

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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## CABINET

15 JUNE 2011

### REPORT OF FINANCE AND ASSET MANAGEMENT PORTFOLIO HOLDER

#### **A.9 LAND AT THE JUNCTION OF BRIGHTON ROAD AND HEREFORD ROAD, HOLLAND-ON-SEA**

(Report prepared by Clare David)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

This report has been prepared as a result of Cabinet decision 2042 taken on 16 February 2011 which resolved that officers prepare a report to provide Members with :

- a history of the site; and
- the PCT's view with regard to the potential use of the Council owned land at Ipswich Road, Holland (including the car park if required).

##### **EXECUTIVE SUMMARY**

The site has a complex and lengthy history. Some key dates include the following: purchase of the bulk of the site at Brighton Road, Hereford Road and Kings Parade by the Council in 1964; declared surplus to the Council's requirements in 2004; resolution by Full Council to sell the site to the Primary Care Trust (PCT) in 2009 for the development of a replacement doctors' surgery; and culminating in the suspension of negotiations to sell the site to the PCT in the latter part of 2009 pending the outcome of an application to register the site as a village green. The latest indication is that the Inquiry into registration may take place later this year.

Officers have met with the PCT to discuss the potential use of the Ipswich Road site (including all or part of the car park) in Holland as a potential location for a replacement doctors' surgery. The PCT advise that the Brighton Road site remains the preferred option for the re-provision of the Frinton Road surgery (the PCT's full response is contained at Appendix B).

##### **RECOMMENDATION(S)**

**That Members note the content of the report.**

#### **PART 2 – IMPLICATIONS OF THE DECISION**

##### **DELIVERING PRIORITIES**

The Council's land and property assets are key resources for the delivery of the Council's priorities. This can be via: the direct delivery of operational services; for the general benefit of residents, workers and visitors to the District; or through the sale of underperforming assets to free up resources to invest in priority activities. It is essential that the Council's assets are managed well to achieve optimum effectiveness and efficiency and Officers are

currently undertaking a full stock take of the Council's land and property in order to inform the Property Strategy and the Property Management Model.

## **FINANCE, OTHER RESOURCES AND RISK**

### **Finance and other resources**

Asset transactions that support the Council's key priorities and/or result in a capital receipt are in accordance with the Capital Strategy and Asset Management Plan 2011-2012 and is in keeping with the Council's medium term Financial Strategy.

Capital receipts can be used to reduce borrowing or to fund the Capital Programme. Capital receipts cannot be used to meet revenue costs.

The preparation and submission of a formal objection to the registration of the site as a village green is being financed from existing budgets. Registration of the site would have a significant impact on the existing and future values of the land.

### **Risk**

Any risks will be dependent on the proposed course of action. The sale of the site to the PCT has stalled pending the outcome of the application to register the site as a village green. Regardless of the course of action for the future of the site the objection to the registration will be pursued in accordance with Cabinet decision 1849 taken on 20 January 2010. The Council is a major landowner and must act responsibly in safeguarding the utility and value of its assets. If the application went unopposed this may set a difficult precedent for any future applications of this kind within the District.

## **LEGAL**

The disposal of the land or the reversal of the former decision to declare the land surplus to the Council's requirements are both within the discretionary powers of the Council.

The disposal of Council owned land at Ipswich Road is within the discretionary powers of the Council, however, in order to proceed the Council's Property Dealing Policy would need to be initiated via a feasibility appraisal by the Corporate Property Officer followed by a report to the Portfolio Holder for Community, Partnerships and Renewal.

In 2005 and 2009 the sale of the land was formerly advertised in accordance with Section 123 of the Local Government Act 1972 which relates to the loss of public open space.

The Council's valuer's advice is that there is no reason to consider that Realise Health Ltd (RHL) were/are Special Purchasers and accordingly if the Council were to consider a sale to them without open marketing, or at a lower price after open marketing, it would have to do so using its discretionary power under the General Disposal Consent (England) 2003.

## **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.**

### Consultation/Public Engagement

The proposed sale of the site was the subject of a public consultation in 2009. This is referred to in more detail in the 'Background' section to this report. The site was advertised in accordance with Section 123 of the Local Government Act 1972 at the same time and, prior to this, in 2005 when the planning application for residential development of the site was considered.

