

Key Decision Required:	Yes	In the Forward Plan:	Yes
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CABINET

15 DECEMBER 2010

REPORT OF ACTING HEAD OF CORPORATE PERFORMANCE

A.5 THE FORMER CLUB PREMISES AND PUBLIC TENNIS COURTS AT LOWER MARINE PARADE, DOVERCOURT

(Report prepared by Clare David)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consider terms for the disposal of the former club premises and public tennis courts at Lower Marine Parade, Dovercourt (the site) shown on the attached plan (Appendix A).

EXECUTIVE SUMMARY

Outcome of Tender Process

In accordance with Cabinet's resolutions the site was the subject of a tender exercise in October 2010 for a freehold sale of the former club premises and tennis courts restricted to a leisure/social or community use.

The Council received one formal bid with a set of proposals for the future use of the site as a Sports and Social Club.

There was also an expression of interest if the tender process did not result in a successful outcome for the Council.

Proposal

The proposal under consideration proposes the refurbishment/extension of the site to include: a sports and social club; function room for 150 people; restaurant and lounge bar; fitness centre; changing rooms; tennis courts; other outdoor sports; and accommodation on the upper floor for rental.

It is proposed that these facilities will be provided in a phased programme of works, all of which are to be completed within 3 years from the date of commencement.

A further report of the terms for the disposal is contained in the Part B report on this agenda for consideration in the event that Cabinet decides to proceed with the disposals.

Key issues to be considered when making the decision

In considering the current proposal Cabinet are reminded of the following issues:

- The public consultation exercise undertaken in 2009 clearly demonstrated a local desire to bring the site back to its former use and this informed the Cabinet's resolutions of January and April 2010 to keep the site for leisure/social or community uses.
- The building has been empty since 2006 and continues to deteriorate.

- Estimated refurbishment costs of the buildings alone amount to approximately £470,000. The Council cannot resource this.
- The sale would result in a capital receipt that could be allocated to priority capital projects.
- Ongoing revenue costs to the Council are approximately £6,300 per annum, plus any reactive costs that are incurred to maintain security of the site.
- The proposal under consideration meets the assessment criteria and would contribute towards a number of the Council's priorities.
- There are a number of potential risks, including issues raised by the Tender Evaluation Panel, that need to be balanced against the advantages of the proposal and these are set out in full in the Finance, Other Resources and Risk Section below.

Cabinet are, therefore, asked to consider the terms for the proposed disposal and to instruct officers accordingly.

RECOMMENDATION

That Cabinet considers the details of the proposal and decides whether to progress with the disposal of the land and buildings as set out in this report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The refurbishment and redevelopment of the site will specifically contribute to the following priorities:

- Building a thriving local tourism industry;
- Promoting sustainable economic growth;
- Promoting healthy and active lifestyles;
- Regenerating the District and improving deprived areas.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Potential Capital Receipt

The proposal is for the freehold sale of the site for a leisure/social or community use. This restricts the value of the site.

Capital receipts can be used to finance future capital investment but cannot be used to support revenue expenditure.

The terms of the proposal including restricted and unrestricted values are the subject of a further report of Part B of this agenda.

Current Revenue Implications

Following the surrender of the lease, the buildings were boarded up and enclosed with security fencing at a cost of approximately £12,000.

The Council is now responsible for payment of the National Non Domestic Rates which are approximately £6300.

No rental income for the buildings has been received since 2007 but the Council does receive a modest payment from the Town Council for the use of the Tennis courts and some other facilities nearby.

Legal Costs

The Council will need to allocate finances to secure the services of a legal representative to act on behalf of the Council in this land transaction.

