

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

CABINET

11 OCTOBER 2019

REPORT OF THE PORTFOLIO HOLDER FOR CORPORATE FINANCE & GOVERNANCE

A.3 FREEHOLD DISPOSAL OF LAND AT VISTA ROAD, CLACTON-ON-SEA AND FREEHOLD ACQUISITION OF LAND AT RUSH GREEN CLACTON-ON-SEA (Report prepared by Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

1. To consider objections and comments received in respect of the potential disposal of public open space and approve the principle of various property transactions and contractual arrangements required to facilitate the extension of the sixth form facility at Clacton County High School and improvement of public open space at Rush Green.

EXECUTIVE SUMMARY

Tendring District Council (“TDC”) owns the freehold of land including Clacton Leisure Centre and Vista Road Recreation Area. The land lies adjacent to Clacton County High School in Walton Road Clacton on Sea (“CCHS”). CCHS is an Academy school under the umbrella of Sigma Trust (“ST”)

TDC owns the freehold of land including Rush Green Bowl and Rush Green Recreation Area. The land lies adjacent to the Tendring Education Centre site formerly known as Bishops Park.

Essex County Council (“ECC”) has approached TDC with a proposal to expand and improve secondary education in Clacton and in the District by expanding CCHS to accommodate additional 11-16 year olds and by creating a new sixth form facility at the Tendring Education Centre site.

In order to meet space requirements ECC needs to expand the CCHS site to accommodate the additional pupils. ECC has requested that the area of land shown edged red at Appendix A is transferred from TDC to ECC with intent that it will be transferred to ST for the purpose of the extending the education facility, in a manner yet to be finalised.

The land in question is held by TDC as public open space and recreation land. A public notice has been published as required by section 123 of the Local Government Act 1972 advertising the intention to dispose of the land. Responses received at the time of printing are attached as Appendix D and consideration of these are set out in the body of the Report. Any subsequent responses received will be made available to Cabinet members at the meeting.

A number of public objections were raised within the responses, concerning the loss of open space. These have been balanced against the opportunity to provide enhanced education facility within Clacton.

Discussion to date between ECC and TDC officers has led to a proposal that includes:

1. TDC transferring the land identified off Vista Road, shown edged red in Appendix A to ECC;
2. ECC transferring the land identified off Jaywick Lane, shown edged red in Appendix B

to TDC;

3. TDC granting rights of access to ECC and ST for construction access, general access and installation and use of services in the car park and access roads adjoining the Leisure Centre and School sites;
4. ECC, TDC and ST would enter into a revised joint use agreement currently related to the football changing room but proposed to encompass:
 - a. Revision in relation to the changing room;
 - b. regulate the use and management of the car park and access;
 - c. facilitate public use of the area transferred to ECC at Vista Road outside of school hours;
 - d. facilitate the use, by ST during school hours, of the all-weather pitch owned by TDC.
5. ECC would transfer a sum of money to part fund the replacement of the all-weather pitch and fund the various improvement works at both of the locations as indicated on the plans save for the potential multi-purpose building which will be subject to separate TDC business case.
6. TDC would be obliged to procure and carry out all of the key improvements and would at its discretion use the remaining funds to carry out the other improvements indicated on the plans.

The existing all-weather pitch, parking and various other features at the sites are in need of some investment and refurbishment. The proposals enable TDC to assist with the facilitation of educational improvements as well as taking a more holistic view of the potential upgrading of facilities both at Vista Road and at Rush Green.

Further details of terms and amounts are set out in a report in part B of this agenda.