### Wards

The site is within the Haven ward. The previous consultation that took place on the future

of the site also included the adjacent ward of St Bartholomew's.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

A full chronological site history is contained at Appendix A of this report. The following represents a summary:

- **1964** - The site was compulsorily purchased by the Council for the sum of £26,000 (twenty six thousand pounds).
- **09 June 2004** - Cabinet declared the land surplus to the requirements of the Council.
- **03 August 2005** - the Regeneration Portfolio Holder authorised the making of an outline planning application for residential development of the site.
- **04 October 2005** - the Council's Development Control Committee resolved to refuse the application.
- **09 November 2005** - Cabinet decided to postpone determining whether to dispose of the site for three months
- **22 February 2006** - Cabinet further postponed determination of this matter pending use surveys of the car parks at both Brighton Road and York Road.
- **6 June 2006** - Cabinet resolved to introduce car parking charges at Brighton Road
- **December 2007** the Tendring District Local Plan was adopted as the relevant development plan for the area following a Public Inquiry. The site was not annotated for any particular land use – which implied that the site may be developed
- **24 June 2008** - the Full Council carried a motion to carry out a full public consultation if the question of the sale of the car parks at Brighton Road and York Road were to be considered again.
- **18 August 2008** - the Community Leadership and Partnerships Committee considered the Council's response to a programme of public consultation carried out by The Primary Care Trust (PCT) on their proposals for relocating Surgeries in Holland on Sea and Great Clacton. They resolved: "...Frinton Road Surgery, Holland-on-Sea, would benefit from being in a more centrally located position, but neither Brighton Road, Holland-on-Sea, nor Kennedy Way, Clacton-on-Sea, meet this criteria and a more suitable, central, location at Holland-on-Sea should be sought."
- **09 December 2008** - the motion to work with the PCT to deliver a new doctors' surgery at Ipswich Road was lost at full Council
- **23 January 2009** - RHL, delivery partners of the PCT, formally requested that the Council sold them the land at Brighton Road
- **26 February 2009** - Cabinet resolved to support the request by RHL to purchase the site but first wished to carry out a full consultation exercise to seek local residents' views
- **19 March 2009** - the Scrutiny Committee met to consider the Cabinet decision taken on 26 February 2009. The Committee resolved to refer the Cabinet decision to the Full Council.
- **30 April 2009** - parking charges at Brighton Road were revoked

- **28 May 2009** - Cabinet decided to proceed with a public consultation exercise
- **17 June and 10 July 2009** - the public consultation exercise took place
- **2 September 2009** - Cabinet considered the results of the public consultation exercise and resolved not to sell the site
- **30 September 2009** - following the call in of the Cabinet decision not to sell the site, the Scrutiny Committee resolved to refer the decision to full Council
- **29 October 2009** - full Council considered the referral from Scrutiny Committee and resolved to sell the site to the PCT
- **November 2009** - Officers appointed agents to negotiate the terms of the sale.
- **19 November 2009** - the Council received notification from Essex County Council that an application had been received asking that the site is registered as a village green under the 2006 Commons Act. Negotiations have since been suspended by mutual agreement pending the outcome of this application.
- **20 January 2010** - Cabinet resolved to make a formal objection to the registration application. The latest indication from Essex County Council is that a Public Inquiry may take place later this year but officers have not been provided with a definitive date.
- **16 February 2011** - Cabinet requested the current report following a motion to reverse the decision to declare the site surplus.

## CURRENT POSITION

Negotiations have been suspended with Realise Health and the PCT by mutual agreement pending the outcome of the Public Inquiry into the application to register the site as a village green. Essex County Council is the relevant registration authority and the latest correspondence suggests that an Inquiry may be bought forward to be held later this year however, Officers have not been provided with a definitive date.

Officers recommend that whatever the decision is for the future of the site, that the objection to the village green registration is not withdrawn. The reason for this is set out in the financial implications section of this report.

In addition, the PCT advise that the PCT Commissioning and Provider arms have been split. The Frinton Road GP Practice was originally a PCT led practice but in January 2011 the provider arm of the Primary Care Trust became a separate organisation – Anglian Community Enterprise (ACE). The ACE took over the responsibility for the Frinton Road Practice. Ultimately, the decision on the future premises requirements for this practice will now need to be taken in conjunction with this new organisation. Furthermore, the release of the White Paper in July 2010, which sets out the new Coalition Government's long term vision for the NHS and the timetable for the abolition of Primary Care Trusts and creation of GP Commissioning Groups, does not deal with property or estates issues. As such, it still remains unclear how the mechanism for reimbursing GP Premises costs will be dealt with. For this reason, the PCT is reluctant to leave legacy cost pressures for the GPs. Clarity is still awaited from the Department of Health on this issue.

