



Purpose: For Decision

Committee report

Committee	CABINET
Date	11 MARCH 2021
Title	PROPOSED TRANSFER OF LAND AND SUPPORTING INVESTMENT AT PARKHURST ESTATE NEWPORT
Report of	CABINET MEMBER FOR CORPORATE RESOURCES AND CABINET MEMBER FOR REGENERATION AND BUSINESS DEVELOPMENT

EXECUTIVE SUMMARY

1. The Ministry of Justice is seeking support from the council in resolving much needed highways and public realm disrepair on its Parkhurst estate including areas around HMP Albany, HMP Parkhurst and the former Camp Hill Prison site.
2. The Ministry of Justice is proposing to transfer to the council the ownership, liabilities and future management of highways land to include the road carriageways, pavements, grass verges and associated amenity areas (other than defined roads/areas it has defined as needing to keep for operational reasons). The proposal includes a sum for improving the roads that the Ministry of Justice is keeping in its ownership and the long-term maintenance liabilities for these will remain with the ministry.
3. The Ministry of Justice is offering a one-off, fixed amount to the council to bring the defined areas up to an acceptable safe standard. The council would then have to take on the current liabilities and future maintenance for the transferred areas, but not for third party owned land under the proposed terms within this one-off budget amount. The final heads of terms agreement dated 1 March 2021 sent on behalf of the Ministry of Justice sets out the proposed terms including the financial offer of the transfer and is attached as confidential Appendix 1.
4. There are instances where ownership of the roads will remain with individual private householders as ownership and its associated liabilities cannot be legally transferred by the Ministry of Justice to the council. Confidential Appendix 2 is a map that identifies the roads that will not be subject to improvement as they will remain third-party roads outside of the Ministry of Justice's investment offer.

5. The transfer of Ministry of Justice land will require completion of a satisfactory legal agreement that provides adequate measures of protection and risk control for the council.
6. The report considers the opportunities and risks for the council in accepting this offer from the Ministry of Justice. This includes the potential importance of the former Camp Hill Prison site for future regeneration and housing development opportunities by the council, establishing a joint strategic approach with the Ministry of Justice to bring the site forward in the longer term.
7. The Ministry of Justice requires that transfer must be accepted by the council with monies transferred by 31 March 2021. The council is expected to agree to the Ministry of Justice being absolved of all ongoing liabilities, financial commitments or specific conditions relating to infrastructure or ongoing maintenance costs on the land being transferred into council ownership.
8. The report's recommendation is to accept the offer from the Ministry of Justice subject to the final heads of terms and legal agreement being agreed with the Ministry of Justice and subsequent approval of these by the Cabinet members for regeneration and resources and the council's section 151 officer.
9. The imposed timescale is very challenging around the legal land transfer process and the potential outcome of not adopting this recommendation may be that, given its range of other estates commitments, the Ministry of Justice withdraws its offer and the investment is lost to the Island if the transfer is not possible in the required timescale.

CONFIDENTIAL / EXEMPT ITEMS

10. The Ministry of Justice has requested that given the commercial information used to calculate the amount of monies to support improvements in the specific terms it has offered the council outlined in Appendix 1, these are subject to commercial confidentiality relating to its financial and legal affairs. This is information that is exempt from disclosure.
11. The specific terms of the land transfers are currently being negotiated based on detailed costings, legal advice and risk assessments produced by the council outlined in appendices 2, 3 and 4. The details of which are also subject to the commercial and legal professional privilege of the council and also considered exempt information.
12. The appendices to this report which contain this information are considered confidential and exempt items by virtue of paragraph 3 of Part 1 of Schedule 12A to section 100(A)(4) of the Local Government Act 1972, and in all the circumstances, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information.

BACKGROUND

13. The Ministry of Justice is currently undertaking a national review of the prison estate and subject to its outcome the proposed transfer and improvement works outlined in this report will support the development of a new masterplan and possible land

transfer for wider area regeneration, should the non-operational part of the site be confirmed as surplus to their future requirements.

