

REPORT TO EXECUTIVE

Date of Meeting: 19th June 2025

Report of: Strategic Director of Corporate Resources & s151 Officer and the Head of Commercial Assets

Title: Pendragon Road Disposal Report

Is this a Key Decision?

Yes

Is this an Executive or Council Function?

Executive

1. What is the report about?

1.1 The report considers a revised approach that has been made to the Council to grant access over a strip of amenity land off Pendragon Road (see Appendix 1) to facilitate the development of land adjoining the Council's ownership for affordable housing.

2. Recommendation:

2.1 That Executive resolves to delegate authority to the Head of Commercial Assets, in consultation with the Strategic Director of Corporate Resources and the Leader, to agree the final disposal terms and red line for granting access over amenity land (see Appendix 1) for the facilitation of the delivery of new affordable homes, subject to securing an independent valuation confirming the final terms represent best consideration.

3. Reasons for the recommendation:

3.1 Members are being asked to revisit a decision made in regard to the disposal of the above land in July 2024 in light of a recent intentions to incorporate 100% affordable housing.

3.2 The grant of access over the Council's land will enable the adjoining land to be brought forward for development in accordance with the planning consent (Ref: 22/0511/OUT) secured on the site (but uplifted to 100% affordable housing).

3.3 The Council will secure a capital receipt for providing access over their land. The development of the adjoining land could also generate new Council Tax income streams and potential temporary housing cost savings.

3.4 Should members decide not to proceed with the grant of access it will not be possible to develop the adjoining housing land and the provision of new affordable homes may not be delivered.

4. What are the resource implications including non financial resources

4.1 There should be positive financial benefits arising from the proposal with a material capital receipt from granting access over the amenity land.

5. Section 151 Officer comments:

5.1 If agreed the sale will produce a capital receipt, which can be used to either finance the capital programme, reducing the need to borrow or to repay existing debt, which will reduce the interest and repayment of debt figures. Given there is a significant need for short dated assets, such as vehicles and It within the existing capital programme, the receipt would be most effectively used to finance this type of asset as it is uneconomical to borrow for a short period of time.

6. What are the legal aspects?

6.1 The proposal will require the Council to comply with section 123 of the Local Government Act 1972 ('the Act'). Section 123 (1) and (2) state that a principal council may dispose of land held by them in any manner they wish subject to obtaining the best consideration that can reasonably be achieved unless the consent of the Secretary of State is obtained.

6.2 As members will note from this report, the council owns a strip of amenity land bordering Pendragon Road and which is the sole means of accessing the site proposed for development. Neither of the planning permissions which have been granted can be implemented unless the council agrees to dispose of an interest in the amenity land so that the site can be accessed.

6.3 The matter concerning the proposal by Land Promotion Group Limited to enter into option agreements for the purchase of the access land was considered by the council's executive committee on 9 July 2024. Executive resolved not to sell the two areas of amenity land. Officers are now putting to Executive a new proposal from a different party. Executive are required to determine whether or not the land should be disposed of on the basis of the terms of this new offer.

7. Monitoring Officer's comments:

7.1 Members' attention is drawn to the detailed legal provisions that apply and must be observed as set out in paragraph 6 above.

7.2 When considering matters which have a financial impact, councillors have the following legal duties:

- a) To act in accordance with their statutory duties and responsibilities.
- b) To act reasonably.
- c) To have careful regard to their fiduciary duty to its rate payers and Council taxpayers.

When making judgement calls, councillors are reminded of their obligation to act reasonably and in accordance with the principles set down in the *Wednesbury* case (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948]). This means that councillors are required to consider and take into account all relevant considerations and ignore any irrelevant considerations. Put simply, it would be unlawful for the Council to come to a view which is unreasonable in the sense that it is so irrational that no reasonable authority could have reached it.

Councillors are under a duty to conduct administration in a business-like manner with reasonable care, skill and caution and with due regard to the council's rate payers. When discharging their obligations, councillors will need to consider:

- a) Prudent use of the council's resources, including the raising of income and the control of expenditure.
- b) Financial prudence both long and short term.
- c) Striking a fair balance between the interest of the council taxpayers on the one hand and the community interest on the other,

7.3 Members are required to have regard to all relevant matters including the potential to secure a significant capital receipt and the delivery of housing. In balancing the competing interests and arriving at a decision, members need to decide whether or not to dispose of the land.

8. Report details:

Background

8.1 The Council owns a strip of amenity land along Pendragon Road that separates the public highway from an area of privately owned land to the north. The owner of that land has secured an outline planning consent on appeal (Ref 21/0020/OUT) and at local level (Ref: 22/0511/OUT) for a residential scheme of up to 100 dwellings and associated infrastructure. A unilateral undertaking has been made (and carried over to the local level consent from the appeal consent) that provides for 50% of the proposed dwellings be affordable housing, with a split of 70% social rented, 25% first homes and 5% intermediate housing. Formal open space and a play area would also be provided.

8.2 Previously, following the granting of the outline planning consent, the adjoining owner approached the Council to explore the possibility of acquiring an option to purchase two areas of the Council's amenity land. The two areas would have allowed the consented scheme to be built out but at the time of the disposal decision (July '24) Executive were not minded to dispose of the land.

8.3 Since the decision not to dispose in July 2024 the adjoining owners have secured a developer that would deliver the whole of the development as affordable homes.

8.4 If an agreement can be secured over the Council's access land, the land benefitting from the planning consent will be bought for affordable homes delivery. Under the terms of the proposed agreement the developer would be able to secure the access land for a price equating to at least one third of the enhanced land value of the adjoining land (less its base value as agricultural land).