Risks

The proposal under consideration offers a real opportunity to refurbish and bring the former club premises back into a beneficial use for residents and visitors to the area. At the same time, there are a number of risks that need to be considered and balanced against the benefits. These are outlined below and after each risk an explanation of the proposed risk management is given:

Non Delivery

There is a risk that after the freehold sale is completed the planned improvements to the site are not delivered. This would result in the area not being regenerated, and the Council no longer owning the key strategic site in the area. The Tender Evaluation Panel considered the proposal on 1 November 2010 and expressed concern with regard to the viability of the project; what the Council could do to ensure that the project actually goes ahead and to full completion; and also the enforceability of the suggested covenants.

There are a number mitigating factors that provide some reassurance over the deliverability of the project;

1. The proposal includes evidence of the purchaser's access to funding for the works. This information has been prepared, supported and evidenced by one of the partners in the bidder's company.
2. The proposal includes a business plan. This predicts that it will take 15 years to recover the costs of the project and will be reliant on the profits of other companies in the bidder's ownership/control. These companies are of a nature that they are most susceptible in the current economic down turn.
3. The proposal includes a programme of works indicating completion of all facilities and works within three years of purchase. Further negotiations with the bidder have been undertaken and an additional condition has been agreed that would allow the Council to buy the site back at the original sale price if after three years of the date of purchase no substantive works had been undertaken on the existing building.
4. The proposal was informed by an informal market research investigation. The research has been based on similar facilities in more densely populated, affluent areas and has been adjusted to reflect the circumstances in Dovercourt. However, this market research is limited.

Alternative Development

There is a risk that the purchaser seeks to develop the site for a use that will yield a higher land value such as residential development. This would result in the site not being used for the approved social/leisure use.

There are proposed terms in the transaction that restrict the future use of the site to that set out in the proposals. If any other use were to be requested the Council would be entitled to share in any uplift in value:

1. The proposal will be subject to a legal covenant not to use the site other than as

proposed for a perpetuity period of 80 years.

2. The sale of the site is restricted to a Class D2 (Assembly and Leisure) Use as defined by the Town and Country Planning Use Classes Order.
3. The proposal includes a 'clawback' provision where the owner will pay the Council 75% of any uplift value should the site be developed for any other use in the future.

Loss of Public Open Space

There is a risk that the disposal of public tennis courts (which are protected as Public Open Space in the adopted Local Plan) may result in a public objection. In the event of public objections the Cabinet will have to decide whether to proceed with the transaction. Factors that reduce the likelihood of public objection are:

1. The sale will be subject to the refurbishment and retention of at least three tennis courts that are available for public hire. Furthermore, the equivalent area of two tennis courts will be made available to the public for alternative outdoor leisure uses.
2. The sale will also be subject to the provision of changing accommodation available to tennis court users and the existing temporary changing accommodation will be removed.

Challenge to Covenants

There is a risk that the covenants placed on the land to protect its future use may be challenged. This may result in the site not being used for social/leisure use in the future. The Purchaser or a successor may be able to obtain an order from the Lands Tribunal under the Law of Property Act 1925 releasing the covenants.

However, underlying all these potential risks, there remains the fact that the building has been vacant since 2006 and continues to deteriorate.

In June 2010 the Council commissioned a Condition Survey and Budget Costs report. This estimated a total cost of circa £470 000 to bring the building and immediate surroundings back to a satisfactory standard. The Council does not have the resources to undertake these works.

LEGAL

Disposal Powers

The release of surplus or under-performing assets is in accordance with the framework set out in the Council's Capital Strategy and Asset Management Plan which, in turn, is based on Government policy and guidance that supports the disposal of surplus or under-performing assets in order to facilitate investment in other facilities and services.

Whilst it is Government policy that local authorities should dispose of surplus land wherever possible, it is a statutory requirement under the provisions of the Local Government Act 1972 that it should obtain the 'best consideration reasonably obtainable' i.e. the highest monetary amount achievable.

There may, however, be circumstances where an authority considers it appropriate to dispose of land at an under value and the Council can consider such a proposal using discretionary powers granted by the General Disposal Consent (England) 2003.