14. The council has over many years pro-actively sought to bring forward improvements and partial housing development of the wider Parkhurst estate as part of its area regeneration plans including developing the former Camp Hill Prison site as part of its regeneration programme.
15. These council led efforts have been stalled on several occasions by a lack of available infrastructure investment by government agencies at the scale required to unlock the larger site for development. These would have addressed the very poor condition of the estate's infrastructure through a programme of development which would have included the road carriageways, pavements, grass verges and associated amenity areas as part of a wider place making agenda.
16. The last substantial funding bids were made in 2015 and 2018 respectively, when the council, supported by the Homes and Communities Agency, the Isle of Wight Trust and the Ministry of Justice proposed a new 'garden village' on the Camp Hill site. This comprised up to 1,750 dwellings, a new local centre, employment, healthcare, education and public open space.
17. The site was considered an ideal location for this development offering:
 - a community with a clear identity and attractive environment;
 - a mix of homes, including affordable and self-build;
 - a scheme planned by the local authority in consultation with the local community;
 - job opportunities;
 - attractive green space and public realm areas;
 - transport infrastructure, including roads, buses and cycle routes;
 - community infrastructure, community and health centres;
 - a plan for long-term stewardship of community assets.
18. This approach was expected to generate the investment and create a strategic site to improve the infrastructure and affordable housing needs of the wider Island. The bid was ultimately unsuccessful as the infrastructure costs to bring forward housing development by attracting potential development partners was considered prohibitive following detailed financial viability studies.
19. Mainland councils who were able to offer much larger strategic sites for new homes with comparatively lower infrastructure costs were awarded the funding as the Isle of Wight bid was not seen as offering the best value for the total funding requirement by the Ministry of Housing, Communities and Local Government.
20. The council subsequently attracted funding for strategic highways junction improvements at St Mary's Roundabout and other Newport junctions with a part of this funding aimed at contributing to the eventual unlocking of the former Camp Hill Prison site.

21. While the land at the former Camp Hill prison is not part of this current land transfer offer, it can be viewed as another step in beginning to de-risk the site itself enabling future negotiations master planning and updated viability activities to take place.
22. The wider Newport area is subject to a wide range of regeneration initiatives and there is a real sense that local stakeholders are supportive of improving and protecting the area's key attributes and addressing wider infrastructure needs.

STRATEGIC CONTEXT

23. This Ministry of Justice proposal also fits with our latest [Corporate Plan 2019-22](#) and with the corporate priorities of growth, regeneration, opportunity and wellbeing. The strategic aim for the potential Camp Hill site is regeneration based and reflected in the council's adopted policies.
24. There is also an appetite for future partnership working within the Ministry of Justice such as attracting One Public Estate funding from government for future master planning activities.
25. The council's regeneration programme sets out potential to achieve higher levels of growth and to support regeneration and increase prosperity. The programme also highlights that infrastructure investments will be required to enable the identified opportunities in the Regeneration Strategy 'Inspiration Island' 2019–30; to be realised through the coordination and management of a range of key projects and work-streams aimed at driving regeneration and economic growth and delivering place-making benefits.
26. One of the key area regeneration programme activities focus on Newport as the Island's main commercial hub, transport hub and the county town, which offers greater strategic opportunities that have the potential to benefit any new communities, the town and the Island as a whole.
27. The council's garden village proposals demonstrated how a new settlement at this location, using a brownfield site, contributes to growth, regeneration, opportunity and wellbeing including contributing to sustainable development, economic, social and environmental aspirations of place making within the community.
28. The aspiration for future housing led regeneration on this site assists a wide range of corporate and service priorities, which are critical to the council and its wider partnerships including social care, crime, health and education; accepting that access to a safe and secure home underpins the health and wellbeing of Island residents.
29. The other strategic plans that relate specifically to the recommendations within the report. include, but are not limited to:
 - the Housing Strategy 2020-25;
 - the Health and Wellbeing Strategy for the Isle of Wight 2018-21;
 - the Extra Care housing strategy 'Independent Island' 2017-32;
 - the Health and Wellbeing Strategy 2018-20;
 - the Community Safety Partnership Strategic Plan 2018-20.

