the Heads of Terms attached to the Part 2 report.
- 2.2. Delegates authority to the Director for Governance in conjunction with the Director for Resources to complete, sign and seal all documents to give effect to the recommendations.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The recommendation is made to ensure that access is available to facilitate the development of GA2, a Strategic Housing site allocated in the Local Plan, which will assist in the delivery of circa 600 new homes and associated facilities including affordable homes. Completion of the sale is also expected to generate a capital receipt.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. For the Council, in its capacity as landowner, not to sell the land: This would prevent delivery of the access and development of the site, and a potential capital receipt. This course of action is not recommended.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Executive Members for Enterprise and Resources have been consulted.
- 5.2 Opposition lead members have been briefed about these proposed terms and Members are more widely aware of the proposed development.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key executive decision that was first notified to the public in the Forward Plan on the 13th September 2024.

7. BACKGROUND

- 7.1. The development of site GA2 is part of the Council's Local Plan.
- 7.2. In order to deliver on this development, a new access road from Mendip Way to the site is necessitated.
- 7.3. The proposed route of the new access road will require the developer to acquire five parcels of land owned by third parties; one of those landowners is the Council. There is no viable alternative route for the access road.
- 7.4. Picture Estates Ltd and associated companies and personal interests own the land shown edged red on the plan at Appendix A and are promoting the development of the land in accordance with the local plan allocation. Picture Estates is an unconnected party to the Council. The land Picture Estates requires for the access road is shown coloured blue on that plan; different parcels of the access are owned by North Herts Council, Croudace, Vistry, the Trustees of the Weston Settlement and Homes England/Stevenage Borough Council. The plan at Appendix B shows the Council's ownership edged red.

8. RELEVANT CONSIDERATIONS

The Site

- 8.1. Under Policy SP18 of the Local Plan site GA2 was allocated for a development of approximately 600 homes. Policy SP18 and plan showing the site are attached as Appendices C & D.
- 8.2. The access land owned by the Council is currently designated as public open space, and features a children's playground. To compensate for the loss of the public open space including playground, the planning application is to be in accordance with the approved masterplan which requires the relocation of the play equipment at the developer's cost and the provision of additional public open space within the GA2 development.

- 8.3. As a Strategic Housing site, GA2 is an important part of the Local Plan for delivery of new dwellings.
- 8.4. Following full Council approval of the Strategic Masterplan Framework for the site in November 2024, the Framework is now a material consideration for relevant planning decisions. The illustrative Masterplan and Landscape Strategy from the Framework forms Appendix E. This reflects the intention for a comprehensive scheme including a neighbourhood retail centre, medical & social infrastructure, a school, a care home, serviced plots for self-build and an integrated transport network.

Option Agreement

- 8.5. The proposed option agreement is to give Picture Estates, or their successors, the right to acquire the land owned by the Council to facilitate access to GA2, in collaboration with the other four owners. One of the conditions for exercising the option is that planning permission must have been granted for the development. The planning application will be in outline for the development of the site but in detail regarding the new access road. It will identify sites for the relocation of the playground currently on the Council's land and for the creation of new areas of public open space.
- 8.6. As it is public open space, section 123 of the Local Government Act 1972 requires the Council to publish notification of its intention to dispose of the land in two consecutive weeks and to consider any objections that are made before taking a decision to proceed. This process should not be initiated until the planning application for the development is sufficiently advanced to identify plans for the re-provision of the existing play area and public open space so as to avoid the risk of legal challenge. Any obligation to dispose of the land will be subject to the due consideration of the objections received as part of the statutory process.
- 8.7. Once planning permission has been granted, Picture Estates intends to sell the site with the benefit of that permission.
- 8.8. Without all five parcels of land which will form part of the access road, the development will not be able to take place. Consequently, there is a joint set of heads of terms between all the landowners and Picture Estates.
- 8.9. The heads of terms propose that all five landowners will grant the developer an option to acquire the land in their ownership in return for an agreed share of the net proceeds of sale achieved by Picture Estates. The share of net proceeds is calculated as a percentage of the development land value, less legal and professional fees. Each landowner will then receive one fifth of this sum, irrespective of the individual land parcel's location or size. This reflects the principle of equalisation as all five parcels of land are required.

- 8.10 To ensure that the Council complies with its statutory obligation to obtain best value for the disposal of the site, it is expected that at both the point of the section 123 consultation and after Picture Estates has received offers for the site an external valuer will provide a report confirming that the payment due to the Council represents the best value that could be achieved. It is worth highlighting that the mechanism for calculation of the amount paid to the Council has been the subject of negotiation, both between the Council, our legal representatives, and the developer in close cooperation with both the agent and external surveyor acting jointly on behalf of Stevenage Borough Council & Homes England.
- 8.11 All five landowners will sign a collaboration agreement governing co-operation, joint obligations, decision making, dispute resolution and cost/receipt.
- 8.12 The site will not be marketed by the Picture Estates before the expiry of the period in which legal challenge could be raised to either the planning permission, disposal of public open space or release of the access road from any restrictive covenants. Further, there will need to be a period for marketing of the site. It could therefore be several years before the Council receives a capital receipt.

