

# PRIVATE AND CONFIDENTIAL

**NOT FOR PUBLICATION** by virtue paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

|                               |           |                             |           |
|-------------------------------|-----------|-----------------------------|-----------|
| <b>Key Decision Required:</b> | <b>No</b> | <b>In the Forward Plan:</b> | <b>No</b> |
|-------------------------------|-----------|-----------------------------|-----------|

## PORTFOLIO HOLDER FOR LEISURE AND PUBLIC REALM AND PORTFOLIO HOLDER FOR ASSETS

**19 November 2024**

### **B.1 TRANSFER OF PUBLIC OPEN SPACE LAND ADJOINING BROOK PARK WEST HARTLEY BROOK ROAD CLACTON-ON-SEA CO16 9FZ ALSO KNOWN AS PICKER'S DITCH LAND**

(Report prepared by Saira Mahboob and Andy White)

## **PART 1 – KEY INFORMATION**

### **PURPOSE OF THE REPORT**

To seek authority to consent to the transfer of open space land at land adjoining Brook Park West, Hartley Brook Road, Clacton-On-Sea CO16 9FZ also known as Picker's Ditch Land ("Open Space Land") directly from Matthew Homes Limited ("Developer") to Tendring District Council ("Council") pursuant to paragraph 1.3 Schedule 3 of the Section 106 Agreement dated 7 June 2017 as varied Section 106 Agreement dated 6 April 2023 (S106 Agreement") relating to planning application 16/01250/OUT dated 8 June 2017 ("Planning Application") submitted by the ("Developer"). All as varied by later applications and supplemental s106 agreement deed of variation dated 6 April 2023. The Open Space Land is registered under freehold title register AA34108.

To seek authority to accept the Picker's Ditch Land Maintenance Contribution of £75,000 ("Contribution") to maintain and manage the Open Space Land in perpetuity from the date of completion of the transfer.

To seek authority to consent to completion of a hoarding licence whereby there is currently hoarding in place, which encroaches onto the Open Space Land to be transferred to the Council, to allow for the safe completion of the works on the adjoining site along the boundary. The hoarding will be removed once work is completed.

### **EXECUTIVE SUMMARY**

The Open Space Land transfer relates to the development of land north land adjoining Brook Park West, Hartley Brook Road, Clacton-On-Sea CO16 9FZ also known as Picker's Ditch Land pursuant to the Planning Application. It is noted that the Council will not be taking the transfer of the SUDs pond and system, this is to be managed by the Developer's appointed management company.

Under paragraph 1.3. of Schedule 3 of the S106 Agreement, the Developer is required to transfer the Open Space Land to the Council with a sum of £75,000 as Contribution for future maintenance. The Contribution is not indexed linked.

Under the deed of variation dated 6 April 2023 to the original S106 Agreement, the Developer is to transfer the Open Space Land prior to the first occupation of the 25<sup>th</sup> dwelling and confirms that it will:

# PRIVATE AND CONFIDENTIAL

**NOT FOR PUBLICATION** by virtue paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

- i) Set out the Open Space Land in accordance with the Picker's Ditch specification.
- ii) Maintain the Open Space Land in accordance with the Picker's Ditch Management Plan until the transfer of the Open space Land to the Council is completed.

It is further agreed that the Council will under the transfer deed of the Open Space Land will covenant to use the Contributions for the purpose of maintaining the Open Space Land as prescribed under the S106 Agreement.

The Council agrees for the existing hoarding which encroaches the Open Space Land to be transferred to the Council to remain under a licence until the building of the estate roads are fully completed.

## RECOMMENDATION(S)

**That the Portfolio Holder for Leisure and Public Realm and Portfolio Holder for Assets note the content of this report and agree:**

- (a) To consent to the transfer of the Open Space Land directly from the Developer to the Council and receipt of the Contribution, in accordance with the intention as set out in Schedule 3 of the Section 106 Agreement as amended by the deed of variation dated 6 April 2023, relating to the Planning Application.**
- (b) Authorise the Assistant Director of Governance to complete the transfer of the Open Space Land and accept the Contributions and to hold the same for the specific purposes of maintaining and managing the Open Space Land; and**
- (c) Authorise the Corporate Director (Operation and Delivery) to undertake the necessary administrative functions to complete the transfer and to accept the Contributions and delegate officers to undertake the necessary maintenance and other activities identified in the S106 agreement and Picker's Ditch Management Plan utilising the Contributions following the transfer of the Open Space Land as proposed.**
- (d) Authorise the Corporate Director for (Operation and Delivery) to complete the hoarding licence agreement for the existing hoarding in place to remain, which encroaches onto the Open Space Land to be transferred to the Council, to allow for the safe completion of works along the boundary. The hoarding will remain until the works are complete.**

## REASON(S) FOR THE RECOMMENDATION(S)

To comply with the condition of the S106 legal agreement to transfer the Open Space Land to the Council.