RECOMMENDATION(S)

That Cabinet:

1. **Considers objections and comments received, as set out in Appendix D, in respect of the potential disposal of public open space and agrees that the loss of public open space is outweighed by the provision of a new extended school facility and by the provision of a dedicated sixth form education facility in the District;**
2. **Subject to the foregoing, approves the principle of:**
 - a. **the freehold disposal of land at Vista Road, Clacton on Sea as shown edged red on the plans in Appendix A for the purposes of educational provision, relying on the General Consent Order for the reasons set out within the report;**
 - b. **the freehold acquisition of land at Rush Green Clacton on Sea as shown edged red on the plans in Appendix B, for the purposes of public open space;**
 - c. **the granting of rights for access and installation and use of services in the Council's retained land at Vista Road;**
 - d. **the revision and extension of an existing shared use agreement related to changing rooms to include grass and artificial pitch areas;**
 - e. **entering into an umbrella agreement with Essex County Council to**

encompass the foregoing to secure funding from Essex County Council for various improvement works in return for the various rights granted and Tendring District Council's undertaking to procure and carry out key improvement works at the Vista Road site.

3. Authorises officers to procure, contract and carry out the key improvement works and such other works that are shown on the plans and listed at Appendix C and other improvements considered necessary by the Corporate Director for Operational Services, subject to sufficiency of funding.
4. Delegates to the Deputy Chief Executive and Corporate Director for Operational Services, in consultation with the Portfolio Holder for Corporate Finance & Governance, authority to enter into the necessary legal agreements to deliver this project.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The potential transactions are pertinent to the following Council priorities:

• Deliver a quality living environment	• Engagement with the Community
• Make the most of our assets	• Effective partnership working
• Balance our budget	• First rate leisure facilities
• Facilitate improved qualification and skills attainment	

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The transfers of land at both Vista Road and Rush Green will be for a nominal £1.

Other transaction costs will be funded by ECC within the wider project fund.

The ongoing revenue cost reduction at Vista Road is likely to be small but broadly balanced by increased revenue cost at Rush Green.

It is proposed that the Cabinet uses its discretionary Power under the General Disposal Consent Order (England) 2003 in order to agree the disposal of the land at Vista Road without payment of a sum directly comprising Best Consideration Reasonably Obtainable.

The use of the order is allowable in support of the provision of increased and improved educational facilities and the contribution of them to the economic and social wellbeing of the area. Educational attainment has been identified as a challenge affecting the town and improving facilities will contribute to improved achievement and therefore to economic gain and social improvement.

ECC will provide a one off sum that will fund a number of improvement works at the sites. This fund partly represents works that TDC may have been required to undertake in future years in the natural course of events and will mitigate future running costs that would fall to TDC in any event.

TDC has made a separate grant application for funds for the renewal and upgrading of the all-weather pitch and at the time of writing the outcome of the bid is unannounced.

Further financial details and details of terms are set out in the report in Part B of this agenda.

Risk

Risk	Control/Mitigation
Planning permission for change of use is not granted	ECC to determine measures to maximise likelihood of approval.
Professional fees and other costs fall to TDC.	ECC has given an undertaking on initial costs and officers will ensure that further costs are secured through any legal agreement.
ECC/ Ministerial decision making	ECC to determine measures to maximise likelihood of approval.
Land initially identified for access at Jaywick Lane is unregistered.	ECC to resolve or provide alternative access land.

Additional financial risks are considered in the report in Part B of this agenda.

LEGAL

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets are for the benefit of the district.

Section 120(1) of Local Government Act 1972 provides for the Council to acquire land either within or outside the District for any purpose within that or any other Act or for the benefit, improvement or development of the area.

Section 123(1) Local Government Act 1972 indicates that, a local authority may dispose of land held by it in any way it wishes so long as (section 123 (2)) the land is disposed for a consideration not less than the best that can reasonably be obtained.

The General Disposal Consent Order (England) 2003 gives consent for disposal at below best consideration reasonably obtainable provided that the undervalue is less than £2m and the proposal enhances the environmental economic and social wellbeing of the area.

Section 123(2A) Local Government Act 1972 indicates that, a local authority may not dispose of open space land held by it without advertising its intention to do so in the local press. Any objections received must be taken into account within the decision making on the future of the land.

