

CABINET

23 JUNE 2023

REFERENCE FROM COUNCIL

A.1 MOTION TO COUNCIL: RING-FENCING OF CAPITAL RECEIPTS ARISING FROM THE DISPOSAL OF SURPLUS LAND

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report to Cabinet a motion submitted at the meeting of the Council held on 2 March 2023.

EXECUTIVE SUMMARY

This report sets out a motion submitted by Councillor Graham Steady to the meeting of the Council held on 2 March 2023 relating to the use of capital receipts arising from the disposal of Council owned land and which was referred to the Cabinet by the Chairman of the Council for further consideration, in accordance with the provisions of the then Council Procedure Rules 12.4 and 12.5.

Councillor Steady sought that any future capital receipts arising from the disposal of surplus land be ring-fenced for investing back into the town or parish it was located in, and in the case of Brightlingsea this would include the proceeds from the future disposal of land in Dover Road, Brightlingsea and also that the relevant Town / Parish Council be consulted on any such investment proposals.

Asset management and the use of capital receipts are executive functions.

Having discussed the Motion it will be for Cabinet to decide what action will be taken.

RECOMMENDATION(S)

That, following the explanation of the motion and in accordance with the current Council Procedure Rule 12.8, the Cabinet decides whether to recommend, or not, that the Council should support the motion in its original format.

REASON(S) FOR THE RECOMMENDATION(S)

To comply with the Council's Constitution (Council Procedure Rule 12).

ALTERNATIVE OPTIONS CONSIDERED

Prior to making its response the Cabinet may, following consultation with the relevant Officers, require further information to be presented to it for consideration on the implications of the proposed motion. Such a report must be considered by Cabinet in a timely manner.

Once the Cabinet has considered the Motion it will be sent back to Council with Cabinet's response.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

In respect of the Corporate Plan 2020/24 Priority Themes the decision will contribute to:

- Strong Finances and Governance (and specifically using assets to support priorities).

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Asset Management is an executive function that is delegated which sits with Cabinet collectively and, individually, to the Portfolio Holder for Assets (depending on the nature of the decision required) in Schedule 3 of Part 3 of the Council's Constitution. The overall function of the Council's Executive is the discharge, in accordance with the Council's Budget and Policy framework, of all functions of the Council (including "local choice functions") except those functions which cannot by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and other legislation, be the responsibility of the Executive.

The Council's Property Dealing Procedure is contained within Part 5 of the Constitution, approved by Full Council.

Article 13 of the Constitution sets out the Principles of Decision Making to be followed for all decisions:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consideration of all the relevant factors and options, taking into account the results of any consultation undertaken and professional advice of Officers;
- (c) Respect for human rights, and equality and diversity;
- (d) A presumption in favour of openness;
- (e) Clarity if aims and desired outcomes; and
- (f) Transparency (i.e. explaining what options were considered and giving the reasons for that decision).

The Council would need to consider the full implications of the decision, if it was minded to support the motion and further research and advice would be necessary before an informed decision could be made.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Not applicable.

USE OF RESOURCES AND VALUE FOR MONEY

External Audit expect the following matters to be demonstrated in the Council's decision making:

- A) *Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;*
 B) *Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and*
 C) *Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.*

As such, set out in this section the relevant facts for the proposal set out in this report.

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Not Applicable in this instance.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Nothing in addition to those matters already set out in the report.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Not Applicable in this instance.

MILESTONES AND DELIVERY

Not Applicable in this instance.

ASSOCIATED RISKS AND MITIGATION

Not Applicable in this instance.

OUTCOME OF CONSULTATION AND ENGAGEMENT

Not Applicable in this instance.

EQUALITIES

In line with the Public Sector Equality Duty, public bodies such as the Council must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.

Not Applicable in this instance.

SOCIAL VALUE CONSIDERATIONS

There are no social value considerations relevant to this report having regard to the Public Services (Social Value) Act 2012.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

There is no impact on the Council's aim for its activities to be carbon neutral by 2030 including the actions, policies and milestones in its Climate Change Action Plan.

OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Set out what consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are then set out below.