To add the area of public open space including play equipment to the current land holding and for it to be fully available to the community.

## ALTERNATIVE OPTIONS CONSIDERED

To decline the transfer of the Open Space Land. Not proposed. The Council owns the adjoining land to the Open Space Land and the area subject to this report will be a significant addition to public amenity in the area.

# PRIVATE AND CONFIDENTIAL

**NOT FOR PUBLICATION** by virtue paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The recommendations if approved will contribute to the following corporate priorities:

**Pride in our area and services to residents**

Promoting clean and tidy communities

**Championing our local environment**

create and maintain spaces for leisure, wellbeing and healthy lifestyles, and deliver access to open spaces and community resources.

**Working with partners to improve quality of life**

promote safer, healthier, well connected and inclusive communities.

### LEGAL REQUIREMENTS (including legislation & constitutional powers)

| Is the recommendation a Key Decision (see the criteria stated here) | NO | If Yes, indicate which by which criteria it is a Key Decision                                                                                                 | <input type="checkbox"/> Significant effect on two or more wards<br><input type="checkbox"/> Involves £100,000 expenditure/income<br><input type="checkbox"/> Is otherwise significant for the service budget |
|---------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                     |    | And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date) |                                                                                                                                                                                                               |

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 106 of the Town and Country Planning Act 1990 provides for the Council to enter into legal agreements to secure community and other benefits that relate to planning permissions. The transfer of open space under s106 obligations is normally a matter determined by officers in consultation with the Portfolio Holder. The Council being a party to the S106 Agreement requires the authority to consent to the transfer of the Open Space Land from the Developer to the Council and for the Council under s106 agreements is delegated to the Corporate Director in consultation with the Portfolio Holder Portfolio Holder for Leisure and Public Realm and Portfolio Holder for Assets in accordance with the current Property Dealing Procedures of Council's Constitution.

Revised terms for future s106 agreements have been introduced requiring land to be offered rather than to be transferred. It is anticipated that this will allow more discretion in future cases if circumstances have changed significantly as they have in this case.

The Open Space Land is registered under freehold title register AA34108 owned by Matthew Homes Limited.

# PRIVATE AND CONFIDENTIAL

**NOT FOR PUBLICATION** by virtue paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

The Council is party to the S106 Agreement. Schedule 3 of the S106 Agreement requires the Developer to transfer the Open Space Land to the Council for the purposes of using it as a recreational facility for members of the public to use at all times without exclusion, cost or hindrance. The S106 Agreement further requires the Council to hold the Contributions and pay for the cost of maintenance or works to the Open Space Land as and when required.

Council will further covenant with the Developer by way of indemnity only, to observe and perform the incumbrances, covenants and restrictions contained or referred to in the property and charges registers of title number AA34108 and the S106 Agreement insofar as they relate to the Open Space Land including the Contributions and will keep the Developer and the Council indemnified against all proceedings, costs, claims and expenses arising from failure to do so.

The Council has agreed to grant a temporary hoarding licence to the developer until the estate roads are built on the estate.

Ordinarily the acceptance of land under s106 agreements is delegated to officers in consultation with the Portfolio Holder for Leisure and Public Realm and granting of licences is delegated to officers. In this case the area of land varies from that set out in the s106 agreement (the proposed area does not include the SUDS pond which officers consider will not contribute to public recreation). Accordingly, the agreement of the Portfolio Holders is sought to the transfer at slight variance to the agreement. While preparing officers also consider it expedient to combine the decision on granting a licence into the same decision package.

|                          |                                                                                                                                |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b> |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|

**No additional comments**

## FINANCE AND OTHER RESOURCE IMPLICATIONS

The Open Space Land is to be transferred for the nominal consideration of £1.00 payable by the Council to the Developer. The Contributions are to be utilised on the maintenance and managing of the Open Space Land in accordance with the s106 Agreement and Picker's Ditch Management Plan.

