

EXECUTIVE

16th January 2025

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| Report Title | Knights Farm, Rushden – Overage Agreement |
| Lead Member | Councillor Matt Binley, Executive Member for Highways, Travel & Assets |
| Report Author | George Candler, Executive Director for Place & Economy Jonathan Waterworth, Assistant Director of Assets & Environment |

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| Key Decision | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Is the decision eligible for call-in by Scrutiny? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Are there public sector equality duty implications? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information (whether in appendices or not)? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972 | 3) Information relating to the financial or business affairs of any particular person (including the authority holding that information). Appendix C |
| Which Corporate Plan priority does the report most closely align with? | Safe and thriving places |

List of Appendices

Appendix A – Site Plan

Appendix B – Plan of Rushden Sustainable Urban Extension

Appendix C – Savills Report – (**EXEMPT**)

1. Purpose of Report

- 1.1. To extend the Planning Longstop date in the Promotion Agreement by two years to April 2027 which effectively extends a Deed of Variation to an overage over Knights Farm.

2. Executive Summary

- 2.1. Knights Farm forms part of the Rushden East Sustainable Urban Extension (SUE) and the Landowner entered into an agreement with a Promoter (Camland Rushden Ltd) in 2017 to obtain planning permission on the land for up to 500 residential units.
- 2.2. The Promotion Agreement can be extended but needs both the Landowner and the Council's consent.
- 2.3. The Council is a beneficiary of an overage agreement on the land dated 1998 and subsequently varied in 2018. If the Landowner is successful in obtaining planning permission to change the land use from agricultural to residential, the Council will benefit from a share of the uplift in value.
- 2.4. The Landowner entered into a promotion agreement in 2017, and a Deed of Variation to the overage agreement was completed in 2018 which resulted in allowable deductions being included in the overage calculation. The original overage agreement was 50:50 between the Landowner and the Council with the landowner being liable for all the promotion and planning costs meaning their share of the receipt would be less than the Council's and would disincentivise them to bring the site forward for development.
- 2.5. The Rushden (SUE) is a large complex development scheme that requires significant consultation with several organisations including National Highways. The consultation process is taking much longer than anticipated and the landowner and promoter have requested a further extension to the Planning Longstop date in the Promotion Agreement up to April 2027.

3. Recommendations

- 3.1. It is recommended that Executive:
 - i) Agree to a further extension to April 2026 of the Planning Longstop date in the Promotion Agreement and consequently an extension to the Deed of Variation on the same terms approved by the Executive in December 2023.
 - ii) Delegates authority to the Assistant Director of Assets and Environment in consultation with the Executive Member for Highways, Travel & Assets, to approve further extensions to the Promotion Agreement and Deed of Variation, should that be required.
- 3.2. Reasons for Recommendation: The reasons for recommending the extension of the Planning Longstop date in the Promotion Agreement is that it will:
 - a) Provide a more definite timeframe for Planning to be resolved as April 2025 is now looking unlikely.
 - b) It will provide the Council with the most certainty that the scheme will be brought forward for housing.

- c) The Deed of Variation to the overage provision on the title to the land will continue as long as there is a valid Promotion Agreement. Agreeing to extend the Planning Longstop date is the most cost-effective way to ensure that the Deed of Variation to the overage provision continues and significantly reduces the amount of legal and other professional fees potentially payable by the Council.
- d) The decision supports the corporate plan and the Rushden East Sustainable Urban Extension (SUE).

3.3 Alternative Options Considered: If the Council does not consent to extend the Planning Longstop Date in the Promotion Agreement, the Deed of Variation to the overage provisions on the Land's Title will expire after 30th April 2025 and any subsequent change of use or planning consent would be subject to the original (unvaried) transfer terms as set out in the original overage agreement. This would hypothetically result in a larger capital receipt for the Council; however, the Landowner and Promotor have stated that if they cannot obtain an extension from the Council, they will not pursue the Promotion Agreement and Planning Application and will let it lapse. This would result in the site not being developed and would create issues for the Rushden (SUE) because it sits in the centre of the site, and the Council would not receive a capital receipt.