9. LEGAL IMPLICATIONS

- 9.1. Cabinet, in exercising its functions, has powers to dispose of land or buildings where the consideration is between £250,000 and £2,500,000.
- 9.2. The option arrangement will enable the party that is successful in acquiring Picture Estates' interest to acquire the land needed for the access to the site.
- 9.3. Section 123 of the Local Government Act 1972 allows a Council to dispose of land in any manner it wishes provided that the consideration is the best that can be reasonably obtained unless the Secretary of State consents to the disposal.
- 9.4. Sections 123(2A) and 127(3) of the Local Government Act 1972 require a local authority wishing to dispose of open space to advertise its intentions in a local newspaper for 2 consecutive weeks and to consider objections. Authorities should conduct these procedures before making any final decisions. Further details are below.
- 9.5. There are a number of procedures which need to be followed for the disposal of the site to mitigate any risk of challenge, and these will be adhered to once the planning application has been considered. The Council will continue to be advised throughout this process to ensure that regulatory and statutory framework is fully adhered to.
- 9.6 The report identifies that there are covenants and restrictions relating to the use of certain parcels of the access land, including the Council's land, which will need to be resolved to enable the access land to be delivered free of any encumbrances.
- 9.7 In relation to the sites owned by third parties, there is a need for the Council to enter into Deeds of Variation to release obligations imposed under existing section 106 Agreements requiring the land to be used for public open space. This should be tied to the new GA2 planning application which will reflect mitigation measures as part of the new section 106 Agreement.

- 9.8 The Council will be giving consideration to the non-statutory Critchell Down Rules which requires former owners or their successors the right of first refusal to buy back land if it was originally acquired using compulsory purchase powers or the threat of and is now surplus to requirements. Although there are no known cases affecting land transferred by way of a section 106 Agreement the Council considers it best practice to give full consideration to these rules.
- 9.9 The Council will need to advertise the intention to dispose of the Council land under section 123 of the Local Government Act 1972 and consider responses before disposing of the land. This consultative process must give effect to the established 'Gunning Principles' which provide that a consultation is only legitimate when these four principles are met:
1. Proposals are still at a formative stage and a final decision has not yet been made, or predetermined, by the decision makers
 2. There is sufficient information to give 'intelligent consideration'
 3. The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response
 4. There is adequate time for consideration and response. There must be sufficient opportunity for consultees to participate in the consultation.

Failure to observe the Gunning Principles could render any decision to dispose liable to judicial review. Any failure to meet this requirement will result in an action in judicial review. This consultative process will commence prior to the planning application being determined but after it is clear where the new playground will be located. The Council will also need to show where a replacement of the existing Public Open Space is to be located on the new development.

- 9.10 Section 203 of the Housing and Planning Act 2016 gives the Council the power to appropriate the Council land for planning purposes as this will override restrictive covenants from existing section 106 Agreements that may exist and ensure that the land is free of all encumbrances, subject to Picture Estates indemnifying the Council against all risks and costs which may arise from any injunctions. There is a statutory process which must be followed including consultation and formal appropriation which can only take place after the site has been granted planning permission.

10. FINANCIAL IMPLICATIONS

- 10.1. The Council's legal & professional fees are being paid for by Picture Estates in the first instance and the total amount will be deducted from the net proceeds of sale before an agreed percentage is distributed to the five landowners. This avoids the Council paying fees up front and being at risk of abortive costs in the unlikely event that a sale of the site does not complete.

- 10.2. In due course, the proposed sale will generate a capital receipt for the Council to assist in funding the overall capital programme. The use of capital receipts reduces the need for borrowing, which in turn reduces revenue costs from interest payments and Minimum Revenue Provision charges. This site will also contribute to providing additional housing in the district. Ultimately this will increase Council Tax income, although that will need to be balanced against the cost of increased service demand, including the direct costs of waste collection.

11. RISK IMPLICATIONS

- 11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. Although the option agreement is due to be signed by all five landowners these are subject to contract and formal approval. There is, therefore, a possibility that the option agreement and collaboration agreement will not be concluded. In this instance it may be necessary to consider using compulsory purchase powers, but this appears to be unlikely as matters currently stand given that each party is due to receive a substantial sum from the sale of their land, which has a low existing use value. Picture Estates still needs to obtain planning permission. Site GA2 is, however, an allocated site in the Local Plan and a Strategic Masterplan Framework has been approved and adopted.
- 11.3. As previously mentioned, the Council's land is public open space, and the Council will need to consider any objections received via the section 123 process mentioned above. As part of this process, and at the appropriate time, the Council will publicise the location of the new playground and replacement public open space on the new development, which will help manage the reputational risk associated with the loss of the existing amenities. This could be further enhanced by highlighting the additional benefits that the related capital receipt could help deliver.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no equalities implications.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report but the Environmental Impact of developing site GA2 will be considered as part of the planning application process for the site giving consideration to Biodiversity Gain planning strategy for improvements to the natural environment.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 As previously mentioned the Council has appointed external solicitors at the initial cost of Picture Estates. It is intended that this matter will be dealt with by the Estates team in conjunction with external solicitors and valuers. Should it be necessary for the Council to use other external consultants either because of a lack of resources within the Council or for reasons of expediency the initial cost of this will be covered by Picture Estates.

16. APPENDICES

- 16.1 Appendix A: Plan showing the land owned or controlled by Picture Estates edged red and the access land coloured blue
- 16.2 Appendix B: Extent of land within Council ownership
- 16.3 Appendix C: Copy of Policy SP18 from North Herts Local Plan 2011-2031
- 16.4 Appendix D: Plan showing allocated site GA2 – Great Ashby
- 16.5 Appendix E: GA2 illustrative Masterplan and Landscape Strategy from the Strategic Masterplan Framework

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18. BACKGROUND PAPERS

Masterplan - [Agenda for Cabinet on Tuesday, 19th November, 2024, 7.30 pm | North Herts Council](#)