

Subject:	Court Farm Surrender		
Date of Meeting:	13 July 2017		
Report of:	Executive Director Economy, Environment & Culture		
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Ward(s) affected:	Woodingdean		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

In order to facilitate the expansion of existing farms to support their financial viability and sustainability, whilst achieving City Downland Estate Policy objectives and increasing revenue, terms have been agreed for the surrender of the major part of the existing Agricultural Holdings Act tenancy of Court Farm. This report is complemented by a report in part two of the Agenda.

2. RECOMMENDATIONS

That the Committee:

- 2.1 Authorise the surrender of the Agricultural Holdings Act Tenancy on the terms proposed at paragraph 3.3.
- 2.2 Authorise the letting of the land surrendered by way of 2 Farm Business Tenancies to existing council farm tenants, of adjacent farms, terms to be approved by the Assistant Director Property & Design in consultation with the Executive Director of Economy, Environment & Culture.

3. CONTEXT AND BACKGROUND

- 3.1 Court Farm, located in Falmer (see plans attached at Appendix 1 and 2), is made up of 248.88 hectares (645 acres) of arable and grazing land. The farm includes 2 cottages and 3 general purpose agricultural buildings and 1 footpath (1km), a statutory bridleway extending to 3.8km and a permissive bridleway extending to 1.7km. The farm is leased on an Agricultural Holdings Act (AHA) Tenancy dated 29 September 1974. There are 3 sublettings in place including the 2 cottages on Assured Shorthold Tenancies (AST's) and a commercial letting of one of the agricultural buildings to an auctioneer.
- 3.2 The farm tenant benefits from the security of tenure provided by the existing AHA tenancy and he is a first generation tenant. The legislation allows for 2 further tenancies to succeeding generations, unless successfully challenged by the landlord. Under the AHA tenancy the tenant has complete control over the use of the land and the buildings and the council is unable to bear influence, other than

by agreement with the tenant. The AHA legislation also prescribes how rent levels are set, which are below the market rent levels set under modern Farm Business Tenancies (FBT's).

- 3.3 The council's agents, Savills have been in negotiations with the farm tenant for 18 months, to agree terms for the surrender of the AHA tenancy. Terms have been agreed for the tenant to surrender back to the council the major part of the farm tenancy, 245.1 hectares (605.64 acres) of farmland, whilst retaining under the existing AHA tenancy one field of 19.1 acres, the 3 agricultural buildings and the 2 residential properties. The tenant will continue to receive rent from the subletting of these buildings and will pay the council a rent. The repairing and insuring covenants will be altered in the council's favour so that the tenant is responsible, paying for all repairs and maintaining insurance cover at his cost. These terms have been agreed, providing the tenant with a continued income from the sublettings for the remainder of the tenancy (the tenant's lifetime), in place of the council paying the tenant a significant capital receipt for the surrender.
- 3.4 The council will purchase the tenant's Basic Payment Scheme entitlements, valued to be approximately £46,000. These entitlements will be re-let with the surrendered land, providing the new tenants with guaranteed payments until 2020 and supporting the rent payable to the council for this land.
- 3.5 The surrender of the major part of the AHA tenancy provides the council with an opportunity to relet the land to 2 existing council farm tenants of the adjacent farms; Housedean and Upper Bevendean (see plan at Appendix 1), thus increasing their farm size and improving the financial viability and sustainability of their farm businesses. This proposal de-risks the income stream for the wider agricultural portfolio, as the farm rent will now be based in line with the open market whereas the review mechanism within the AHA legislation is based partially on the productive capacity of the farm i.e. income potential, which is all the more relevant in light of Brexit and the potential reduction in farm subsidy payments. This may result in reductions in farm incomes and thus AHA assessed rents.
- 3.6 Terms have been agreed for 2 new FBT's (see plan at Appendix 1), each for 15 years.
- 3.7 By taking a surrender of the AHA tenancy of the major part of the farm the council regains control of the land surrendered and has included additional bridleways in the new FBT's (see plan attached at Appendix 1).
- 3.8 The 2 residential properties that will remain leased to the tenant of Court Farm under the AHA tenancy had previously been approved by this committee for disposal as part of the funding proposal for the refurbishment of the Stanmer Traditional Agricultural buildings. In light of the recommendation of this report, to retain the 2 residential properties and continue to lease them under the existing AHA tenancy, a further report will be presented to this committee setting out revised proposals to fund the refurbishment of the Stanmer Traditional Agricultural Buildings to accommodate the funding gap created by retaining these 2 properties.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 Allow the existing AHA farm tenancy to continue

The tenancy will continue and may be subject to successions, potentially extending the tenancy by 2 further generations, though this is not anticipated. The more likely scenario is for the AHA tenancy to continue for the existing tenant's lifetime.

