

Key Decision Required:	No	In the Forward Plan:	No
-------------------------------	-----------	-----------------------------	-----------

CABINET

15 DECEMBER 2010

JOINT REPORT OF HEADS OF REGENERATION AND COMMUNITY SERVICES AND LEISURE SERVICES AND THE ACTING HEADS OF ENVIRONMENTAL SERVICES AND CORPORATE PERFORMANCE

A.6 PROPOSED ACQUISITION OF LAND AT BROOKLANDS GARDENS JAYWICK
(Report prepared by Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek authority to acquire land at Brooklands Gardens, Jaywick, shown outlined in bold on the attached plan (Appendix B).

EXECUTIVE SUMMARY

Jaywick is an area of significant deprivation and Tendring District Council (TDC) and partners are committed to a range of measures to address this. A joint project was developed by the Jaywick Strategic Leadership Group (JSLG), now integrated into the Coastal Renaissance Partnership Board (CRPB) whereby Essex County Council (ECC) would construct a Community Garden on land owned by the East of England Development Agency (EEDA), and once constructed the ongoing management would be undertaken by TDC.

The enhancement of Brooklands Gardens improves the quality of the open space at the heart of the area. This project does not impact of any wider strategy for the future of the area as it is only enhancing the open space that currently exists.

As a part of the project it was proposed that once the Community Garden was completed, EEDA would transfer the ownership of the Brooklands Gardens site to the Council for a nominal sum subject to certain conditions and restrictions.

External partners from the JSLG will provide commuted funds for 10 years' future maintenance. In return for this it is proposed that TDC takes on future responsibility for the area.

The Corporate Property Officer has considered the items set out in the Property Dealing Policy and is satisfied that the acquisition of the site would enable the future of the Community Gardens to be secured in the medium term whilst not exposing the Council to any unnecessary risks.

It is therefore proposed that TDC considers acquisition of the site. The terms of the acquisition are to be considered in part B of this agenda.

RECOMMENDATION

That Cabinet authorises the acquisition of the site at Brooklands Gardens Jaywick.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The acquisition of the Brooklands garden site would secure the future of the area and contribute to the corporate priority 'Regenerate the District and improve deprived areas'.

The ongoing provision of leisure facilities in the area will serve as an important diversionary activity related to the Council's responsibilities on Crime and Disorder. The Community Garden may help create a more cohesive community by providing an informal meeting point for local people.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Although the cost of acquiring the site is notional, there will be ongoing revenue costs for the maintenance of the community garden which need to be considered. External partners to the JSLG will provide commuted funds for the above 10 year's future maintenance.

There is a small chance that the Council will have to contribute to future highway improvements and repairs. Costs will also be offset by the substation lease on the site which represents a small ongoing revenue income to the Council.

In the long term the Council will benefit from the merger of the leasehold interest in the Community Centre and play area sites because of the removal of any uncertainty over terms at the future termination or renewal of the leases.

Further financial details and terms are provided in the report in part B of this agenda.

Risk

There is a risk that TDC will have to contribute to future costs of highway works. After considering the likelihood of this occurring the risk is considered acceptable. (See Appendix A for further information)

There is risk that TDC will face future costs for remediation works to contamination on the site. A study to identify existing contamination on the site and recommend control measures has been received. (See Appendix A for further information)

In addition to these risks it has to be noted that Jaywick lies in an area that is at a risk of flooding. A risk that is likely to increase in future years. It may well be that the site becomes flooded in the future. The built forms of the site are already the responsibility of TDC. Acquisition of the freehold will render the Council no more or less susceptible to losses that might arise from flooding than it is at present. In the event of coastal flooding the planting on the community Garden area might be adversely affected and need to be replanted. However this is likely to be quite a small cost in relation to other issues that would arise in the event of significant inundation.

As above and in the appendix the proposed acquisition has some risks associated with it. It is Officers' view that the risks are quite low-level. Members should have regard to these risks and the balancing benefits when determining whether to proceed with the acquisition.

LEGAL

This action is within the discretionary powers of the Council.

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 / Consultation/Public Engagement.

Crime and Disorder Act 1998

The ongoing provision of leisure facilities in the area will serve as an important diversionary activity.

Health Inequalities

The Provision of recreational facilities will provide better access to exercise and outdoor activity in an area which is subject to significant Health Inequalities.

Ward

Golf Green

PART 3 – SUPPORTING INFORMATION

DETAILS OF THE SITE

The Brooklands Gardens site can be split into five areas (as set out on the map in Appendix B):

Area 1

To the South, land including a late twentieth century building comprising the Community Resources Centre, complete with some landscaping, a play area for young children and a car park. These were constructed some years ago by TDC using grant funding and remain owned by TDC.

