

WESTERN EXPANSION AREA COLLABORATION AGREEMENT

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Executive Summary:

The Council (MKC) owns approximately one third of the land in the Western Expansion Area (WEA), the balance being in the ownership of Redlawn/Gallagher and the whole of which has the benefit of an outline planning permission secured by Gallagher in 2007. Redlawn/Gallagher have continued with obtaining further consents and reserved matters approvals with a view to commencing development on site in 2012. As joint landowner, MKC signed the Section 106 agreement relating to the WEA in 2007, binding it in to the implementation of the planning permission as granted.

The purpose of this report is to seek authority to enter into a Collaboration Agreement with Redlawn/Gallagher in order to enable development and disposal of sites to proceed on a basis that maximises the Council's receipts, reduces its risk and complies with EU procurement regulations.

Separately, the Council – as highways authority – has negotiated with Redlawn/Gallagher to agree significant variations to the original consented scheme, securing new network connection principles and an extension of grid roads into the scheme, with protected grid road corridors extending right across the scheme.

1. Recommendation(s)

- 1.1 That the public and press be excluded from the meeting virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of the Local Government Act 1972 during consideration of **Annex A** to this report.
- 1.2 That the successful conclusion of negotiations with Redlawn/Gallagher in relation to the proposed Collaboration Agreement be welcomed.
- 1.3 That the progress, reflected in the Memorandum of Understanding between the Council and Redlawn/Gallagher, towards securing a future highway network in the WEA that complies with the commitment to Grid Roads enshrined in the draft Core Strategy be welcomed.
- 1.4 That the Assistant Director (Law and Governance) be Authorised to enter into an agreement whereby the Council contracts with Gallagher or its subsidiary Company Redlawn, to sell the land the Council owns in Area 10 and 11 of the Western Expansion Area to whoever Redlawn/Gallagher direct, on the basis summarised in paragraphs 2.9 to 2.16 below.

2. Issues

- 2.1 Five farms on the Western flank of Milton Keynes were transferred under Local Government re-organisation from Buckinghamshire County Council to this Council in 1997.
- 2.2 Three of these are in the Western Expansion Area and where outline planning consent was granted in 2007. The planning consents related to two adjacent areas, Area 10 and Area 11.
- 2.3 In totality 6,550 new residential units, a high street, several schools, industrial areas, local centres, community sports facilities and a city wide burial ground were consented.
- 2.4 Cabinet last considered bringing forward the Council's land in the Western Expansion Area in March 2008. At that time the structure of the arrangements was to carry out land exchanges so the Council then owned 50% of the land in Area 10 and Redlawn/Gallagher all of Area 11.
- 2.5 Redlawn/Gallagher would then utilise European Procurement rules tender and put in the infrastructure into Area 10 and be free to procure the infrastructure for Area 11 as they wished. The Council was to pay for their proportion of the infrastructure in Area 10 by reference to the percentage of land owned.
- 2.6 Once the respective parcels of land in Area 10 or 11 were serviced either party could sell their respective land holdings.
- 2.7 Apart from a collapse in market conditions two main issues emerged which prevented the collaboration agreement being completed in that form.
 - European Procurement law was the subject of a further case law which meant that the whole collaboration agreement in itself became a Public Works Contract which had to be tendered.
 - Redlawn/Gallagher considered that the Council could undercut them on the sale of serviced land parcels.
- 2.8 The net effect was to re-start the negotiations on a different basis addressing both the issues outlined above.
- 2.9 The new proposal is for the Council to contract with Gallagher, or its subsidiary Redlawn, to sell the Council's land in the Western Expansion Area to whoever it may direct, but subject to the terms summarised below and set out in Annex A which is not for publication by virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of the Local Government Act 1972.
- 2.10 In the case of Area 10 Gallagher can only sell serviced parcels whether in their or the Council's ownership. In Area 11 Redlawn/Gallagher can sell and direct the Council to sell un-serviced parcels.

- 2.11 Splitting the responsibilities for servicing in this way gives flexibility to dispose of the land in Area 10 in accordance with the normal Gallagher business model, and allows flexibility for Redlawn/Gallagher to sell un-serviced parcels in Area 11.
- 2.12 One of the main issues considered in the negotiations was to ensure that the Council did not have to make payments up front for the provision of infrastructure and thereby avoid the arrangements becoming a public works contract under European Law.
- 2.13 The Council instead receives a percentage of the sale proceeds for all land in the Western Expansion Area, not just for those areas in the ownership of the Council.
- 2.14 The payment mechanism is achieved by changing the proportions of land receipts, increasing the Redlawn/Gallagher proportion when serviced and un-serviced land is sold. The costs of negative cash flow will also be deducted from the sale receipts.
- 2.15 The exact proportions have yet to be agreed and will be the subject of a detailed assessment by the Council's land agents, but they split approximately one third to the Council and two thirds to Redlawn/Gallagher. The agreement relates to all land in the Western Expansion Area, not just that for residential development.
- 2.16 The Heads of Terms also deal with the potential that the form of development and provision of infrastructure may change during the development period. In particular it confirms that Redlawn/Gallagher will use their reasonable endeavours to accommodate changed requirements of the Council as Highway and Planning Authority provided there are no cost/value implications to Redlawn/Gallagher.
- 2.17 The benefit of this arrangement is that the Council, first having being gifted the farms, now will have an agreement by the majority landowner in the Western Expansion Area for them to service and sell the land and the Council will have no liability to make any payment, but instead receive a net capital receipt building on the expertise of its development partner Redlawn/Gallagher.
- 2.18 Although the negotiations have been led by the Valuer and the Deputy Valuer, external specialist surveying and development advice from Carter Jonas has been obtained and a Director of that firm has attended the meetings with Gallagher. External legal advice from Sharpe Pritchard has also been obtained at partner level where again the partner dealing with this negotiation has been present at the meetings