The PCT advise that, despite the delays in the delivery of the Doctors' surgery, Brighton Road remains the preferred site.

The PCT's response is contained in full at Appendix B. It provides the PCT's view of the current situation, however, your Officers do not necessarily concur with all those points made.

**BACKGROUND PAPERS FOR THE DECISION**

None.

**APPENDICES**

**Appendix A – Chronological Site History.**

**Appendix B – Response from the PCT dated 24 March 2011**

**Appendix C - Location Plan showing the areas of space previously identified as car park and the area declared surplus in 2004.**

**Chronological Site History**

- The site was compulsorily purchased by the Council in 1964 for the sum of £26, 000 (twenty six thousand pounds) and included various covenants that, amongst other things, specified that the land should only be developed for residential dwellings. No comparison has been made with similar land prices that existed at the time of purchase, however, it would seem, on initial view, that the sum of £26, 000 was a substantial amount and it does not appear that the land was transferred to the Council at less than its value.
- On 09 June 2004 Cabinet declared the land surplus to the requirements of the Council including the concept of maintaining the extent of open space by exchanging it with land that had been protected as car parking. The former car parking area is now protected as Public Open Space in the adopted Tendring Local Plan 2007. Appendix C, attached, shows the areas of space previously identified as car park and the area declared surplus.
- On 03 August 2005 the Regeneration Portfolio Holder authorised the making of an outline planning application by a planning consultant. The application was described as follows: "Outline planning permission for residential development including use of existing car park as replacement amenity open space."
- On 04 October 2005 the Council's Development Control Committee resolved to refuse the application by ten votes to one. The reasons for refusal were as follows:
  - 1 It is the policy of the Council, as set out in Policies TR1, TR2, TH4 and CLA5 of the adopted Tendring District Local Plan (TDLP)(1998) and Policies BE3 and CS2 of the approved Essex and Southend on Sea Replacement Structure Plan (2001), to safeguard existing open space. The site of the proposed residential development is identified as public open space to be protected in the TDLP. The open space is used and valued by the local community and visitors to the area. Whilst a case has been put forward for its development it does not outweigh the fundamental policy objections.
  - 2 Government guidance in PPG17 "Planning for Open Space, Sport and Recreation" is of relevance to this proposal. In particular paragraph 10 emphasises the need for a robust and up to date assessment of open space by a local authority and the need for a developer to demonstrate wide local support. The consultation with and support from the local community has not been satisfactorily undertaken in this case. This application is premature until further work has been undertaken and the support of the local community has been demonstrated. The application is therefore in conflict with the guidance and the need to protect open space.
  - 3 It is the policy of the Council, as set out in Policy TT5 of the TDLP, to safeguard existing public off-street car parking, especially in seafront areas. The car park in this application is identified on the TDLP Proposals Map Inset 1 as a safeguarded car park. The car park is used both by the local community and visitors to the seafront, especially at peak holiday times. The car park is an important facility for tourists and its loss would also conflict with Policy CLA5 of the TDLP which seeks to enhance and protect the seafront for tourism purposes.
- On 09 November 2005, in the light of the outcome of the planning application and public comments/objections received following the advertisement of the potential disposal

required by Section 123 of the Local Government Act 1972, Cabinet decided to postpone determining whether to dispose of the site for three months and on 22 February 2006 Cabinet further postponed determination of this matter pending use surveys of the car parks at both Brighton Road and York Road.

- On 6 June 2006 Cabinet resolved to introduce car parking charges at Brighton Road, amongst other sea front car parks, under decision number 1221.
- In 2007 the Tendring District Local Plan was adopted as the relevant development plan for the area following a Public Inquiry. In his report the independent Inspector concluded that car parking surveys demonstrated a low level of use and that ample provision for car parking existed at Hazlemere Road. The Inspector accepted that the land at the junction of Brighton Road and Hereford Road was not annotated for any land use (i.e. it became 'whiteland') and that this implied that development could occur subject to other policy considerations. He supported the Council's view, in the absence of any persuasive evidence to the contrary, that there was little merit in maintaining underused car parks which had virtually no recreational or amenity value as open spaces and he accepted the Council's stance. As such, the adopted Tendring District Local Plan 2007 does not designate or protect the site for any particular land use.
- On 24 June 2008 the Full Council carried a motion to carry out a full public consultation if the question of the sale of the car parks at Brighton Road and York Road were to be considered again. The Council resolved some detail on the consultation: "Such consultation should take account of all options, including the retention of the sites as car parks or any other alternative use appropriate to the sites."
- On 18 August 2008 the Community Leadership and Partnerships Committee considered the Council's response to a programme of public consultation carried out by The Primary Care Trust (PCT) on their proposals for relocating Surgeries in Holland on Sea and Great Clacton. They resolved: "...Frinton Road Surgery, Holland-on-Sea, would benefit from being in a more centrally located position, but neither Brighton Road, Holland-on-Sea, nor Kennedy Way, Clacton-on-Sea, meet this criteria and a more suitable, central, location at Holland-on-Sea should be sought."

