

## **CABINET**

<b>DATE</b>	6 <sup>th</sup> October 2021
<b>REPORT OF</b>	Councillor Stan Shreeve – Deputy Leader and Portfolio Holder for Finance, Resources and Assets
<b>RESPONSIBLE OFFICER</b>	Sharon Wroot – Executive Director of Environment, Economy and Resources
<b>SUBJECT</b>	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Lease disposal of Land at Spring Street, Immingham “Jubilee Woodland”
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	CB 10/21/06

### **CONTRIBUTION TO OUR AIMS**

The disposal of land at Spring Street, Immingham “Jubilee Woodland” (the “Site”) by way of a 125-year, full, repairing, and insuring lease will enable Immingham Town Council (the “ITC”) to take over the management and maintenance of the Site and to develop the Site to enhance its uses and improve security.

Providing a lease for the above term at a peppercorn rent is based on the submission of a detailed Business Case proposal setting out the social and economic return on investment; the benefits of which outweigh the monetary value that would be requested in rent over the term.

The lease disposal supports the Council’s outcome of ‘Stronger Communities’ by improving and developing the Site to encourage members of the community to get involved, and to use/visit the Site more including local members of the community, schools, and clubs such as cubs and scouts who have expressed interest in having more eco areas for educational activities and a safe outdoor space that allows everyone to enjoy.

### **EXECUTIVE SUMMARY**

This report seeks authority to dispose, by way of a 125-year full, repairing, and insuring lease, of the subject Site, namely the land at Spring Street, Immingham “Jubilee Woodland”. The purpose of this report is to gain agreement to the Business Case proposal from ITC, which will provide a social return on investment, far outweighing monetary equivalent to otherwise proposed rent as part of the Council’s approach to Community Asset Transfers (CAT). Approval to the proposal will allow the granting of a lease of the Site over the stated term at a peppercorn rent (£1 per annum, if demanded).

### **RECOMMENDATIONS**

It is recommended that Cabinet:

1. Approves the principle of a full, repairing, and insuring lease of the subject Site for a term of 125-years at a peppercorn rent (£1 per annum if demanded) to Immingham Town Council.

2. Delegates to the Executive Director of Environment, Economy and Resources, in consultation with the Deputy Leader and Portfolio Holder for Finance, Resources and Assets authority to settle all terms and ensure that all necessary actions are carried out to complete the lease disposal.
3. Authorises the Assistant Director of Law, Governance and Assets (Monitoring Officer) to complete and execute all requisite legal documentation in relation to the matters outlined above.

## **REASONS FOR DECISION**

A proposal has been received from ITC which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal, by way of a full Business Case, has been agreed in principle which could result in the transfer of the Site by virtue of a 125-year full, repairing, and insuring lease. The lease would enable the asset to transfer to ITC on the basis that their proposal is sustainable and viable over the term.

### **1. BACKGROUND AND ISSUES**

- 1.1 The Council is the freehold owner of the Site, which for the purposes of this report, is the Site shown outlined red as per the attached plan at Appendix One and is the extent of the asset to be leased to ITC.
- 1.2 A Community Asset Transfer (CAT) would further enhance a positive asset to the area and would promote the Site for increased use by the local community and residents.
- 1.3 The Council has an agreed CAT approach to consider proposals where certain organisations and groups demonstrate they contribute significant social, economic or environmental benefits to the community - benefits which can be taken in lieu of the monetary value being proposed in rent. The CAT approach allows proposals to be considered through an agreed governance process, including in principle support at key milestones, resulting in formal Cabinet approval.
- 1.4 The proposal, by way of a detailed Business Case, was received from ITC and was considered by Panel members at a CAT meeting and recommended to decision makers for in principle support.
- 1.5 When considering proposals such as these, the Council must demonstrate the social return on investment reflects, as a minimum, the loss of any potential rent, and reasons that a rent element could impact negatively on the sustainability which may result in the management of a site becoming unsustainable. The Council has been satisfied that the proposal to approve a 'less than best' transaction is based on sufficient social and economic benefit, which is stated as part of the submitted Business Case. The Business Case received far outweighs the monetary value that could be requested in rent and supports wider community benefits which are a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.
- 1.6 The proposal to set the level of rent at a peppercorn would ensure the use and management of the Site remains sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the Site will be that of ITC, as would all future investment opportunities.
- 1.7 The Council must also consider the strategic reasons in holding assets that are unable to be resourced fully to meet full operational use. The proposed lease will see the Site being further utilised by the Community.