Given the circumstances of the case Cabinet is called upon to consider:

1. public objections.
2. acquisition and disposal terms,
3. applying the General Disposal Consent Order
4. entering into an umbrella agreement
5. Accepting funding from ECC and committing to procuring and completing various work and revising and extending joint use agreements affecting the site at Vista Road.

The full details of joint use, construction and access arrangements are not yet entirely defined and subject to Cabinet's decision in principal, it is proposed to delegate authority to enter into any supplementary or related legal agreements to the Deputy Chief Executive and Corporate

Director for Operational Services in consultation with the Portfolio Holder for Corporate Finance & Governance. Each of these decisions will be recorded and published in accordance with the Council's decision making principles and Access to Information Procedures.

Due to commitment to the Council's existing property programme and capacity within the in-house legal team, it is likely that external legal resources will be required in entering into the range of agreements and transfers. The costs of this are to be met from within the funding to be provided by ECC.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of:

Equality and Diversity:

The proposed actions are unlikely to have any differential effect on any protected group. Notwithstanding the proposed disposal over 10Ha of public open space will remain at Vista Road

Health Inequalities and Crime and Disorder:

Both physical activity levels and educational attainment levels can be linked to health inequality and to crime and disorder. In this case the proposal from ECC/ST/CCHS is aimed at addressing educational need in the area. The proposed mitigation of the reduction in open space and the improvement of facilities are aimed at the enhancement of opportunity for physical activity and recreation.

Consultation and Public Engagement:

The proposed disposal of public open space has been advertised in line with the statutory requirement and responses received are to be considered by cabinet within this report.

Wards:

St Pauls and Bluehouse.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Council owns the freehold of land including Clacton Leisure Centre and Vista Road Recreation Area. It has been used as public open space since acquisition in 1935.

The land lies adjacent to Clacton County High School.

The Council owns the freehold of land including Rush Green Bowl and Rush Green Recreation Area. The land is currently open space and recreational but has been used as landfill in the past. The land lies adjacent to the Bishops Park site.

Essex County Council has approached the District Council with a proposal to expand and improve secondary education in Clacton and in the District by expanding Clacton County High School to accommodate additional 11-16 year olds. The proposal includes the construction of additional buildings on the existing school site and additional recreational space beyond.

Additionally it is proposed to create a new sixth form facility at the Bishops Park site using existing buildings.

In order to meet space requirements at the school ECC needs to expand the CCHS site. In order to facilitate this ECC has requested that the area of land shown edged red at Appendix A is transferred to it.

Access at the CCHS site is restricted and for many years the Leisure Centre car park has

been used for pick up and drop off and for visitor parking. No agreement for such use has been in place.

It is likely that ECC will require access for construction purposes and additional easements for services to the potential new construction

The disposal area includes some features which will need to be relocated.

The existing TDC owned all-weather pitch is in need of renewal and upgrading. Some other features at the site are in need of repair and upgrading.

The existing changing pavilion to the North West of the current school site is subject to a joint user agreement.

The changing facilities at Rush Green have been recently upgraded but the paths and slopes around the site could benefit from upgrading and the nature of the soil challenges the maintenance of good quality playing surfaces.

ECC has proposed that in order to mitigate the loss of public open space an area of land to the West of Rush Green, edged red on the plan at Appendix B, complete with access off Jaywick Lane, edged purple on the plan at Appendix B is transferred to TDC.

Housing growth to the West of Clacton may factor in future local plan epochs and lead to additional recreation demand in that area.

The Portfolio Holder for Corporate Finance & Governance initiated the process in relation to the acquisition and disposal on 05 July 2019.

CURRENT POSITION

The land at Vista Road is part of the Town's public open space and recreation provision. Following the Portfolio Holder's decision in July 2019, officers advertised the potential disposal of public open space as statutorily required. Objections and comments received at the time of printing are attached at Appendix D. Any objections or comments received after printing but before the day of the Cabinet meeting will be made available to Cabinet Members at the meeting.