The Community Resource Centre is currently managed by a local committee, the Jaywick Resources Centre Association, under an informal arrangement. The land is currently leased by TDC from EEDA for a peppercorn rent for 99 years ending in 2096. The building is in substantially sound condition but aspects of the site could benefit from maintenance attention.

Area 2

This land including a recently constructed and TDC owned multi-use games area including fences, benches, lighting, macadam surface and markings. The land is leased by TDC from EEDA for a peppercorn rent for 10 years ending in 2018. The land is in sound condition.

Area 3

A footpath to the north of the above completely bisecting the site and passing from Brooklands Gardens West to Brooklands Gardens East. The path is substantially sound but would benefit from ongoing maintenance.

Area 4

The site of the former club building (demolished) now comprising an electricity substation and open space. This area and the most northerly one have been landscaped by ECC and now forms a community garden. Paths and other features have been formed and planting has become established.

Area 5

At the northern end of the site, an area of formerly very rough open space with grassed surface has now been incorporated into the Community Gardens.

The entire site is owned by EEDA following acquisition from Jaywick Sands Freeholders Association and Jaywick Association Properties Limited.

As a part of this proposal all the areas would become the property of TDC who would be responsible for the ongoing maintenance.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A – Results of Further Enquiries

Appendix B – Brooklands Gardens Site Plan

Appendix A

RESULTS OF FURTHER ENQUIRIES

As a part of the Acquisition process, before agreeing any provisional terms and report to Cabinet the Corporate Property Officer needs to satisfy them self regarding a number of areas. Detailed below are a summary of the key points.

Existing Title

EEDA has registered title to the entire site; however the type of title differs.

- Areas 1, 2 and 3 have Absolute Title
- Areas 4 and 5 have only Possessory Title.

This could present a risk that a third party might present themselves to seek to reclaim the land. The risk of this being successful, if it occurs, is small. Officers have asked EEDA to take out an indemnity insurance against the possibility but they have declined to do so.

The risk to the title of the land is small in reality, given the slimness of the chances of this situation arising, that the land is transferred at minimal consideration and all investment to date has been made by third parties there are no concerns over the title of the land.

Existing Covenants

Areas 1, 2 and 3 are affected by covenants contained in a Conveyance dated 28 March 1934:-

- *The Purchasers to the intent that this Covenant shall be binding so far as may be on the owners for the time being of the premises hereby assured but upon the Purchasers only so long as they are the owners of the same hereby covenant with the Vendor that the Purchasers and their successors in title shall at all times hereafter carry on no trade or business other than that of a cafe and refreshment contractor but this covenant shall not prohibit or restrict/the sale upon the said premises of ice cream mineral waters sweets and tobaccos nor the conduct upon the said premises of whist drives concerts dances theatrical performances and cabarets.*
- *The Purchasers to the intent that this covenant shall be binding so far as may be on the owners for the time being of the premises hereby assured but upon the Purchasers only so long as they are the owners of the same hereby covenant with the Vendor that the Purchasers and their successors in title will at all times hereafter observe the restrictions set out in the Schedule hereto*

The SCHEDULE before referred to:-

- 1) *No advertisements or advertising signs of any description shall be placed upon the land except as relate to the business carried on by the Purchasers upon the premises.*
- 2) *No machines constructed or intended for the purposes of amusement or recreation (other than weighing machines) shall be placed or allowed to stand upon the land.*
- 3) *No sewage or other offensive matter shall be deposited on nor buried in the land nor shall anything be done thereon which may constitute a sanitary or other nuisance.*
- 4) *No hut or caravan shall be placed on the land without the Vendor's consent in writing.*
- 5) *Nothing shall be done on the land which may be a nuisance or annoyance to the Vendor or adjoining owners or a detriment to adjoining property.*
- 6) *No business of any description shall be carried on upon the land other that referred to in Clause 2 of the above Conveyance.*

Title for areas 4 and 5 contains the following restriction dated 27.11.2003

- *The land is subject to such restrictive covenants as may have been imposed thereon before 27 November 2003 and are still subsisting and capable of being enforced. These are the areas with possessory title and it is likely that this restriction was registered because the evidence of possession presented did not contain information on restrictive covenants that may exist. It*

would be rational to assume that at least the same covenants as above are likely to exist. Because of the existing leases of areas 1 and 2 the Council is already bound by the provisions of the covenants in these areas.

None of the covenants identified raises any issues for the Council in maintaining the site as a Community Garden.

Leases

TDC currently leases areas 1 and 2 from EEDA. In the event that TDC acquires the site these leases will merge with the Freehold (be absorbed into it). The current position with the leases are;

- The lease for the area 1, the site of the Community Resource Centre, is at a peppercorn rent and expires in 2096.
- The lease of area 2, upon which the play area is constructed, is at a peppercorn rent at present and expires in 2018.