## 2. PROPOSAL

- 2.1 A proposal received from ITC sets out their objectives to lease the Site and take over the maintenance as well as making fundamental improvements to the Site.
- 2.2 Should the proposal be agreed, and a lease has been granted, ITC will have full autonomy to concentrate on improving the sustainable provision of leisure and recreational use of the Site, and to enhance the biodiversity of the area and make investment in the security of the Site to deter anti-social behaviour.
- 2.3 Currently the Site is under-utilised and in parts has become untidy and subject to anti-social behaviour such as fly-tipping. As a valuable resource to the community, ITC's proposal to enhance the Site and improve on this provision for the benefit of the community and residents should be considered on merit of the social benefits to be realised.
- 2.4 In the first year ITC proposed a Management/Development Plan would be developed in conjunction with the Community, residents, and specialists. This would be in line with any conditions set by NELC, including advice from Ecology, Trees and Woodlands, Planning and Environment/ Grounds Maintenance Officers as necessary.
- 2.5 Further investment by ITC to assist in security and to reduce anti-social behaviours, including installation of gates and fencing would be considered at entrances. Any proposed changes as part of the lease would be agreed in advance with NELC as Landlord.
- 2.6 ITC confirm local Schools have expressed an interest in having more eco areas for children's educational activities, and the Police are eager to see the area better managed and security improved.
- 2.7 The proposal lease would be granted on a full, repairing, and insuring basis across the 125-year term. This would maintain the current position whereby the Council would not incur any ongoing maintenance costs for the Site.
- 2.8 The proposed lease would protect the Site as a registered Jubilee Woodland which was planted in 2012 and consent would be required prior to ITC implementing any future proposals to the Site.

## 3. CONSTITUTIONAL REQUIREMENTS

- 3.1 The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration ("the Protocol") which contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property
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The Council's qualified Chartered Surveyor has provided a valuation report which contains the following key information.
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Unrestricted Value (i.e. market value as a capital sum)	£250,000 (Two Hundred and Fifty Thousand Pounds)
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Less Restricted Value (i.e. market value subject to proposed lease)	£0 (Nil)
Equals Discount (i.e. total amount of undervalue)	£250,000 (Two Hundred and Fifty Thousand Pounds)

The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if the proposal is approved.

(ii) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e. social, economic and environmental benefits)

The value of the proposed lease in non-monetary terms cannot be quantified. Nevertheless, a transfer to ITC supports the Council's outcomes of a 'stronger economy' and 'stronger communities'. It provides ITC with the opportunity to improve a key asset to the community and to take over management and maintenance of the Site. The proposed lease includes all of the maintenance costs associated with the Site being transferred to ITC, thus ensuring no change in the financial position of the Council.

ITC's commitment to provide a local community amenity will improve community spirit and health and well-being, help to tackle anti-social behaviour, and boost local prosperity.

These outcomes affect peoples' lives and cannot be directly quantified. Notwithstanding there is a significant cost to the Borough in dealing with issues and any opportunity to reduce the numbers of those affected must be embraced.

(iii) Confirmation that the disposal will contribute positively to the Council's priorities.

The CAT will contribute positively to enabling active management and use of the Site in support of the Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.

(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the lease takes place at an undervalue rent and confirming that no reasonable alternative means of funding are available to the purchaser.

ITC are dependent upon a 'Less Than Best' Lease agreement to enable them to take over the management and maintenance of the Site to the local Community.

(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.

<p>A full Business Case has been received and considered. ITC is of sound grounding and can provide an enhanced asset to benefit both the residents and the wider community.</p>
<p>(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic, and environmental wellbeing of the area.</p> <p><i>NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy</i></p>
<p>A summary of the Headline terms are below:</p> <ul style="list-style-type: none"> <li>• A 125-year lease term</li> <li>• Peppercorn rent (£1 if demanded)</li> <li>• Full, Repairing and Insuring by the tenant</li> <li>• Restricted to Jubilee Woodland and Community Uses throughout the term</li> </ul>
<p>(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.</p>
<p>See Section 11 of this Report “Legal Implications”</p>
<p>(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium-Term Financial Plan.</p> <p><i>There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value</i></p>
<p>See Section 10 of this Report “Financial Implications”</p>

- 3.2 ESTATES PROGRAMME BOARD - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.
- 3.3 SUBSIDY CONTROL RULES - The Protocol further requires that the Council ensures that the nature and amount of any undervalue complies with the European Commission’s State Aid Rules and does not create a state aided subsidy for a commercial organisation. From 1<sup>st</sup> January 2021 the State Aid rules have been replaced by the Subsidy Control Rules for subsidies granted in the UK. The Council now has to ensure the nature and amount of the undervalue, as a subsidy, complies with the obligations in the UK-EU Trade and Co-operation Agreement (“the TCA”). That requires the application of the follow tests:

<p>Does the proposal meet the four-limb definition of a Subsidy under the TCA?  <i>Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute a Subsidy:</i></p>
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Is there financial assistance arising from resources of the parties?	Yes
Does the financial assistance confer an economic advantage on one or more economic actors?	Yes
Is it selective, favoring certain economic actors over others?	Yes
Has it or could it have an effect on trade or investment between the UK and the EU?	No

#### **4. RISKS AND OPPORTUNITIES**

- 4.1 The risk to the Council in progressing with a lease to ITC is considered minimal. In the scenario of a lease, should the proposals no longer be viable, the option to relinquish the Site back by the Council and ultimately seek alternative opportunities would be pursued which could mitigate against the Council incurring any future holding costs.
- 4.2 Future risks remain with ITC in respect to the management and operational costs of maintenance etc. and the obligation of repair and maintaining the Site to an acceptable standard to ensure ongoing use.
- 4.3 There are no identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of the Site will be maintained and improved based on its current operational use. The long lease will allow ITC continuation of the Jubilee Woodland and would allow for potential funding to be obtained, allowing for further investment and improvements. The Site usage continues to require no financial commitment from the Council.