30. The recommendation in the report to accept the proposal from the Ministry of Justice has the potential to take the council's ambition to acquire and unlock the former Camp Hill Prison site for housing and community development one step further with substantial benefits to the Island's wider regeneration.
31. This site has also been included in the Island's Investment Plan also submitted to this Cabinet meeting to form a prospectus for an island-wide infrastructure funding application, as part of the government's levelling-up agenda.

HIGHWAYS PFI CONTRACT

32. The Highways PFI contractor Island Roads has already been engaged on the project and provided costings. It is intended it will act as the contractor for the council on this project if taken forward. Island Roads has provided estimates of the investment needed to bring the road carriageways, pavements, grass verges and associated amenity areas into repair to a safe standard.
33. This includes the roads the ministry has defined as needing to keep for operational reasons. Island Roads will confirm the required sums to complete the necessary works and should the project proceed, mobilise existing contractual arrangements to deliver the improvements on the estate. Options to secure arrangements for maintenance linked to wider regeneration of the area will form part of site master planning.

CONSULTATION

34. There has been past consultation in regard of the wider estate and the potential for new housing development at the former Camp Hill Prison site as part of the council's long-standing ambitions and funding bids, however this does not constitute part of the Ministry of Justice's current offer as it stands.
35. Full consultation has not been possible at this stage of the negotiations as the council has not yet decided on this offer from the Ministry of Justice. The ward councillor has been consulted and engaged to help manage initial resident communications. All residents have been contacted by letter to inform them of survey works being undertaken on the estate and any enquires, including public messaging, are being managed through the Regeneration Team.
36. The feedback received to date indicates community support of the prospect of the council taking on the responsibilities of tackling disrepair on the Parkhurst estate and taking over the stewardship of the road carriageways, pavements, grass verges and associated amenity areas from the Ministry of Justice.
37. If the proposal is accepted a full consultation plan and community engagement arrangements will be undertaken before commencement and during implementation of the works. There are also statutory duties to consult residents as and when significant works are due to take place under highways legislation which will be managed by Island Roads throughout the time period of the works programme.
38. Consultations with other utilities will also be needed to ensure proper co-ordination of any planned works.

SCRUTINY COMMITTEE VIEW

39. The views of the Corporate Scrutiny Committee will be advised to the Cabinet verbally during consideration of this report.

FINANCIAL / BUDGET IMPLICATIONS

40. The council manages the service delivered from Island Roads through the Highways PFI contract and is responsible for its revenue budget and staffing. Island Roads has provided costings to inform the potential funding offered by the Ministry of Justice to bring the road carriageways, pavements, grass verges and associated amenity areas back into repair and to cover potential future maintenance costs as at Appendix 3.
41. It is acknowledged that the sums are provisional as there is no detail of potential costs associated with below ground drainage. The indicative works and cost schedules were based on surface-inspections only, due to the time constraint in preparing these for the Ministry of Justice's completion deadline by 31 March 2021.
42. These cost estimates have been further revised by a specialist project and a 30 per cent contingency has been added to the original estimates to help de-risk these 'unknowns'. The potential whole life costs have also been calculated using the accrual calculation for the Highways PFI contract.
43. The main financial risk identified is the future maintenance costs of the transferred areas that benefit from the initial investment. However, due to the non-standard construction and historic design of the road network on the whole Parkhurst estate it is not considered feasible to bring the Ministry of Justice's current land parcels up to the council's 'adoptable standard' within the Highways PFI contract. This would require a total reconstruction of the road network rather than addressing disrepair and there is little allowance within the sum of monies offered by the Ministry of Justice beyond repairs to the existing areas and for on-going maintenance.
44. This means that the existing road network cannot be accrued onto the Highways PFI contract between the council and Island Roads as it stands and flexibility in the timings and the actual scope of works has been negotiated with the Ministry of Justice to ensure the budget for works is manageable. The Ministry of Justice has confirmed that it is not able to increase the sum of monies offered beyond that in the final heads of terms for ongoing maintenance liabilities.
45. The council's mitigation to date has been to negotiate with the Ministry of Justice to agree that a safe standard of repair is acceptable. The plan is to use the 'one-off' funding offered by the Ministry of Justice to address immediate disrepair liabilities, focusing on health and safety. Over the next several years while these works are being undertaken the council will identify the best method to fund future maintenance requirements through regeneration activities including submitting bids for infrastructure funding and through a programme of consultation and engagement with residents including potential for an estate management company for the affected areas.
46. While all costings remain provisional and further due diligence is required to refine the overall costs, the proposal as presented would, if alternative arrangements are not put in place, require the council to incur costs over and above the sum offered by