This Consent allows the Council to carry out its statutory duties and functions and also to fulfil other objectives that it considers necessary or desirable. When disposing of land at an under value, the Council must be certain that the transaction contributes towards the **social, economic or environmental well being of the area**. It must also remain aware of

the need to fulfil its fiduciary duty in a way which is accountable to local people.

The tender proposal has been assessed on this basis. A matrix intended for the comparison and evaluation of proposals is contained at **Appendix B**. It also includes a schedule of the proposal content that indicates the nature of potential social, economic and environmental benefits included.

Disposal of Public Open Space

The proposed disposal of the public tennis courts has been advertised in accordance with S.123 of the Local Government Act 1972 (as amended). This requires the Council to place a public notice in the press to advertise the proposed disposal of public open space. The date for comments on the proposed disposal expired on 3 December 2010.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below. **Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

Crime and Disorder

The building and surrounds are in a semi derelict condition and have been the subject of vandalism and anti social behaviour. The refurbishment and redevelopment of the site will assist in reducing crime and disorder by bringing the site back into beneficial use and with the added advantage of providing natural surveillance of the immediate locality.

Health Inequalities

The proposed use as a Sports and Social Club will assist in reducing health inequalities by providing a public facility that will support positive health activities in an area with below average life expectancy.

Consultation/Public Engagement

The Council undertook a public consultation exercise over the future use of the site in September 2009. The results of this were reported to Cabinet in January 2010 following which a decision was taken to retain the site for leisure, social or community uses.

Area or Ward Effected

The site is located within the **Harwich East Central** ward but it is likely that the facilities will benefit the residents over the much wider area of Dovercourt and Harwich and, of course, to visitors and tourists.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The former club premises have a lengthy and complex history. This is set out in full in the previous reports to Cabinet on 30 September 2009; 20 January 2010; and 21 April 2010.

DETAILS OF THE SITE

The site is in a prominent location on the sea front adjacent to a Blue Flag Beach. The surrounding areas are laid out for recreational and leisure uses.

The main building, the club premises, is a substantial, 2 storey, pre-war property, with later flat roofed single storey additions. Attached to the main building is a single storey, timber function hall. Space for parking is located to the front, side and rear. There are five tennis courts situated at a lower level and two at a comparable level to the buildings. The

combined area is approximately 0.65ha.

The purchase offer under consideration includes all the land and buildings as described above.

A plan of the site is included in **Appendix A**.

OUTCOMES OF TENDER PROCESS

The site was the subject of a tender exercise in October 2010 for a freehold sale restricted to a leisure/social or community use.

Of the thirteen tender packs that were issued only two were returned. Details of the two responses are summarised below.

Response 1

The response contained a formal bid with a set of proposals for the future use of the site as a Sports and Social Club.

In summary the proposal includes the following:

- Freehold purchase of all the land and buildings advertised for sale;
- Refurbishment and extension of the buildings to provide: a sports and social club; function room for 150 people; restaurant and lounge bar; gym/fitness centre; changing rooms; tennis courts; other outdoor sports; and accommodation on the upper floor for rental to visitors;
- Refurbishment of outside sports areas to include: covered store area; 4/5 tennis courts; removal of existing temporary changing rooms; floodlights to front courts; other ball games; on-site parking; and landscaping.
- The proposed additional activities include: kite surfing (on sea front); pool team; darts team; indoor bowls; crib team; and rounders.

Response 2

The response did not contain a bid, but expressed an interest if the tender process did not result in a successful outcome for the Council.

Assessment Matrix

As the disposal is not based solely around the best consideration available an Assessment Matrix was developed that was sent out with each tender pack. The purpose of the matrix is to define the contribution that each proposal would make to the social, economic and environmental well being of the area.

Each criteria was scored between 1 and 5, whereby 1 does not meet the benchmark and 5 exceeds the benchmark.

A copy of the completed Assessment Matrix is included as **Appendix B**.

The Tender Evaluation Panel met and assessed the proposal. The outcome of the matrix scored the proposal (Response 1) **47 out of a possible 80**. It is important to note that it met all the mandatory criteria.