3. **Alternative Options**

- 3.1 Sell the Council's land un-serviced.
- 3.2 Service the Council's land and sell serviced parcels.

- 3.3 There is no market except at a very low price for large parcels of un-serviced land and where to sell agreement needs to be reached with a competitor developer over the provision of infrastructure (in this case Redlawn/Gallagher).
- 3.4 The Council could service its own land as the Section 106 allows either party to enter onto each others land and construct services. The Section106 also allows each party to connect into the services so laid without payment. However the Council would have to make up front payments for such infrastructure provision and this carries considerable risk.
- 3.5 Neither alternative is recommended. If the first alternative was pursued then if a sale could be achieved it would be at a heavily discounted price. In the case of the second Redlawn/Gallagher do not need to come onto the Council's land for a number of years and would phase their development to concentrate on their land alone.

4. Implications

4.1 Policy

Planning

The Western Expansion Area was allocated for development in the 2005 Adopted Local Plan. The development principles of the Western Expansion Area – a mixed use development of about 6,550 new homes and supporting facilities and services – were set-out in a Development Framework approved by Council in June 2005. Milton Keynes Partnership Planning Sub-Committee considered and approved, subject to conditions, outline planning permission for the Western Expansion Area during December 2005 and October 2007 respectively.

Reserved matters planning applications for primary infrastructure works and an increase in retail floor area for Phase I of the Western Expansion Area have been submitted to Milton Keynes Partnership Planning Sub-Committee. A decision on these applications is expected by the end of 2011.

The Western Expansion Area is identified as an existing major development site in the Revised Core Strategy.

In general terms the reserved matters planning applications are broadly in accordance with Council policy and subject to detailed consideration can be supported in principle.

Additionally as joint landowner MKC signed the Section 106 agreement relating to the WEA in 2007 binding it to the implementation of the planning permission as granted

Transport

The outline planning consent introduced the concept of a City Street with supporting infrastructure connecting to the V4 and H4. Redlawn/Gallagher progressed that concept until the point that they could request the Council as Highway Authority to issue consents under Section 278 of the Highway Act 1980.

Elected Members expressed their concern at this concept and requested that Grid Roads be introduced along with the city street into the development. The introduction of grid roads into new expansion areas is supported by Milton Keynes Transport Strategy (Local Transport Plan) adopted in June 2011. Redlawn have co-operated in this request and have agreed to a Memorandum of Understanding attached as **Annex B**. This has been the subject of discussion with Milton Keynes Partnership and it has been agreed that the changes do not require a new outline planning application, a pre-condition by Redlawn/Gallagher associated with the re-design.

The Heads of Terms also allow the Council as Highway and now planning development control (acting on behalf of the Homes and Communities Agency) to request reasonable additional changes which Redlawn/Gallagher will accommodate provided that there are no cost/value implications for them.

4.2 Resources and Risk

The structure of the transaction reduces the risk to the Council as the financial liability falls on Redlawn/Gallagher. They take their reward by an increase in the percentage of land sale receipts specified above. Their percentage is sufficient to incentivise them to reduce the costs of infrastructure provision and maximise sales receipts.

Their ability to sell un-serviced parcels in Area 11 allows them flexibility if their requirement is to obtain early receipts, but again the Council obtains a share of those receipts.

Redlawn/Gallagher are anticipating to start work on the infrastructure provision in early 2012.

Y	Capital	Y	Revenue	N	Accommodation
N	IT	Y	Medium Term Plan	N	Asset Management

4.3 Legal

Counsel's opinion has been obtained confirming that the structure of the transaction is such that European Procurement rules do not apply.

The requirement in the transaction for the sale of land to be tested in the open market or be the subject of a valuation satisfies Section 123 of the Local Government Act 1972 to obtain best value on property disposals.

3.4 Other Implications

Y	Equalities/Diversity	Y	Sustainability	N	Human Rights
N	E-Government	Y	Stakeholders	Y	Crime and Disorder

Background Papers:

Annex A Heads of Terms for a collaboration Agreement between Redlawn/Gallagher and the Council which is not for publication by virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of the Local Government Act 1972

Annex B Memorandum of Understanding between MKC and Redlawn/Gallagher