If the purchase does not proceed there is potential in both cases that freehold could pass from EEDA to another party or that EEDA's policy will change and that higher rents will be demanded at renewal, in eight years in the case of the play area. There is therefore some potential medium and long term advantage in owning the freehold, so, in the long term, the Council will benefit from the merger of the leasehold interest in the Community Resource Centre and play area sites because of the removal of any uncertainty over terms at the termination or renewal of the leases.

Area 3 includes a substation site that is subject to an ongoing lease. The lease also includes rights for underground cabling that crosses the site roughly along the line of the footpath. The right to the rent will pass to the Council on acquisition.

TDC currently has a memorandum of understanding with the community group that runs the Community Resource Centre. The relationship with the group is unchanged whether we are freeholder as proposed, or superior tenant as currently exists.

There are no issues with the leases that cause concern.

Other rights and encumbrances

A right to fit stays to overhead cables close to the site is documented and additionally there are further overhead cables that cross the site and run along both edges. It is likely that these were installed under statutory powers and therefore the right to fit them will exist even though not documented.

It is likely that highway rights would exist if claimed for the use of the footpath that crosses the site.

An Environment Agency pumping station is located to the south west corner of the site. It seems likely that pipe work connected to this traverses at least part of the site. Again it is likely that these were installed under statutory powers and therefore the right to fit them will exist even though not documented.

The Community Resource Centre is managed by a local group, the Jaywick Resources Centre Association, under an informal memorandum of understanding with TDC. They are responsible for the day to day running of the facility. This arrangement will be unchanged in the event of acquisition except that TDC will be the freehold owner rather a superior tenant.

Highway Rights and responsibilities

Brooklands Gardens East is adopted Highway and is the responsibility of Essex County Council as Highway Authority. Brooklands and Brooklands Gardens West are not adopted and therefore are, in theory, the responsibility of their owner. However, after the dissolution of Jaywick Sands Freeholders Association the ownership of the roads is unclear. It may be that the land has reverted to the Crown.

TDC has power to carry out work on the roads, as all unadopted roads, but not a responsibility to do so. The Crown will not take responsibility for them.

In the absence of an identifiable owner the principle of frontagers comes into play. A frontager is the owner of land adjoining the highway, and they have the status of a frontager for the length of highway adjoining their land, up to the centre line if there are opposing frontagers.

If the majority of the frontagers want to upgrade the road they can seek to require the County Council

to upgrade and adopt it: at the frontagers' cost. If this happens then TDC would have a substantial liability for part of Brooklands and Brooklands gardens. The Head of Technical Services considers that the minimum cost to raise Brooklands Gardens West to an adoptable standard would be in the order of £250,000.

The risk of this is small because any frontager that wished this to happen would have to secure a majority of all frontagers. This might be difficult as they would all have to pay for a share of the work either directly or by way of a charge on their property.

Accordingly, if purchase proceeds there is a small chance that TDC could be required to financially contribute (in the order of £125,000) to Highway works, or that it will feel obliged to use its discretionary powers to a greater extent. The cost of the use of discretionary powers would depend on the extent of works that were determined upon.

Contamination

The terms proposed by EEDA are that TDC will take on all responsibility for any contamination. Studies by the Council's consultants to identify the presence, nature, and implication of contamination have been commissioned in three stages:

Initial desktop studies indicated that the site was classified as "low risk but contamination may be present and requires investigation".

Investigations revealed levels of chromium and polyaromatic hydrocarbons (PAHs) above the soil guideline values and further detailed sampling was undertaken (stage 3) to identify the type, depth and area of contamination and the seeking of confirmation from ECC that their imported material was clean.

Consultants for ECC's contractor have confirmed that imported material was not contaminated. The consultants have analysed the nature and extent of the contamination on the site and advise that investigation identified the highest level of Chromium to be present was 170 mg/kg in borehole HA3, the soil guideline value (SGV) for residential areas with plant uptake was 130mg/kg, and although this figure has been withdrawn it has not been replaced and there is currently no other figure to compare it to for total chromium. Chromium VI is regarded as a significant risk to human health but the consultants report states that the chromium found can be regarded as chromium III which under the latest Generic Assessment Criteria (GAC) gives a guideline value of 3000mg/kg and is not regarded as a significant hazard. The highest concentrations of PAHs were found in borehole WS6 and the report states that this may be due to bonfires causing this localised contamination and this is supported by the fact that this was the only borehole where clinker was found. Both of these areas where the highest contaminations were found are now covered with 150mm of topsoil and grass, thereby breaking the receptor link which should render the area safe for its intended use provided that appropriate measures are put in place to ensure that the grassed areas around boreholes HA3 and WS6 are not excavated below the level of the imported topsoil.

The Council's Acting Head of Environmental Services and Head of Leisure Services have considered the advice from the consultants and confirm that the landscaping scheme provided by ECC meets the requirements set out and that, subject to operational risk assessment, they will be able to manage and maintain the area as required within the commuted sum.