8.5 The proposed end purchaser is now LiveWest, a housing association with homes across the Southwest and a part of The Exeter Partnership, who have committed (working with Vistry and Homes England) to deliver 100% affordable housing. A scenario that would demonstrate the council working positively with local, regional and national partners to meet local affordable housing need.

8.6 The City Council has committed to a brownfield first strategy regarding the delivery of homes in the emerging Exeter (Local) Plan and has accepted that to enable the delivery

of homes on brownfield (often derelict contaminated) sites and maintain viability, lower levels of affordable housing may need to be accepted, compared with greenfield sites. Whilst this should stimulate the delivery of more homes in Exeter it does mean any greenfield sites, like this one, may become an important source of affordable homes in the City.

8.7 An excellent locally produced (and ECC funded) short film on the Mincinglake and Whipton ward titled “Proud to Be” (see: [New film highlights pride in Exeter's neighbourhoods - Exeter City Council News](#)) emphasises both the importance of accessible green open space and the need for affordable homes to local residents and with the changes secured since last year's decision it is now considered that the current proposition contributes towards both.

8.8 A court hearing has been set for the 18th July to consider the decision in July '24, not to grant access for development, was taken legally.

Planning Position

8.9 There is no material difference between the two planning permissions granted for the Pendragon Road site. The appeal decision was a significant material consideration in the determination of the subsequent application, providing substantial weight in favour of approval. The Inspector's conclusions on key matters, including the principle of development and the provision of public open space, were instrumental in shaping the local planning authority's assessment of the later application, leading to its approval in line with established planning policy and precedent.

Public Open Space

8.10 The legal agreements for the Pendragon Road development secure a minimum of 10% of the total site area, which includes both the application land (see land outlined red on Appendix 2) and the adjacent appellant's land (see land outline blue on Appendix 2), as Public Open Space (POS). This commitment is binding within the s106 agreements and was a determining factor in the Inspector's decision.

8.11 Unlike the Spruce Close (ref: 20/0538/OUT) planning agreement (which secures the delivery of the additional valley park land – see Appendix 2), the Pendragon Road legal agreement does not explicitly safeguard the adjacent appellant's land as POS in perpetuity. While the landowners have indicated a willingness to designate this area as POS and potentially transfer it to the Council, this is not currently a legally secured position under the planning agreements.

8.12 If Executive resolve to approve the revised access proposal, additional negotiations to formally secure the adjacent land as POS will be required, actioned and secured via either the planning process or an alternative legal agreement.

Local Plan Position

8.13 The City Council is committed to a brownfield first strategy regarding the delivery of homes in the emerging Exeter Plan. However, this presents significant challenges in terms of the viability and delivery of homes on brownfield (often derelict contaminated) sites.

8.14 New evidence supporting the Exeter Plan (which was not available when the City Council first considered the disposal of this land in July 2024) demonstrates the necessity of adopting a differential approach to affordable housing, with a much lower percentage on brownfield sites (15%), compared to greenfield (35%). Whilst this should stimulate the delivery of more homes in Exeter it does mean any greenfield sites, like this one, will continue to be a major source of affordable homes in the City.

8.15 One of the key requirements of the Exeter Plan is to ensure the delivery of appropriate sites in the city to meet housing needs – this is a clear priority of Government.

8.16 The Exeter Plan is looking to allocate land to provide more than 5,000 homes out of a total housing requirement of nearly 14,000, over the plan period. Sites with planning permission are included in the housing projections of the plan. On this basis, the homes permitted at the Pendragon Road site have been included in the underlying assumptions for the Exeter Plan and, releasing the land to support the delivery of homes on the site will support the progress of the Exeter Plan at Examination.

Access Position

8.17 Since the decision in July '24 not to grant access over Council land the landowner has conditionally sold the site, on market terms, for the delivery of affordable homes.

8.18 Subject to independent sign off that the Council is securing best consideration for its land the terms of the access land disposal are that the developer will pay one third of the sale price of the adjoining development land (less its base value as agricultural land). Based on the anticipated price for the adjoining development land the capital receipt to the Council is anticipated to be in the region of £1 million.

8.19 Provisions in the final agreement will ensure the access is only available if a totally affordable scheme is promoted and completed.

8.20 The Council's strip of land serves no substantive amenity purpose although the established trees and hedges on the land warrant some protective measures. These measures can be built into any legal agreement. The land does, however, effectively control access to the adjoining land from a development perspective and therefore does serve to significantly restrict its development potential should that remain the preferred course of action.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 This decision could contribute to the Council's strategic priority of 'Leading a Well-Run Council' by potentially securing capital receipts and the delivery of affordable homes for local residents.

10. What risks are there and how can they be reduced?

10.1 The grant of access over amenity land does not expose the Council to risk.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because the proposals do not seek to reduce or change services to the extent that they will impact on any individuals including those with protected characteristics.

12. Carbon Footprint (Environmental) Implications:

12.1 There are no direct carbon impacts arising from the recommendation.

13. Are there any other options?

13.1 The Council is not obliged to grant access over its amenity land. As such it could decide to reject the proposal and retain the land for amenity uses.

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Head of Commercial Assets, Ben Colman

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Local Government (Access to Information) Act 1972 (as amended)

Appendices:-

1. Appendix 1 - Pendragon Road Access Lane (Highlighted Blue)
2. Appendix 2 – Pendragon Road Context Information

Background papers used in compiling this report:-

None

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