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

None

Health Inequalities

None

Area or Ward affected

Most of the Wards in the District

PART 3 – SUPPORTING INFORMATION

ASSISTANT DIRECTOR (BUILDING & PUBLIC REALM)'S ASSESSMENT AND ADVICE

Following a motion put to the full Council in November 2020 by Councillor Placey the Cabinet requested a review of Council owned assets that could be used for the construction of new Council homes or used or released in return for capital receipts in order to support Council priorities.

As part of that exercise a total of 69 sites were identified, with three already pending action after earlier decisions.

A report for Cabinet consideration was prepared identifying the sites and inviting determination of in respect of which of them to commence the property dealing procedure. Three previously identified sites were identified for priority disposal action, two of the then identified sites were identified for action.

On 15 July 2022 Cabinet agreed the identified priority actions and decided to progress with the property dealing procedure in relation to all of the identified sites.

Officers have begun to progress the identified priority actions, as resources permit, but no detailed assessment of any of the other sites has yet been undertaken.

On 04 November 2022 Cabinet considered a report outlining the Council's financial outlook including a number of housing and property investment requirements that could not be funded.

It is likely that looking forward it will be increasingly necessary to practice asset management in order to deliver property and other obligations and aspirations.

Section 123 of the Local Government Act 1972 provides that any proposal for disposal of open space must be advertised in the local press and representations taken into account. Any planning application will necessitate statutory and neighbour consultation and due consideration to any responses. Both of these would happen at a later stage in the property dealing process. Cabinet may wish to note the petition, thank the petitioner and request that these views and others are taken into account as the property dealing procedure unfolds, subject to available resources.

Portfolio Holder's Comment:

"These 69 sites have been identified as part of a process to review potential development or other options throughout the District. They should not be considered in isolation or outside of that process. No decision has been taken to build on or dispose of any land. This process was begun following questions raised at the full Council and has consumed considerable time and effort to get to this stage. Given the Council's financial position and aspirations for housing and public space improvement the Authority must look towards careful use and rationalisation of its properties in order to reduce costs, avoid clinging to unproductive space and facilitate investment in services and facilities.

I recommend that Cabinet informs Full Council that the Motion should be not supported."

BACKGROUND

Councillor Graham Steady, pursuant to the Council Procedure Rule 12 then in place, submitted the following motion to the meeting of the Full Council held on 2 March 2023:-

"That this Council resolves to recommend to Cabinet that -

(a) any future capital receipts arising from the disposal of surplus land be ring-fenced for investing back into the town or parish it is located in, and in the case of Brightlingsea this would include the proceeds from the future disposal of land in Dover Road identified in the report to Cabinet on 15 July 2022; and

(b) the relevant Town / Parish Council be consulted on any such investment proposals."

At that Council meeting, Councillor Steady had formally moved the motion and Councillor Chapman BEM had formally seconded the motion.

Councillor Steady had then given his reasons why he felt that it would be appropriate for the motion to be dealt with at that meeting, namely that:-

- *the Council was coming to the end of its current four year cycle;*
- *the process of land disposal had already begun in Brightlingsea. Early link ups to policy had already been announced;*
- *there were opportunities in the pipeline to raise match funding for joint schemes between Brightlingsea Town Council (BTC) and Tendring District Council (TDC). BTC working with TDC Officers could reduce housing waiting lists. Therefore, dealing with the motion at this meeting would 'tidy things up' and create a platform for the new post-election Executive to build on and reduce the timescale for the delivery of schemes; and*

- *the extra funding from land disposals could fund a significant number of extra small schemes right across the District in every town and parish council area.*

Councillor Chapman BEM had then given her reasons why she felt that it would be appropriate for the motion to be dealt with at the Council meeting, namely that:-

- *now would be a better time to debate this motion as the present Members had the experience and knowledge gained from previous discussions of land disposals. Following the election there could be a significant number of new Councillors who might not fully understand the argument being made on this matter; and*
- *this would be an ideal time to demonstrate to residents that two Councils can work together to build out projects.*

The then Leader of the Council (former Councillor Stock OBE) had then responded and had put forward reasons why it would be more appropriate for the motion to stand referred to the Cabinet. Those had included:-