#### **5. OTHER OPTIONS CONSIDERED**

- 5.1 To do nothing would see ITC not taking on responsibility of the Site and be unable to develop their proposals and seek future funding opportunities to improve the Site for the benefit of the residents and community. As a result, the Site use would continue as is, including all associated costs of managing the landsite being that of the Council.
- 5.2 The freehold disposal of the Site has not been considered at this time. This is in respect of the Council's continued interest in the use of the land and mitigating risk in the event ITC are unable to continue with maintaining the Site. In such circumstances where the proposal is no longer viable, which impacts on the ongoing use of the Site, the Council could take action to seek an alternative use of the Site or to prevent any unauthorised uses of the Site which a freehold disposal would remove.

#### **6. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

There are positive reputational implications for the Council resulting from the decision to support a lease to ITC. The lease agreement will primarily enable continued use of the Site but will allow future investment opportunities for enhancement as well as a continued localised management offer for the benefit and use by local residents and the community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

## **7. FINANCIAL CONSIDERATIONS**

- 7.1 The proposal outlined within the report supports the Council's key outcome of 'stronger communities', by enabling ITC and the residents and community to use and enhance the Site.
- 7.2 The repair and maintenance cost of the Site will be financed through resources obtained by ITC. Any future investment will be subject to the ITC's own resources and access to external grant funding.
- 7.3 On an ongoing basis the proposal will require no capital and revenue expenditure to be provided by the Council. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

## **8. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The recommendations outlined within this report have been considered so far as their impact of the proposal on climate change and the environment. In reference to the Council's environmental policy, the proposal supports the Council's environmental priorities:

- By recognising and realising the economic and social benefits of a high-quality environment.
- By working towards a low carbon North East Lincolnshire that is prepared for, and resilient to, the impacts of climate change.

## **9. CONSULTATION WITH SCRUTINY**

There has been no consultation with Scrutiny to date.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There are no ongoing financial implications to the Council in progressing this proposal and the long-term lease of the Site will enable ITC to seek opportunities to achieve improvements to its existing leisure and recreational use, for the benefit of local residents and the community.
- 10.2 Lease disposal will achieve social benefits and remove any future costs to the Council that would be needed in order to maintain and invest in the Site, and this outweighs the loss of any capital receipt that could be achieved from market disposal.

## **11. LEGAL IMPLICATIONS**

- 11.1 Local Government Act 1972, s123, provides that the Council may dispose of land in any manner it sees fit subject to the constraint that (except in the case of leases for less than 7 years) disposal must be for the best consideration reasonably obtainable.
- 11.2 The General Disposal Consent (England) 2003 provides a general consent removing the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposing Authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).

- 11.3 Constitutionally and as outlined in the above report the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed lease is capable of falling within the terms of the General Disposal Consent (England) 2003.
- 11.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:
- 11.4.1 the amount of undervalue would be below the £2m threshold.
- 11.4.2 it is the professional opinion of the Executive Director for Environment, Economy and Resources that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.
- 11.5 The Scheme of Delegation in the Constitution provides for the Executive Director for Environment, Economy and Resources to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration and maintain a register of all undervalue disposals. This report therefore complies with those provisions.
- 11.6 In terms of subsidy control, it is clear from the analysis set out earlier in this report that the proposal fails to fully satisfy the four-limb definition of a subsidy under the UK-EU Trade and Co-operation Agreement. Further, the proposal would fall within de minimis contained in the UK-EU Trade and Co-operation Agreement. This recognises that small amounts of subsidy, less than €380,000.00 over a rolling 3-year period, are unlikely to distort competition.
- 11.7 It is recognised and accepted that long term security of tenure can be advantageous to a provider and sometimes necessary to secure funding or render an investment capable of delivering a return.

## **12. HUMAN RESOURCES IMPLICATIONS**

12.1 There are no direct HR implications

## **13. WARD IMPLICATIONS**

This proposal directly impacts on the Immingham Ward.

## **14. BACKGROUND PAPERS**

There are no background papers to this report.

## **15. CONTACT OFFICER**

Wendy Fisher, Head of Estates & Business Development, NELC  
(01472) 323132

**COUNCILLOR STAN SHREEVE**  
**DEPUTY LEADER AND PORTFOLIO HOLDER FOR FINANCE,**  
**RESOURCES AND ASSETS**