the Ministry of Justice. Even if the contingency sum were not to be required, the council would still be required to incur substantial annual and ongoing costs. This would be to the potential detriment of other highways maintenance and improvement works on the Island. Due diligence is also required to establish whether any historic liabilities are insurable or not and if so the additional costs that this may confer on the council.

47. The council has also incurred expenditure in legal fees, surveys, and searches to help assess the proposal from the Ministry of Justice, and these costs will be abortive if it does not go ahead.
48. Discussions with the Ministry of Justice regarding the potential regeneration of the former prison site at Camp Hill continue and while a national review of prison estate is ongoing the Ministry of Justice is unable to enter into any specific agreement regarding this. Addressing the legacy public realm issues connected with the existing residential areas will obviously be needed as part of any wider regeneration plan and taking the opportunity to tackle these through the funding offer provided will help offset this future cost in enabling future partnership regeneration of the wider site.
49. It is anticipated that sometime within the next 17 years as per the terms of the Highways PFI contract there will be a whole site development solution coming forward for the former Camp Hill Prison including the necessary upgrading of the enabling infrastructure works for the whole Parkhurst estate. Though any such development must be considered speculative at this stage for the purposes of taking a decision on the Ministry of Justice proposal.
50. There are no specific VAT or tax implications identified to date for the purposes of this proposed land transfer from the Ministry of Justice outside of the council's business as usual activities and obligations as a public body. These implications are being explored further with specialist advice to ensure that this remains the case and will be considered by the Director of Finance and section 151 officer as part of his consideration of the financial risk of the proposed decision.

CARBON EMISSIONS

51. Carbon emissions from the construction and management of roads does not currently contribute to the council's carbon footprint. The council is considering the inclusion of emissions from major suppliers in the next Carbon Management Plan which, if agreed, will result in a contribution from the proposed scheme. However, in the context of the whole Highways PFI contract, the contribution will be modest for the repairs to be undertaken to road carriageways, pavements, grass verges and associated amenity areas on the Parkhurst estate.
52. In the context of the Climate Emergency Declaration, there are clear national plans for the rapid decarbonisation of transport which will significantly reduce emissions from private transport. The proposed scheme will also support the council's sustainable transport agenda by facilitating public transport, walking and cycling.

LEGAL/PROCUREMENT IMPLICATIONS

53. The final heads of terms have been agreed in principle and the legal work is continuing at the time of writing to progress the result of Cabinet's decision. This

report reflects the risks and mitigations to protect the legal interests of the council from immediate land transfers and liabilities without being given the opportunity to complete all the usual due diligence on land transfers due to the imposed timescale.

54. The recommended option will result in a report on due diligence on the acquisition of the land being provided to the Director of Regeneration for consideration.
55. The council seeks flexibility of ongoing maintenance delivery within the final heads of terms of the Ministry of Justice's offer and in managing the future legal agreement to protect against the identified risks against to the council's budget and insurance cover in the longer term.
56. The council has confirmed to the Ministry of Justice that its retained highways contractor Island Roads was procured through an Official Journal of the EU compliant competitive selection process. It can undertake the works required while satisfying public procurement rules and internal processes.
57. The council has checked the costs provided by Island Roads to satisfy itself that the costs accord with the schedule of rates defined in the council's contract with Island Roads.