4. Report Background

- 4.1 An overage agreement is an agreement whereby a purchaser of land agrees to pay the seller an additional sum of money in addition the purchase price following a change of use that enhances the value of the land. It is usual to include this in sales of land such as farmland to ensure the seller obtains best value and will secure a share of any uplift in value resulting from a change in use of the land if the land is developed for housing etc.
- 4.2 There are several reasons for negotiating overage agreements, but, in this instance, there was no indication at the time of the sale, that the area would be considered for housing. The land formed part of an agricultural farm and landholding that the former County Council determined was surplus to requirements and was sold to the tenant farmer in 1998.
- 4.3 This agreement is a planning overage agreement, so the landowner is liable to pay overage to the Council when planning permission is granted and the value of the land has been enhanced. The overage agreement will expire in 2038.
- 4.4 Overage agreements include a formula for the parties to calculate the sums owed at the trigger date (grant of planning consent). This formula usually includes allowable deductions, such as the buyers' costs of obtaining the land, costs of obtaining planning permissions and other costs the buyer may incur because of obtaining the planning permission, such as the Promoters' costs, abnormal or infrastructure costs.
- 4.5 The negotiated terms are dependent on the circumstances of the land in question and the economic climate at the time the deal is agreed. There is no legal or financial fixed formula for overage agreements and surveyors act as advisors.

- 4.6 The original 1998 sale agreement did not provide for any allowable deductions. When the planning policy changed to indicate the wider area had housing potential, the Landowner approached the former County Council to modify the original agreement, to introduce deductions that would make the scheme viable to progress for planning permission. The Council agreed, and this resulted in the parties entering a Promoters Agreement and a Deed of Variation to the overage provisions in the original transfer.
- 4.7 At the end of April 2022, the Council received a request from the Landowners to extend the Deed of Variation, however legal advice confirmed that this had already expired, and that the overage agreement reverted to the terms of the original 1998 agreement.
- 4.8 After a period of negotiation, on 20th April 2023, Executive agreed a one year extension to the Deed of Variation and Planning Longstop date to April 2024.
- 4.9 In September 2023, a Planning Performance Agreement was agreed with the Landowners and the Council. The applicants have been working proactively with the Local Planning Authority in order to resolve a number of material planning considerations, including but not limited to: agreeing an indicative masterplan and moving forward on technical matters such as drainage and ecology, therefore making good progress towards a potential planning committee in late 2024.
- 4.10 The landowners requested a further extension to the Deed of Variation and Planning Longstop date in the Promotion Agreement up to April 2025 and Executive approved that extension in April 2024. Following the resolution, the Council confirmed it would be reticent to agree any further extension and would need to give serious consideration as to whether any further extension would be in the best interests of the council and its residents.
- 4.11 However, despite the agreement of a Planning Performance Agreement and positive collaboration in progressing the planning application, resolving a number of material planning considerations, the Landowner's Agent wrote to the Council in September 2024 advising that an element of the planning process was taking much longer than anticipated and part of this was due to external statutory consultees, including National Highways taking significant time to respond.
- 4.12 A previous consultation response received from National Highways was positive that suitable traffic mitigations could be agreed in principle, subject to planning conditions and a Section 106 agreement to enable the application to be submitted for consideration by the relevant Planning committee in early 2025. However, in November, after a significant amount of time since their previous comment, National Highways raised new concerns relating to the traffic impact modelling undertaken and that it could have an adverse impact on Highway safety without the correct mitigation agreed. As such, the application can no longer progress to a planning committee for determination based on this feedback from a statutory consultee and further negotiations between the Landowner, local planning authority and National Highways are required.

- 4.13 Officers have confirmed that this issue is not a result of any delay on the developers part or the processing of the application and is predominantly outside of the Council's and landowner's control, which has been confirmed and verified by planning officers. There also continues to be the potential benefit of facilitating development within North Northants via the pending planning application determination, along with the potential for a receipt to the Council.
- 4.14 The landowners are seeking a further extension to the Deed of Variation and Planning Longstop date up to April 2027. However, based on the context of previous extensions and to ensure momentum on resolving this remaining matter it proposed that only a further extension to April 2026 is granted initially, with any further extension considered under delegation.