PROPOSED TERMS OF DISPOSAL

This proposed terms for disposal includes;

The freehold interest in the whole site including the club premises, tennis courts and adjoining area and including restrictive covenants to reflect the nature of the proposals outlined above and as specified in the tender pack.

Members are advised that the public tennis courts have been advertised in accordance with the relevant legislation for the disposal of public open space. Members will be updated verbally at the Cabinet meeting should any objection to the disposal be received.

Members are advised that the tennis courts are currently managed by Harwich Town Council (HTC). HTC have provisionally agreed to surrender an undocumented lease of the tennis courts to the District Council but it is understood that there is also an undocumented agreement between HTC and the Dovercourt Tennis Club for the exclusive use of the courts at certain times. The purchaser will be required to establish the nature and status of this agreement and negotiate with the Club to either terminate or regularise this arrangement.

APPENDICES

Appendix A: Site Plan

Appendix B: Tender Assessment Matrix

Appendix B – Tender Assessment Matrix

The Tender Evaluation Panel assessed each of the proposals against the benchmarks score as follows;

- 1 – Does not meet benchmark**
- 2 – Slightly below expected benchmark**
- 3 – Expected benchmark**
- 4 – Slightly exceeds expected benchmark**
- 5 – Exceed expected benchmark**

Benchmarks that are **bold** are mandatory for a bid to be considered. Therefore a score of at least 3 must be achieved.

	<u>Benchmark</u>	<u>Response</u> 1	<u>Response</u> 2
1	The proposal is for the use of existing buildings (or equivalent replacement) on the site only as a sports and social club within Class D2 (Assembly and Leisure) of the Town and Country Planning (Use Classes) Order 1987 (as amended) or subsequent equivalent thereof.	3	N/A
2	The building will contain a licensed function room with a capacity for at least 75 persons that will be available for public hire.	5	N/A
3	The proposal will include changing accommodation available to tennis court users and the removal of the existing temporary changing accommodation.	3	N/A
4	The area will include a useable pedestrian and vehicular access including a turning area that will be adequate for maintenance vehicles and cars.	3	N/A
5	The area will include for the refurbishment and retention of at least three tennis courts that are available for public hire, and additionally, for alternative outdoor leisure facilities available to the public of equivalent area to at least two tennis courts.	4	N/A
6	The proposal for purchase of the relevant land and buildings is not conditional on any planning permission or upon any other prior approval or event.	3	N/A
7	The proposal includes for the purchase of the site to be subject to legal covenants not to use the site other than as proposed for the perpetuity period of 80 years.	3	N/A
8	The proposal includes for a clawback provision to pay to the Council or its successors 75 % of the uplift in value of the site as a result of any future grant of planning permission for use other than as above.	3	N/A
9	The proposal includes further covenant to pass on the foregoing to any future purchasers and their successors.	3	N/A

	<u>Benchmark</u>	<u>Response</u> <u>1</u>	<u>Response</u> <u>2</u>
10	The proposal includes clear evidence of the purchaser's access to funding for any construction or other work proposed.	2	N/A
11	The proposal includes a clear business plan demonstrating that the proposal is economically sustainable.	2	N/A
12	The proposal includes a clear programme related to the above that indicates the completion of all facilities and works proposed within three years of purchase.	3	N/A
13	Any tennis courts included will be refurbished or remodelled to a high standard.	3	N/A
14	Any other areas in the proposal will be landscaped and maintained to a high standard.	3	N/A
15	The proposals above include specific details showing how they will significantly advance the delivery of the Plan/Strategy objectives.	3	N/A
16	The proposals include specific details (in addition to the above) showing other material matters that will significantly advance the delivery of the Plan/Strategy objectives.	1	N/A
	TOTAL SCORE FOR PROPOSAL(max 80)	47	0
	All required areas meet specified levels?	YES	NO
	Percentage of Tennis Court areas that are included	100%	N/A
	Capital Purchase Price Proposed	-	-