

To: Scrutiny Panel
Date: 18 November 2024
Report of: Head of Corporate Property
Title of Report: Disposal of Land at Foxwell Drive, Headington

Summary and recommendations

Purpose of report: To respond to queries raised as part of the call-in.

Appendices

Appendix 1	Public Cabinet papers
Appendix 2	Exempt Cabinet Papers (Exempt from Publication information concerning financial or business affairs)
Appendix 3	Legal position (exempt from publication Legal Professional Privilege)

Introduction and background

1. The decision made at the October Cabinet meeting to approve entering into an Option Agreement with Ruskin College is now subject to a call-in on the basis that the decision could lead to a loss of open space, the length of time for the Option Agreement, and conflicts of interest. This report seeks to address these concerns.

Separation of functions and conflict of interests (the transaction and planning)

2. The decision to enter into the Option Agreement has been taken by Cabinet acting as Landowner. Whether it is the Council or a third party, property transactions are often subject to conditions being met and these regularly include the buyer securing satisfactory planning permission. This is often a requirement of a purchaser as they will not want to purchase the land if they cannot use it for the intended purpose.
3. In such cases it is not a matter for the seller to deal with the planning department and, in this case, there have been no discussions between officers within Corporate Property and the Planning Department. Any discussions, whether pre-application or concerning an application, will be a matter for the proposed purchaser and officers from Corporate Property will not be involved.
4. The Cabinet agreeing to enter into an Option Agreement conditional on planning does not seek to pre-judge any application Ruskin and their partners may make to the Local Planning Authority in relation to the scheme. The decision to enter into an option agreement is an executive function, the decision concerning

planning is a Council function. The Cabinet will have no power to determine the planning application. Cabinet Members were advised by the Monitoring Officer prior to the meeting of cabinet as what to consider where they also sit on the Planning Committee. Several members therefore recused themselves from the decision before Cabinet and did not attend on that item.

5. In the event a planning application is forthcoming advice will be provided to members of the Planning Committee as to conflicts and interests.
6. Members who have attended the Code of Conduct training will be well versed on the considerations concerning predetermination and bias and there is a high threshold for demonstrating such.
7. There are no concerns over the Council separating its functions in this case as there will be no involvement of Council officers in the planning process. The Planning officers are all professionals and also used to dealing with applications for Council owned land. In this case however their dealings will be with the proposed purchaser and planning officers will only, as always, consider only the planning merits in relation to the planning application. The fact the Council is the current owner will not be a consideration.
8. Further the Planning team will be supported by a planning lawyer who will have had no part in the property transaction (which is dealt with by a separate legal team).
9. The Monitoring Officer is satisfied there is nothing at all unusual about the transaction, with no cause for concern, and that appropriate advice and safeguards will be put in place as needed throughout to protect the Council as LPA in its decision making.

Conflicts of interest – planning policy

10. In the call-in members raised the issue of conflict of interest and separation of function with regards to the planning policy function including either a next generation of or revised local plan 2024.
11. The Local Plan is a Council function and not a Cabinet function. Planning policy officers are professionals, with their own code of conduct and professional body and are also required to develop planning policies in accordance with the law and national policy. As with the previous draft plan, the development of planning policy will be done properly, with consultation, engagement, decisions, and Council and then is subject to independent examination. This is a well-established professional process and there is no reason to suggest that there would be a departure from this in relation to the site. The safeguards are in place as were with all previous planning policy development the Monitoring Officer and Head of Planning and Regulatory are confident this will remain the case.

Option Agreement – period

12. The proposed disposal of the land ensures that the Council uses its property to maximise income generation and rates of return in line with the Asset Management Strategy.
13. The land that Ruskin is looking to redevelop is sizeable, 8.7 acres for residential use and a further 3.5 acres for educational use. It will take a considerable period of time and financial investment for Ruskin to find a suitable partner, put together

a scheme that is likely to be acceptable to the Local Planning Authority and gain consent. The current issue with Thames Water sewage treatment plant and the standard Environment Agency objections will also need to be resolved in order for an implementable planning consent to be gained.

14. A ten-year option period will allow Ruskin to sufficiently explore all options available to them; a period of five years may not allow them sufficient time to explore all these options and Ruskin may decide to not proceed with the scheme. Our agents have advised that given the significant amount of work that would need to be undertaken before a planning application could be submitted a five year option would be considered a significant risk to the project and any bidders for the scheme would reduce the price are prepared to pay in an attempt to mitigate this risk, if they decided to make a bid for the scheme at all. A 10-year option is not unusual in these circumstances.

Risks Requiring Further Scrutiny – Sufficient Scrutiny

15. The purpose of scrutiny is not to make confidential information available to the public, FOIA is very much its own legal process and the fact a matter is for decision does not mean that all information on it should be disclosed under FOIA. There is a need to balance the public interest and the right to confidentiality and protection of commercially sensitive information of the Council and third parties.
16. FOIA is applied and processed by qualified professionals that will have taken a view in light of the information and the legislation as to whether the Council is obliged to release it, as is right to do. The fact Scrutiny may want to consider an item, that is a Cabinet decision or that it may come before planning is not relevant.
17. Referring to Part 15.12 of the Constitution, whilst members are entitled to see papers for a Cabinet decision this does not extend to information about the possible terms of a contract the Council is negotiating. Scrutiny then have further rights set out in section 15.11 which allows it access to confidential information on a decision it is scrutinising however this is subject to:
18. The Scrutiny Committee considering and discussion exempt information in closed session.
19. Members obligations as to confidentiality in 15.13.
20. As such Scrutiny can consider the information before Cabinet and effectively scrutinise the decision but it cannot do so in open session or share any information with a person outside the meeting. This still allows for effective scrutiny given this is in line with the legal framework concerning exempt papers, scrutiny and duties concerning commercially sensitive information of the Council's and third parties.
21. The Option Agreement has not yet been drafted; we have an agreed set of Heads of Terms that were summarised as part of the confidential appendix to the Cabinet report. It is not usual that the agreement is drafted and shared in final form as it is a technical document.

Risks Requiring Further Scrutiny – Land Repurposed as Public Open Space

22. The legal position is that the land is held by the Council for planning purposes and not open space. This is considered in more detail in exempt appendix 3. Counsel was instructed to consider the following points:

- Is the 2012 appropriation of the land, of which the land subject to the Option Agreement forms part, open to challenge on the basis the 2012 report suggests that some land would be returned to Public Open Space.
- If there is a risk of challenge should OCC advertise the proposed disposal as if it were held as public open space.
- Are there any further issues arising from the 2012 appropriation that should be considered.

23. With regards to the urban forest Ruskin College have advised that it will either be relocated or replaced as part of their wider scheme. There is also potential for OCC to relocate or replace the urban forest in an alternative location within the existing area of land. This will, however, be a matter for the LPA to consider in the consideration of any planning application.

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Background Papers:	
1	The Constitution