5. Issues and Choices

- 5.1 The proposed extension to the Planning Longstop date in the Promotion Agreement and Deed of Variation will ensure that the Council fulfils its fiduciary responsibilities to obtain value for money and is most likely to deliver a share in any uplift in value should the scheme be given planning permission.
- 5.2 The Council procured professional advice to enable it to reach a decision on the Deed of Variation and this advice, provided by Savills LLP is annexed to this report.
- 5.3 The Savills report confirms the Landowners requested terms for a new Deed of Variation are reasonable and advised the Council on how to improve some of the contract definitions and terms. The recommendations from the Savills report (outlined at page 6 of their report) have been included in the revised Deed of Variation. The circumstances of the land and the economic climate have not changed since the original report and therefore a new report is not necessary.
- 5.4 The Council could choose to do nothing and allow the Promotion Agreement to expire in April 2025. This would terminate the current Deed of Variation to the overage and the Landowner and Promoter have stated they will withdraw from the planning process as the development will no longer be viable for either party to proceed and would await the overage provision in the original transfer to expire in 2038.
- 5.5 The Council would not receive a share in any uplift in value and would not generate a capital receipt. This is contrary to the Councils wider corporate objectives of supporting growth in North Northamptonshire and supporting one of the Council's Sustainable Urban Extensions.

6. Next Steps

- 6.1. Subject to Executive approval, the Council will consent to extend the Planning Longstop Date in the Promotion Agreement up to 30th April 2026. The revised Deed of Variation to the overage provisions on the farmland title will continue for as long as there is a valid Promotion Agreement. All other previously negotiated terms would remain as documented. This will enable the landowner

and promoter to continue to work on getting planning consent for the new residential scheme.

7. Implications (including financial implications)

7.1. Resources, Financial and Transformation

- 7.1.1 This report has no implications for transformation.
- 7.1.2 The Savills report includes a financial comparison to demonstrate the difference in capital receipt to the Council between the existing overage agreement and a varied agreement.
- 7.1.3 It assumes that the Landowner would agree to bring the site forward on the existing agreement, which the Landowner has stated they will not do.
- 7.1.4 It is included to provide a financial guide to help the Council make an informed choice. The inputs for the formula are based on today's land values and are, therefore, for comparative purposes only.
- 7.1.5 The range of financial outcomes could, therefore, be that the Landowner does not bring the site forward until the overage expires, which would result in no capital receipt for the Council.
- 7.1.6 The Council and Landowner agree the terms of a new deed of variation on the same terms as the expired agreement and benefits from a proportion of the uplift in land value because of the grant of planning permission which, at today's land values, could result in a capital receipt of more than £12m.
- 7.1.7 Capital receipts are required to support the capital programme.
- 7.1.8 The Council would also receive s106 from the end development to offset the impact of the development locally.

7.2. Legal and Governance

- 7.2.1 The Council is not under any legal obligation to agree to extend the Longstop Date in the Promotion Agreement.
- 7.2.2 Without a new variation, however, the Landowner has stated that they will not bring the land forward and, if they withdraw from the planning process, the Council receives no capital receipt.
- 7.2.3 In addition, the terms of the 1998 disposal, when considered with the subsequent alterations to access arising from the A6 construction (which could not have been foreseen at the time) raise the possibility of an argument by the Landowner that a substantial amount of the value of development is attributable to the land which they acquired from Department for Transport, rather than the land acquired from the Council. This is a novel argument, the success of which, if taken to court, is very difficult to predict, therefore, pursuing it to its conclusion creates a risk (for both parties) which it would be reasonable to consider

avoiding if that is possible. Forcing the Landowner to choose whether to proceed under the 1998 overage provisions is not, itself, a risk-free option for the Council.