This view was forwarded to the PCT as the Council's official response to the consultation.

- On 09 December 2008 the following motion to Full Council was lost: "This Council recognises that the residents of Holland-on-Sea would prefer their GPs new surgery to be built on land owned by the Council on Ipswich Road. This Council therefore resolves to urgently work with the PCT in order to bring this site forward as a viable option."

The officer report outlined planning issues and concluded: "...The PCT has not asked the Council to work with them to bring forward the site at Ipswich Road and in fact their (the PCT's) consultation document states that this site was considered to be unsuitable. In addition, from the Council's point of view there would be serious Planning impediments..." There had also been concerns expressed by the PCT about access and highway issues.

- On 23 January 2009 RHL, delivery partners of the PCT, formally requested that the Council sold them the land at the junction of Brighton Road and Hereford Road Holland on Sea for the construction of a new doctors' surgery.
- On 26 February 2009 Cabinet resolved to support the request by RHL to purchase the site but first wished to carry out a full consultation exercise to seek local residents' views on the potential sale of the site and the future use of the surfaced car park area (decision number 1685).

- On 19 March 2009 the Scrutiny Committee met to consider Cabinet decision 1685 after it was called in. The Committee resolved to refer the Cabinet decision to the Full Council. Scrutiny Committee resolved as follows:

**(a)** That the Committee disagrees with the Cabinet's decision and (having had regard to the advice of the Head of Legal Services and Monitoring Officer) refers it to the full Council as the Committee believe that the decision is contrary to the Council's Policy Framework for the following reasons:-

The Corporate Strategy states that we will be "A Willing Partner and Community Leader" and "Take our People with Us" by leading by example and listening to the community. We believe that the Cabinet's decision to support the request by Realise Health Limited contravenes this and overrides the decision made by full Council on 24 June 2008. The Committee considers that the Head of Corporate Performance's recommendation to the Cabinet meeting on 26 February 2009 was acceptable. Therefore the Committee have referred this matter to the full Council for reconsideration and to enable a full and open debate to take place and draws full

Council's attention to the following concerns:-

(1) That no feasibility study on the Ipswich Road/Frinton Road site has been undertaken by the Council; and

(2) That no option has been included in the proposed consultation letter to residents that allows the respondent to state that they do not wish the site to be sold.

**(b)** That the Chairman of the Council be requested to allow this matter to be dealt with as a matter of urgency at the meeting of the Council to be held on 24 March 2009.

**(c)** That, in the event of the Chairman of the Council acceding to the above request, the assembly of emails and briefing notes between the parties identified and the Council's Asset Management Team prepared in response to a Freedom of Information request made by Councillor Sambridge and referred to, and discussed at, the meeting of the Committee be made available for inspection by Members in the Princes Theatre at least one hour before the scheduled start time of the Council meeting on 24 March 2009.

**NB** At the Scrutiny Committee reference was made to a document released under the Freedom of Information Act. It originated from the PCT and stated that the Council had "...tried helpfully to quell any further debate on the Ipswich Road site..." It is considered likely that this is a reference to the Full Council on 09 December 2008 outlined above.

- On 30 April 2009 parking charges at Brighton Road, amongst other sea front car parks, were revoked by the Portfolio Holder for Technical Services under decision number 1729.
- On 28 May 2009 Cabinet decided to proceed with a public consultation exercise
- Between 17 June and 10 July 2009 the public consultation exercise took place
- On 2 September 2009 Cabinet considered the results of the public consultation exercise. The results were that 66.3% of respondents wished to see the site sold to the PCT to develop a doctors' surgery and 52.9% wanted to see the car park retained as opposed to converting it to public open space. Cabinet resolved as follows (decision number 1768):



(a) That the Primary Care Trust be requested to carry out further work to identify a more central location for a new doctors' surgery in Holland-on-Sea.

(b) That the land at Brighton Road/Hereford Road, Holland-on-Sea be not sold.