- *pointing out that, in his opinion, the current wording of the Motion meant that places in the District with a large number of Council owned assets would benefit at the expense of those without;*
- *the disposal of assets was an Executive function, as acknowledged in the motion itself, so this motion really had to go before the Cabinet in order for it to form a recommendation and return the motion to Full Council at a later date. No land would be sold off in the interim so there was nothing to fear on that score;*
- *pointing out that, in his opinion, even if the motion was considered and then unanimously approved at that the Council meeting it would have 'zero effect'. He had felt that it was a pointless exercise as it could not change what Cabinet could or could not do.*

Having consulted both the Council's Monitoring Officer and the Section 151 Officer, the then Chairman of the Council (Councillor Harris) had then made his ruling on whether the motion should be dealt with at the meeting or stand referred. He had decided that the motion would stand referred to the Cabinet on the grounds that the motion clearly concerned an Executive function.

Councillor Steady had then explained the purpose of the Motion in accordance with the provisions of the then Council Procedure Rule 12.4.2. That explanation had included:-

- *that the motion aimed to build on previous successes in Brightlingsea and to bring about a meaningful, fiscal devolution from TDC to BTC as a pre-cursor to fiscal devolution from central Government to local Government;*
- *it would enable TDC to get 'ahead of the game' and enable the flexibility required to deliver these schemes;*
- *adapting such an ethos would challenge everything and provide a different way of delivering services and facilities similar to the land swap at Vista Road, Clacton-on-Sea which had been an integral part of the refurbishment of the Clacton Leisure Centre's new all-weather football pitch funded by the Football Foundation and a contribution from Essex County Council; and*
- *that this was a wonderful opportunity to 'dare to be different'.*

Councillor Chapman BEM had then further explained the purpose of the Motion in accordance with the provisions of the then Council Procedure Rule 12.4.2. That explanation had included:-

- many parish/town councils had small projects that were waiting to be progressed or completed – this would be a good way of achieving positive outcomes;
- it would demonstrate how parish/town councils and district/borough councils could work together within guidelines – it could enable match funding opportunities to complete such projects for the benefit and pacification of local communities; and
- there was a worry that the money raised from land disposals would go into a central pot and ‘disappear’.

Pursuant to the current Council Procedure Rule 12.10, as the purpose of the motion has already been explained at the full Council meeting, Councillor Steady (or another Member nominated by him) will not have any automatic right to speak at this Cabinet meeting though he will be permitted to answer questions and/or provide clarification, if requested to do so by the Leader of the Council, as the Chairman of the Cabinet meeting. Councillor Steady will also have a right of reply (of no more than three minutes duration) to respond to the debate at the Cabinet meeting on his motion.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Cabinet Meeting on 15 July 2022 - Minute 40 - Cabinet Members' Items – Report of the Corporate Finance & Governance Portfolio Holder – A.5 – Initiation of the Property Dealing Procedure in order to explore the Development Potential of various areas of Council Land

“RESOLVED that Cabinet -

- (a) agrees to initiate the Property Dealing Procedure in respect of each of the areas identified in Appendix A to the Portfolio Holder’s report;
- (b) agrees that priority action be taken in relation to bringing forward proposals for further decision in relation to the potential development of the sites at Fernlea Road, Harwich and Seaview Close, Little Oakley, as contained in the appendix and subject to the Council’s Corporate Priority actions;
- (c) determines a prioritised list of the other sites, having regard to:
 - i) the likely ease or otherwise of completing disposal actions with limited resources;
 - ii) the identified need for social housing provision in the area;
 - iii) the number of potential dwellings identified;
 - iv) the potential level of capital contribution to other priorities;

all to be subject to further decision in relation to the allocation of resources required; and
- (d) requests that Officers bring forward processes and ultimately reports for further decision in respect of the freehold disposal of sites at Crome Road Clacton-on-Sea, Dover Road, Brightlingsea and Burrows Close, Clacton-on-Sea.”

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

Report of the Corporate Finance & Governance Portfolio Holder (A.5) – Initiation of the Property Dealing Procedure in order to explore the Development Potential of various areas of Council Land – submitted to Cabinet on 15 July 2022.

Published Minutes of the Cabinet meeting held on 15 July 2022.

Published Minutes of the Full Council meeting held on 2 March 2023.

APPENDICES

None

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