- 7.2.4 Savills' advice is that the terms of the Deed of Variation remain consistent with likely open market arrangements. On this basis, the Council's obligation under s123 Local Government Act 1972 to obtain the best consideration reasonably obtainable for land would still be fulfilled. At the same time, the risk of future dispute over the access land issue mentioned above would be mitigated.

7.3. Relevant Policies and Plans

- 7.3.1. The proposed extension to the Promotion Agreement will ensure that the landowner continues to pursue a valid planning permission for a new housing scheme, and that planning consent will generate a significant capital receipt that will be used to fund the Council's Capital Programme.

(a) This proposal will assist the Council in delivering new housing through the proposed Sustainable Urban Extension.

(b) This proposal will help to deliver Safe and Thriving Places through the proposed development of new housing to contribute towards housing targets.

7.4. Risk

- 7.4.1. The recommended way forward provides the least risk to ensure that the site is brought forward, and the Rushden (SUE) continues through the planning consultation process.

7.5. Consultation

- 7.5.1. The information in this report has been reached in consultation with professional advisors and asset management experts.

7.6. Consideration by Executive Advisory Panel

- 7.6.1. This item has not been considered by an Executive Advisory Panel

7.7. Consideration by Scrutiny

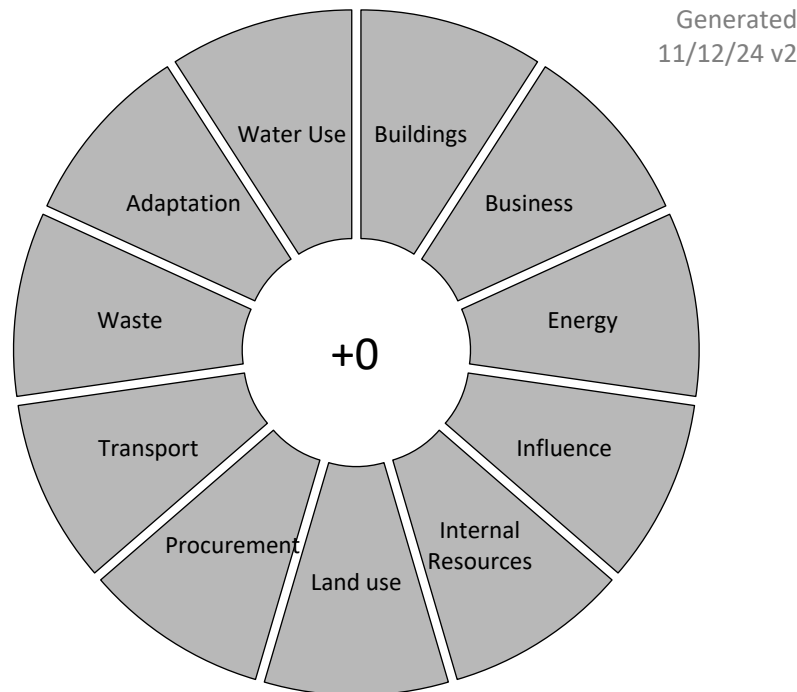
- 7.7.1. This item is eligible for call in by the Scrutiny Committee as part of their work plan.

7.8. Equality Implications

- 7.8.1. An equality assessment form has been completed and confirms no negative impacts.

7.9. Climate Impact

7.9.1. This proposal does not have any negative impacts on climate change for the Council because it does not involve Council owned land, and the development is being promoted by the Landowner.



The infographic shows the relative costs and benefits of the decision on 11 different categories with respect to the climate: Buildings, no effect.

7.10. Community Impact

7.10.1. The changes to the Promotion Agreement will have no direct impact on the community. The development will ensure the community is considered as part of the planning process.

7.11. Crime and Disorder Impact

7.11.1. There are no implications arising from what is being proposed.

8. Background Papers

8.1. Previous Executive Paper from April 2024:
<https://northnorthants.moderngov.co.uk/documents/s23252/Knights%20Farm%20Overage%20Legal%20Agreement.pdf>