To not consent to the transfer of the Open Space Land and accept the Contributions could potentially create additional work for the Council should the Developer fail to maintain and manage the Open Space Land which may have adverse impact on the adjoining land owned by the Council.

|                          |                                                                                                                                 |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b> |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------|

**No additional comments**

## USE OF RESOURCES AND VALUE FOR MONEY

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; | There may be short term impact attributable to the play equipment having been left exposed since installation. This can be addressed within the commuted sum to be transferred. |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# PRIVATE AND CONFIDENTIAL

**NOT FOR PUBLICATION** by virtue paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

|                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and                                                                                                                                                                                                                                                                                     | This report and any agreed actions will ensure decisions have been made in accordance with Council procedures.                           |
| 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.                                                                                                                                                                                                                              | Detail is provided within the financial and other resource implications above.                                                           |
| <b>MILESTONES AND DELIVERY</b>                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                          |
| <ul style="list-style-type: none"><li>• Open space transfer and commuted sum: Early December 2024</li><li>• Review and opening of the play equipment: Mid December 2024</li><li>• Completion of adjoining works and removal of hoarding: December 2026</li><li>• Transfer of further open space to the North and West of the development: To be confirmed.</li></ul>                                    |                                                                                                                                          |
| <b>ASSOCIATED RISKS AND MITIGATION</b>                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                          |
| <p>Detail on risks is included in the finance and other resource implications above.</p> <p>Additionally, the agreement provides for the SUDs system to be maintained by a management company. There is a risk that the Council would be liable for maintenance of the parts of that system within the land to be transferred in the event that the management company defaults or ceases to exist.</p> |                                                                                                                                          |
| <b>EQUALITY IMPLICATIONS</b>                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                          |
| There are no direct implications.                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                          |
| <b>SOCIAL VALUE CONSIDERATIONS</b>                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                          |
| There are no direct implications.                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                          |
| <b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030</b>                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                          |
| There are no direct implications.                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                          |
| <b>OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS</b>                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                          |
| <b>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</b>                                                                                                                                                                                                                                              |                                                                                                                                          |
| <b>Crime and Disorder</b>                                                                                                                                                                                                                                                                                                                                                                               | High quality facilities for young people helps reduce crime and anti-social behaviour                                                    |
| <b>Health Inequalities</b>                                                                                                                                                                                                                                                                                                                                                                              | Provide opportunities for encouraging improvement to public health and well-being both for young people and others including the elderly |
| <b>Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)</b>                                                                                                                                                                                                                                                                                            | Not applicable.                                                                                                                          |
| <b>Area or Ward affected</b>                                                                                                                                                                                                                                                                                                                                                                            | Cann Hall                                                                                                                                |

# PRIVATE AND CONFIDENTIAL

**NOT FOR PUBLICATION** by virtue paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

The Developer was granted planning permission reference 16/01250/OUT dated 8 June 2017 for the development of 200 dwellings including with the provision of affordable homes together with means of access, parking, garaging associated landscaping and public open space provision along with commercial premises such as a food store, hotel, family public house and restaurants. Under paragraph 1.3.3 of Schedule 3 of the S106 Agreement, the Developer is required to transfer the Open Space Land to the Council with a sum of £75,000 as Contribution for future maintenance. The Contribution is not indexed linked.

Under the deed of variation dated 6 April 2023 to the original S106 Agreement, the Developer is to transfer the Open Space Land prior to the first occupation of the 25<sup>th</sup> dwelling and confirms that it will:

- (e) Set out the Open Space Land in accordance with the Picker's Ditch specification.
- (f) Maintain the Open Space Land in accordance with the Picker's Ditch Management Plan until the transfer of the Open space Land to the Council is completed.

The Developer has agreed its appointed management company will maintain the SuDs system.

The Council has received the completion certificate for the Open Space Land and Developer has fully complied with the conditions of the Section 106 agreement and has requested the transfer of the land in accordance with the s106 Agreement.

### CURRENT POSITION

The Council has received the signed the public open space works completion certificate in respect of the Open Space Land to be transferred as required under the s106 agreement. The land is ready for transfer save for being partly enclosed within the adjoining site hoarding.

### APPENDICES

Appendix A – S106 Agreement.

Appendix B - Deed of Variation dated 6 April 2023 attached with Picker's Ditch Management Plan,

Appendix C - Agreed transfer and plan showing the area of land to be transferred.

Appendix D – Hoarding Licence

### REPORT CONTACT OFFICER(S)

|                 |                                                                                                                                                       |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name            | Saira Mahboob and Andy White                                                                                                                          |
| Job Title       | Senior Property Solicitor and Assistant Director, Building and Public Realm                                                                           |
| Email/Telephone | <a href="mailto:smahboob@tendringdc.gov.uk">smahboob@tendringdc.gov.uk</a> and <a href="mailto:awhite@tendringdc.gov.uk">awhite@tendringdc.gov.uk</a> |