

## **CABINET**

<b>DATE</b>	16 <sup>th</sup> November 2022
<b>REPORT OF</b>	Councillor Stephen Harness - 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 – Leasehold disposal of the Tennis Courts at Mount Pleasant Playing Fields and strip of land leading to Neville Turner Way Playing Fields
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	CB 11/22/05
<b>CONTRIBUTION TO OUR AIMS</b>	

A proposal from Waltham Parish Council to invest in the Tennis Courts, introducing a Multi-Use Games Area (MUGA) and create an accessibility pedestrian access pathway to the facility as well as take over the management, maintenance and use of the Site will enhance their aims and objectives to the local community.

Providing a leasehold disposal at less than best (market) value is based on the submission of a detailed Business Case proposal setting out the social, economic and environmental (community) return on investment; the benefits of which outweigh the monetary value that would be requested if the Site were to be leased at market value.

The disposal supports the Council's outcome of 'Stronger Communities' by enabling the continuation yet improvement of the current provision, as well as proposed improvements for accessibility. There would be no continued financial constraint on the Council in terms of managing the Site which will meet our determination to be an efficient and effective Council.

### **EXECUTIVE SUMMARY**

This report seeks authority to dispose, by way of a long term (minimum 25 years), full, repairing and insuring lease (FRI), namely the Tennis Courts at Mount Pleasant Playing Fields and a strip of land to form an accessible pedestrian access pathway to the car park serving Neville Turner Way Playing Fields, Waltham (the "Site"). The purpose of this report is to gain agreement to the Business Case proposal received from Waltham Parish Council (the "Parish"), 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 long lease of the Site of at least the minimum 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 long term (minimum 25 years) to be agreed at a peppercorn rent (£1 per annum if demanded) to Waltham Parish Council;
2. delegates authority to the Executive Director of Environment, Economy and Resources in consultation with the Portfolio Holder for Finance, Resources and Assets the responsibility to ensure that all necessary actions are carried out in order to complete and approve the detailed terms of the disposal;
3. delegates to the Assistant Director Law and Governance (Monitoring Officer) authorisation to complete and execute all requisite legal documentation in relation to the matters outlined above;
4. notes that until disposal is ultimately achieved, the Council continues its commitment to maintaining the site.

## **REASONS FOR DECISION**

A Community Asset Transfer proposal has been received from the Parish. The proposal, by way of a full Business Case, has been agreed in principle and, subject to approval, could result in the transfer of the Site by virtue of a long term (minimum 25 years) FRI lease. The lease would enable the asset to transfer to the Parish 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 Mount Pleasant recreation site, outlined red as per the attached plan at Appendix One. The Site, which includes Tennis Courts, and land leading to the car park at Neville Turner Way situated within the wider recreation site at Mount Pleasant, for the purposes of this report, is shown on the attached plan at Appendix One.
- 1.2 The facilities are currently underutilised due to the condition of the Site and would benefit from investment which would help mitigate against any Anti-Social Behaviour and vandalism as a Community Asset Transfer (CAT) would lead to localised ownership and management of a public asset resulting in an enhancement of the area, promoting the Site for increased use by the local community and residents.
- 1.3 The proposal, by way of a detailed Business Case, has been received from the Parish and was considered as part of the Council's agreed Community Asset Transfer (CAT) approach allows proposals to be progressed through an agreed governance process, including in principle support at key milestones, resulting in formal Cabinet approval for a lease or freehold transfer.
- 1.4 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.

- 1.5 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 investment, 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 the Parish, as would all future investment opportunities.
- 1.7 The Council must 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.
- 1.8 Ward Councillors will be engaged as part of the disposal process.

## **2 PROPOSAL**

- 2.1 A proposal received from the Parish sets out their objectives to lease the Site and make investment to introduce a MUGA as well as improvements to retain a Tennis Court as well as create an accessible pedestrian pathway to access the Site from the Neville Turner Way car park. The Parish will take over the ongoing maintenance of the Site.
- 2.2 Should the proposal be agreed, and a lease granted, the Parish 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 unusable and untidy and subject to anti-social behaviour. The Site needs refurbishment and the Parish have plans to invest, improve and then maintain the Site as a valuable resource to the community. The Parish also proposes to create an accessible pedestrian pathway access from the facility to the car park at Neville Turner Way which will enhance the Site and improve on the current provision for the benefit of all the Community and residents who wish to access.
- 2.4 The Parish have held engagement sessions with the Community in respect to the proposals and introducing a wider range of facilities in the use of the Site, with feedback from those who are eager to see the area better managed and the facilities improved.
- 2.5 The proposed lease would be granted on a full, repairing, and insuring basis across a long term, at least for a minimum term of 25-years. This would maintain the current position whereby the Council would not incur any ongoing maintenance costs for 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

The Council’s qualified Chartered Surveyor has provided a valuation report which contains the following key information.