The council will continue to receive the current rent passing from the existing AHA tenancy and commercial sub-tenancy subject to periodic reviews.

4.2 Surrender the major part of the AHA tenancy on terms proposed and market the vacant land

Marketing the vacant land openly will ensure all interested parties have an opportunity to bid for a lease of the land including existing council farm tenants and other parties. A full tender will delay the start date of the new tenancies until 29 September 2018, as this process could not be completed in time for this year.

Court Farm is core to the wider agricultural estate and well placed to enable the council to amalgamate this unit with smaller adjoining farms which need to increase in size to remain sustainable.

This process may achieve a higher rent but this is not guaranteed given Brexit, and the delayed start date will only allow 2 years of security under the current subsidy status.

4.3 Surrender the major part of the AHA tenancy on terms proposed and relet to council tenants as proposed (recommended).

As well as achieving the surrender of the major part of the AHA tenancy for nil consideration this proposal also supports the financial viability and sustainability of 2 existing council farm tenants with a proven track record. Terms agreed provide the council with certainty.

5 COMMUNITY ENGAGEMENT & CONSULTATION

5.1 Terms for the surrender have been negotiated with the tenant of Court Farm and terms for the 2 new FBT's have been negotiated with the tenants of Housedean and Upper Bevendean Farms.

5.2 Cityparks have been consulted on the proposals.

6. CONCLUSION

6.1 The terms of the surrender provide the council with control of the major part of Court Farm, for nil consideration, which would otherwise continue to be held under the existing AHA lease for an indeterminate time. Following the surrender, under the current circumstances, it is considered unlikely that an application to succeed what remains of the AHA tenancy would be successful.

6.2 The reletting of the land surrendered to 2 existing council farm tenants supports the sustainability of their farm businesses, provides additional City Downland Estate Policy access objectives, provides the council with certainty and increases

the income, subject to a one off payment of approximately £46,000 for the Basic Payment Scheme entitlements for Court Farm.

7. FINANCIAL & OTHER IMPLICATIONS

7.1 Financial implications:

The council will receive an uplift in rental income as part of the 2 new Farm Business Tenancies and income associated with the farm tenant. There will be a one off payment to meet the Basic Payment Scheme entitlement but this will be offset against the additional income received. The increased rental income will support the council's rental income targets within the Integrated Service & Financial Plans. The council will also reduce risk associated with ongoing repair and insurance costs which will be the responsibility of tenants. The removal of the proposed disposal of the two properties at Court Farm will require a further report to be presented to this committee setting out revised funding options to support the refurbishment of the Stanmer Traditional Agricultural Buildings.

Finance officer consulted: Rob Allen

Date: 15/06/17

7.2 Legal implications:

With reference to recommendation 2.1, the surrender of a lease by a tenant to its immediate landlord is a consensual arrangement between the landlord and the tenant. It results in the vesting of the tenant's estate in the landlord and the extinguishment of the term of the lease. The Agricultural Holdings Act 1986 (AHA) does not impose any restrictions on parties agreeing to surrender a tenancy. As the tenant is being asked to give up a secure tenancy under the AHA 1986 with possible rights of succession for any family members it would be sensible to ensure that the tenant obtains independent legal advice.

With regards to recommendation 2.2 and the proposed new lettings, s123 Local Government Act 1972 enables a local authority to dispose of land held by them provided it achieves the best consideration reasonably obtainable.

Lawyer consulted: Joanne Dougnaglo

Date: 12/06/17

7.3 Equalities Implications:

There are none.

7.4 Sustainability Implications:

Both proposed tenants have a good track record for meeting tenancy obligations, and are experienced in farming land subject to conservation stewardship agreements. They will continue to farm the land in accordance with the existing HLS agreement until its expiry in April 2020.

SUPPORTING DOCUMENTATION

Appendices

1. Plan identifying proposed leases and new bridleway
2. Location Plan

Documents in Members' Rooms

None

Background Documents

None

