

Report

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Report to:	Estates Committee
Date of Meeting:	12 July 2011
Report by:	Executive Director (Enterprise Resources)

Subject:	Sale of Land to Muse Developments at Cherryhill, Larkhall
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ advise on action taken, in terms of Standing Order No 36(c) because of the timescales involved, by the Executive Director (Enterprise Resources), in consultation with the Chair and an ex officio member, to agree proposed variations to the existing contract with Muse Developments for the sale of land at Cherryhill, Larkhall.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the following action taken, in terms of Standing Order No 36(c), by the Executive Director (Enterprise Resources), in consultation with the Chair and an ex officio member, be noted:-
- ◆ the Council grant a licence of the areas of land in the Cherryhill area of Larkhall illustrated on the plan attached at appendix 1, at Church Street, Broomhill Road and Broomhill Drive to Muse Developments to carry out roads improvements associated with their development proposals adjacent to Larkhall Academy
 - ◆ the proposed variations to the existing contract with Muse Developments set out at Section 4 of this report

3. Background

3.1. The Council entered into an agreement with InspirEd which was negotiated by the Schools Modernisation Team for the replacement of Larkhall Academy in 2006. Part of that agreement included the sale of 2 areas of land to their partner company, now trading as Muse Developments. The terms of that contract allowed for a sale price of £5 million for "the Southern site" and £820,000 for "the Northern site". Both contracts were drafted on similar terms and allowed for an overage payment to the Council in the event the developer changed the development from the envisaged use of housing to a more profitable development mix within six months of settlement.

3.2. It was envisaged that the contract would be completed in 2009. However, difficulties including (a) access rights to adjacent land in third party ownership, (b) land required to carry out road improvements to access the proposed development and (c) the

limited duration of the overage provisions, has resulted in the final settlement being delayed.

- 3.3 In an attempt to progress the development, the Council entered into negotiations with Muse to accommodate the requirements of each party and free the way to achieve settlement of the new school procurement contract. These negotiations have resulted in a provisional revised agreement.

4. Proposal

- 4.1. The negotiations focussed on 4 main areas which represent the main concerns of the two parties. These are:
- Payment of the agreed purchase price by Muse to Education Resources
 - Resolution between the parties on the obligation in the Council's title to provide access over the land to be sold to Muse to adjacent land owned by the Trustees of Euphemia Hamilton
 - Use of land for access improvements to the development
 - An extension to the overage provisions to allow the Council a better prospect of receiving overage
- 4.2. The early resolution of the contract and the subsequent payment of the purchase price to the Council is vital to allow Education Resources to comply with other contractual obligations relating to the completion of Larkhall Academy. The contract has not been able to be resolved until now mainly due to the outstanding issues surrounding the access arrangements to the Euphemia Hamilton land.
- 4.3. The obligation to provide a reasonable alternative access to Euphemia Hamilton land will be transferred from the Council to Muse who will require to provide this within their development proposal. The cost of providing an equivalent access to this land has been costed in the region of £90,000. It is estimated that the value of the land made available to Muse by the Council is less than this.
- 4.4. The Council will make land available for the access improvements as illustrated on the plan at appendix 1 with plots numbered 1 to 7. Plot 1 comprises land over which the Council will grant to Muse a servitude for construction of new permanent access to the proposed development. Plot 2 comprises an area of temporary access to enable development works. Plots 3,4,5,6 and 7 comprise areas over which the Council will grant Muse a licence for the purpose of undertaking junction improvement works.
- 4.5. The improved access arrangements associated with the Muse development will have the additional benefit to the Council of significantly improving vehicular access to the new Larkhall Academy.
- 4.6. The original agreement allowed the Council to share in an uplift in value (overage) as a result of planning permission granted within 6 months of the date of settlement. In the current economic climate this is considered to be too short a time period to test whether any enhanced value can be secured.
- 4.7. Through negotiation it has been agreed to increase the period of the overage to 5 years with the percentage share to the Council reducing by 10% per annum throughout that period. The overage share to the Council would start at 70% decreasing to 30% in year 5. This reflects a significant improvement over the Council's existing contractual position and gives a realistic prospect of securing an overage payment, should it be due.

4.8. It is considered that the proposals set out above improve the Council's position in relation to the existing contractual position.

5. Employee Implications

5.1. There are no employee implications in connection with this transaction.

6. Financial Implications

6.1. There are no financial implications to the Council in the short term. However, the changes to the contract increase the prospect of securing any overage payment.

7. Other Implications

7.1. The risks in not proceeding with this proposal are that the Council's contractual obligations will not be met and the capital receipt will be further delayed in being paid to Education Resources. Education Resources will, in turn, face financial penalties relating to the construction of the school if matters are not resolved in early course.

8. Equality Impact Assessment and Consultation Arrangements

8.1. Negotiations have been conducted by Regeneration, Education and Legal staff working together.

8.2. This report does not introduce a new policy function or strategy or recommend a change to existing policy, function or strategy and therefore, no impact assessment is required.

Colin McDowall

Executive Director (Enterprise Resources)

21 June 2011

Link(s) to Council Objectives/Improvement Themes/Values

- Improve the quality of the physical environment
- Sustainable development
- Support the local economy

Previous References

None

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Iain Ross, Project Manager, Regeneration Services

Ext: 4227 (Tel: 01698 454227)

E-mail: iain.ross@southlanarkshire.gov.uk

REGENERATION SERVICES