EQUALITY AND DIVERSITY

58. The council, as a public body, is subject to general and specific duties under equality and diversity legislation and as such has a duty to impact assess its service, policies/strategies and decisions with regard to diversity legislation and the nine protected characteristics (race, gender reassignment, disability, age, sex and sexual orientation, religion or belief, pregnancy and maternity, marriage and civil partnership). There are no direct implications for the council's duties under the terms of the Equality Act 2010 arising from the recommendations in this paper.

PROPERTY IMPLICATIONS

59. The proposed project is not currently within the scope of the Strategic Asset Management Plan. If the council decides to accept the offer from the Ministry of Justice, it will receive and become legally responsible including claims for the land being transferred into its ownership.
60. This is largely highway, footpath and related amenity space which as the report sets out will require significant investment to bring up to an acceptable standard and maintained in a suitable condition. There is no property budget from which any of these costs can be met and the detailed terms of any agreement with the Ministry of Justice are important in securing the necessary funds and other resources. Unless or until the land is subsequently transferred into the existing Highways PFI or any other third party for its long-term management, the council will be responsible for the land and property matters associated with the transfer including related holding costs.

SECTION 17 CRIME AND DISORDER ACT 1998

61. The Local Development Framework provides the local policy context within which decisions on planning applications are made and their crime and disorder implications considered by our Planning Department. There is a whole range of partnerships and

client groups represented in the Community Safety Strategy which can be consulted with during the work stages if the proposal from the Ministry of Justice is accepted.

62. This proposal offers an opportunity to reduce crime, disorder, antisocial behaviour, and substance misuse across this community by improving the physical environment through practical measures such as improved street lighting, improved carriageways and footways to an acceptable safe standard with anticipated positive individual behavioural changes and greater community ownership happening in due course.

OPTIONS

63. The options available to the council are as follows:
 1. To accept the heads of terms from the Ministry of Justice subject to the final heads of terms and legal agreement being reached with the ministry, and to delegate subsequent approval of the acquisition of the land to the Director of Regeneration in consultation with the Director of Finance together with the Cabinet members for regeneration and business development, corporate resources, and infrastructure and transport.
 2. To reject the proposal from the Ministry of Justice.
64. Option 1 is the recommended option because the Ministry of Justice proposal could act as a new focus and catalyst for the regeneration of the Parkhurst estate and improve the lives of residents. While at the same time assessment will need to be made as to whether, through appropriate flexibility in the heads of terms, and subject to legal agreement, there is enough comfort in balancing its regeneration ambitions with the significant risks and potential financial exposure of undertaking the works and long-term liabilities identified in this report. Consideration of the financial liabilities and any liabilities arising as a result of due diligence will be undertaken by those officers with delegated authority to approve the transfer as part of this option.
65. Option 2 is also a viable option but carries the risk of the Parkhurst estate falling into further disrepair given that the Ministry of Justice has not maintained its assets on the estate over many years and access to future funding being uncertain. The risks to the council taking on this responsibility would be avoided, but this option needs to be balanced against the loss of a 'one-off' investment opportunity to support the council's regeneration aims and secure the potential quality of life benefits for local residents from this investment. The future relationship with the Ministry of Justice regarding potential wider redevelopment of the area may also be compromised

RISK MANAGEMENT

66. This proposal requires a significant decision from Cabinet to progress further. A detailed risk assessment and register to inform this decision has been put together following 4 risk workshops held in late January and early February with key staff and shown at Appendix 4.
67. The major risks identified within this proposal relate mainly to the short timescale imposed by the Ministry of Justice which limits the amount of due diligence that the council can reasonably undertake before the proposed sums, land and liabilities are transferred on or before 31 March 2021. This imposed timescale also limits what can

be done to mitigate the impacts of the identified risks as the council would normally undertake several months due diligence on a project of this size, scale and complexity.