- On 30 September 2009, following the call in of decision number 1768, the Scrutiny Committee resolved :

That the Committee disagrees with the Cabinet's decision and (having had regard to the advice of the Head of Legal Services and Monitoring Officer) refers it to the full Council as the Committee believe that the decision is contrary to both the spirit and intention of the Council Policy Framework as the Cabinet, having undertaken a consultation with the residents of Holland-on-Sea, did not take the result properly into consideration when making their decision.

- On 29 October 2009 full Council considered the referral from Scrutiny Committee and resolved:

That the Council does object to the decision as it considers it is contrary to the Policy Framework and that therefore Executive Decision No. 1768 be amended to read as follows:-

"Tendring District Council resolve to offer for sale (subject to negotiation) to Realise Health Limited, the land referred to by the North East Essex Primary Care Trust in their letter of 7 July 2009. This decision to reflect the wishes of the 2 to 1 majority of residents consulted who favoured a disposal of the land requested."

- Officers appointed agents to negotiate the terms of the sale.
- On 19 November 2009 the Council received notification from Essex County Council that an application had been received asking that the site is registered as a village green under the 2006 Commons Act. Negotiations have since been suspended by mutual agreement pending the outcome of this application.
- On 20 January 2010 Cabinet resolved to make a formal objection to the registration application. The latest indication from Essex County Council is that a Public Inquiry may take place later this year but officers have not been provided with a definitive date.
- On 16 February 2011 Cabinet requested the current report.

**PCT Response dated 24 March 2011****Background**

Between June and August 2008 the PCT carried out a full public consultation exercise regarding proposals for the re-provision of the Frinton Road GP Practice. Our LIFTCo partners, Realise Health Ltd, (RHL) carried out a thorough site search exercise following which the Ipswich Road site was not included as an option as it had not been deemed by Tendring District Council as being surplus to your requirements and was therefore not available. Furthermore, TDC confirmed that in terms of their resources only one option could be explored at any one time. Some of the other issues that would have made the Ipswich Rd site unsuitable were:

- House imposing into part of the land
- Public Open Space and trees on site
- Gas main governor in one corner
- Public toilets
- Access issues (particularly as regards ambulance access)
- Restricted on-site parking
- Traffic congestion and highways issues (accident 'black spot')

The outcome of the consultation showed that 80% of those people that responded were in support of a development on the Brighton/Hereford Road site in Holland-on-Sea.

Following the conclusion of the PCT's consultation, in 2009 Tendring District Council carried out their own consultation (Disposal Consideration) on the site. The outcome of this was that TDC agreed to continue discussions with RHL regarding the sale of a section of the Brighton Rd site. On 11<sup>th</sup> November Richard Warner, RHL CEO, met with TDC's valuer, Jill Lee, to discuss the way forward

On 19<sup>th</sup> November 2009 an application was submitted by local residents to have the Brighton Road site registered as a Village Green. This application has still not been heard. Our understanding is that it has been deferred until the new financial year (2011/2012). On 11<sup>th</sup> December, Jill wrote to Richard stating, "we will need to await the outcome of the application to register the site as a Village Green". Negotiations were put on hold

**PCT Commissioning / Provider split**

The Frinton Road GP Practice was originally a PCT led practice. In January 2011 the provider arm of the Primary Care Trust became a separate organisation – Anglian Community Enterprise (ACE) and took over the responsibility for the Frinton Road Practice. Ultimately, the decision on the future premises requirements for this practice will now need to be taken in conjunction with this new organisation.

**The White Paper**

In July 2010 the new Coalition Government published its White Paper setting out its long term vision for the NHS and the timetable for the abolition of Primary Care Trusts and creation of GP Commissioning Groups. Unfortunately, what was missing from the White Paper and still remains unclear, is any detail on the mechanism for reimbursing GP Premises costs. As such, the PCT is reluctant to leave legacy cost pressures for the GPs. Clarity is still awaited from the Department of Health on this issue.

**Conclusion**

The Brighton Road site remains the preferred option for the re-provision of the Frinton Road surgery.

Whilst it is agreed that the Ipswich Road site is more centrally located, even with the prospect of part or all of the adjacent public car park now being offered, this site still fails to meet all requirements to be able to deliver the appropriate development. The prospect of additional parking does not address other obstacles and environmental issues associated with this site.

Clarity from the Department of Health regarding future funding of GP premises is needed to enable both ACE and the GPs to fully understand what they need to address by way of increased costs and on-going revenue requirements as a consequence of embarking on any such development work.