The principal thrust of objections lie in four themes:

1. Loss of amenity space
2. Distance to the mitigating Land at Rush Green
3. Space already within the School site
4. Disproportionate effect on older persons or people with mobility difficulties

ECC has considered options for the increasing and improvement of school capacity in the town as has selected this project as the best solution. The increasing number of pupils at the site requires an increase in recreational space to meet national standards. The availability of an all-weather pitch mitigates this but additional area is still required.

The loss of open space is a serious matter and relates to a previously identified shortfall on formal playing pitches. Over ten hectares of open space will remain available to the public at the site and the land disposed of will be available for formal booking outside of school hours.

The land at Rush Green is some distance from Vista Road but it is in an area likely to be subject to future housing growth, adjacent to existing playing pitches. As above, significant area of open space will remain at Vista Road.

The proposals include for the provision and refurbishment of paths at both locations which will improve the accessibility of the facilities at both.

In addition to the mitigating factors outlined the educational proposals are significant steps aimed at improving educational attainment within the Town and it is considered that overall

the benefits of the proposals outweigh the other effects.

Officers from TDC and ECC have negotiated a package of deals and measures, subject to Member approval and to contract, aimed at creating a mutually agreeable solution.

The proposed elements are:

- ECC would provide TDC with a fund to carry out various improvement works at both of the locations including the meeting of the TDC's legal, valuation and other professional costs. The locations of those works are indicated on the plans.
- TDC would be obliged to ECC to procure and complete all of the key improvements identified on the plans.
- TDC would use the residue of the fund to procure and complete the other works identified on the plans, subject to the fund being sufficient, and would use any further residue of the fund for other improvement on the sites the nature of which will be determined by TDC.
- The package also looks forward to a potential future TDC scheme to add a new flexible leisure building behind the current buildings where shown on the plan. This will be subject to a separate feasibility and business case.
- TDC would transfer the land at Vista Road, edged red on the plan at Appendix A, to ECC for the consideration of £1 and subject to the further terms as set out in the report in Part B of the agenda.
- The use of the General Disposal Consent Order is proposed in support of the provision of increased and improved educational facilities and the contribution of them to the economic and social wellbeing of the area. Educational attainment has been identified as a challenge affecting the town and improving facilities will contribute to improved achievement and therefore to economic gain and social improvement.
- ECC would transfer the land at Rush Green, edged red on the plan at Appendix B complete with the access land edged purple, or other access land to be agreed, to TDC for the consideration of £1 and subject to the further terms as set out in the report in Part B of the agenda.
- TDC will grant a works access licence to ECC or ECC's contractor on terms as set out in the report in Part B of the agenda.
- TDC will grant an easement for the laying and ongoing use of services reasonably required in the school expansion to ECC or ECC's successor/tenant on terms as set out in the report in Part B of the agenda.
- TDC and ST together with ECC if required will enter into revised and/or further joint use agreements as needed to:
 - define the ongoing use of the football changing room in revised circumstances,
 - provide for public access, bookable via the leisure centre, of the land transferred at Vista Road, outside of school hours but with exceptions either way if agreed between school and leisure centre.
 - provide for school use, of the all-weather pitch at Vista Road, during school hours but with exceptions either way if agreed between school and leisure centre.
 - provide a framework for the management and control of the car parking and access areas to be shared between the school and the leisure centre
- ECC TDC and ST to enter into such umbrella or supplemental agreements as may be

considered necessary on either side to give effect to the foregoing.

APPENDICES

Appendix A – Location Plan – Vista Road

Appendix B – Location Plan – Rush Green

Appendix C– Key to the works indicated on the plans

Appendix D – Objections and comments related to the disposal of public open space

BACKGROUND PAPERS

Consultation letter issued by the school