68. There are more specific risks with regard to the council being expected to take on liability for the transferred land from the date of transfer including a level of anticipated claims which could arise once these areas of land come into council ownership. There is also the potential for historical claims to emerge as the Ministry of Justice has been unable to supply records for the last five years as requested. The details of all known and settled claims to the Ministry of Justice knowledge have been provided. If further yet unknown historic claims emerge, these claims will need to be managed as such with the responsibility being passed back to the Ministry of Justice as the landowner at the time. The claims risks identified could impact the budget or the current levels of the council's insurance cover, though again the likelihood and extent of this remains unknown at present.
69. Other risks relate to agreeing specific land and utility ownerships and liabilities, wider infrastructure unknowns such as drainage, condition of sewers, and expected timescales for the delivery of works within the specific terms proposed at transfer. There is also the expectation that the council will upgrade carriageways that will remain in Ministry of Justice ownership which causes further complications in actually delivering the works due to the patchwork ownership of the estate between public and private parties.
70. The council therefore has negotiated flexibility of works and ongoing maintenance delivery within the final heads of terms of the Ministry of Justice's offer. This needs to be fully captured within the final legal agreement to protect the council against risks to the council's budget and insurance cover.
71. The one-off offer from the Ministry of Justice to address the necessary improvements goes beyond its understanding of its legal commitment linked to the transfer of their remaining land ownership. Those areas of footways and highways that were historically included in the sale of individual properties to homeowners, will remain the responsibility of those owners following transfer of the Parkhurst estate and should the transfer take place, the council will seek to work with those home owners to identify how best to ensure whole area improvement can best be delivered. In their grant offer the Ministry of Justice has provided some recognition of this challenge of securing wider improvement even though it is not they legally obliged to do so.
72. While these works are being undertaken the intention is to identify the best options to enable arrangements for future maintenance to be confirmed these include:
 - accrual of the assets to the PFI contract for the remainder of its term;
 - establishment of a management company for the existing residential area;
 - the council property and highway functions retaining maintenance responsibility;
 - development of a management company for the wider regeneration area (subject to wider area master planning moving forward).

It is intended to use the grant funding offered to address immediate works but also address resulting maintenance demands until a preferred option is confirmed.

EVALUATION

73. Consideration has been given to the associated risks, legal and budget implications for this project to go forward. There is undoubtedly a balance to be struck between the potential risks to the council in taking ownership and responsibility for areas of land on this estate from the Ministry of Justice and the benefits to residents from this potential investment in the short term.
74. While it is important to note that the potential surplus land at Camp Hill Prison is not part of this current Ministry of Justice offer, it does present an opportunity to support the de-risking of the former Camp Hill Prison for future development (subject to adequate funding being available to construct and maintain the infrastructure) and to enable future master planning exercises to attract developers and improve the underlying viability of the site.
75. There remains an appetite for future partnership working, including attracting One Public Estate government funding for master planning activities as both parties are public sector organisations, and the Ministry of Justice has indicated a willingness to do so once its national review of prisons has concluded in late 2021.

RECOMMENDATION

Option 1 - To accept the heads of terms from the Ministry of Justice subject to the final heads of terms and legal agreement being reached with the ministry, and to delegate subsequent approval or refusal of the acquisition of the land to the Director of Regeneration in consultation with the Director of Finance together with the Cabinet members for regeneration and business development, corporate resources, and infrastructure and transport.

CONFIDENTIAL APPENDICES ATTACHED

Appendix 1 - comprises the final draft heads of terms from the Ministry of Justice.

Appendix 2 - comprises the map of included and excluded roadways for transfer.

Appendix 3 - comprises the estimated costs of this proposal.

Appendix 4 - comprises the risk register and assessment for the proposal.

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