Unrestricted Value (i.e. market value as a capital sum)	£5,000 (Five Thousand Pounds)
Less Restricted Value (i.e. market value subject to proposed lease)	£0 (Nil)
Equals Discount (i.e. total amount of undervalue)	£5,000 (Five 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 the Parish supports the Council’s outcomes of a ‘stronger economy’ and ‘stronger communities’. It provides the Parish 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 the Parish, thus ensuring no further costs to the Council.

The Parish 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.

<p>(iii) Confirmation that the disposal will contribute positively to the Council's priorities.</p>
<p>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'.</p>
<p>(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.</p>
<p>The Parish are dependent upon a 'Less Than Best' Lease agreement to enable them to take over the management and maintenance of the Site on behalf of the local Community.</p>
<p>(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>
<p>A full Business Case has been received and considered. The Parish 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 25-year lease term (minimum)</li> <li>• Peppercorn rent (£1 if demanded)</li> <li>• Full, Repairing and Insuring by the tenant</li> <li>• Restricted to Community Accessible Use 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 12 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>

*There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value*

See Section 11 of this Report “Financial Implications”

- 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 Subsidy Control Act 2022 became law at the end of April 2022 with the new regime expected to come into force in the new year (2023). Until then, public authorities are required to continue to follow the existing rules on subsidy control (as set out in the UK-EU Trade and Cooperation Agreement (the TCA). The Protocol requires that the Council continues to ensure that the nature and amount of any undervalue complies with the Subsidy Control 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 TCA. The application of the differing regimes is dependent upon the date of completion. At the moment the matter requires the application of the follow tests:

Does the proposal meet the four-limb definition of a Subsidy under the TCA?  
*Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute a Subsidy:*

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 the Parish 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 the Parish 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 potential positive identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of the Site will be improved and maintained based on an improved use. The long Lease will allow the Parish to continue with management of the Site and would allow for potential funding to be obtained, allowing for further investment and improvements.
- 4.4 The disposal will enable the Parish to direct resources and funding towards ongoing management resulting in increased usage which will result in a positive reflection to the Site within this part of the Borough, reduce miss-use or antisocial behaviour and will ensure there is no future ongoing financial commitment to the Council.

## **5 OTHER OPTIONS CONSIDERED**

- 5.1 To do nothing would see the Parish 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 Community and residents. As a result, the Site use would continue to be managed as is, including all associated costs 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 the Parish are unable to continue with maintaining the Site. In such circumstances where the proposal is no longer viable, which impacts on the on-going 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 the Parish. 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 the Community and local residents. 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 the Parish and the Community and residents to use an enhanced Site.
- 7.2 The repair and maintenance cost of the Site will be financed through resources obtained by the Parish. Any future investment will be subject to the resources of the Parish 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 CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

The Site is currently underutilised due to its condition. Subject to this proposal being agreed, investment will be made and the Site improved and will be used as a Multi-Use Games Area including a Tennis Court, resulting in positive implications so far as availability of such facilities for Children and Young People the opportunity to partake in a range of sporting activities in the local area.

## **9 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.

## **10 CONSULTATION WITH SCRUTINY**

There has been no consultation with Scrutiny to date.

## **11 FINANCIAL IMPLICATIONS**

The proposal will achieve some small savings in ongoing revenue costs for the site as well as transfer the responsibilities for capital investment, whilst providing the opportunity for improved facilities and usage.

## **12 LEGAL IMPLICATIONS**

- 12.1 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.
- 12.2 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).
- 12.3 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.

12.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:

- the amount of undervalue would be below the £2m threshold
- 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.

12.5 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.

12.6 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.

12.7 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.

### **13 HUMAN RESOURCES IMPLICATIONS**

There are no direct HR implications.

### **14 WARD IMPLICATIONS**

This proposal impacts on the Waltham Ward.

### **15 BACKGROUND PAPERS**

There are no background papers in respect of this proposal.

### **16 CONTACT OFFICERS**

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**COUNCILLOR STEPHEN HARNESS**

**PORTFOLIO HOLDER FOR FINANCE, RESOURCES AND ASSETS**

# APPENDIX ONE – SITE LOCATION PLAN

