

TITLE OF REPORT SALE OF LAND AT BOWES FIELD

Key Decision No. FCR Q33

**CABINET MEETING DATE
(2019/20)**

29 September 2020

CLASSIFICATION:

OPEN

If exempt, the reason will be listed in the main body of this report.

WARD(S) AFFECTED

None

CABINET MEMBER

Mayor Philip Glanville

KEY DECISION

YES

REASON

Spending/or saving

GROUP DIRECTOR

Ian Williams Group Director of Finance and Resources

1. CABINET MEMBER'S INTRODUCTION

1.1 This report will enable the Council to meet its contractual obligations to the leaseholder should they exercise their option to obtain the freehold of the land subject to any positive changes to the emerging or finalised Epping Forest District Council Local Plan.

1.2 Ownership of land outside of the borough's boundaries is rightfully no longer common practice by the Council, and while the decision to retain the freehold of Bowes Field was farsighted by Officers and Councillors involved at the time, it is not something that needs to continue. This report will lead to a resolution of that situation and hopefully in the future a return to the Council which it will be able to use to invest in services and our capital programme at a time when after austerity and Covid-19 our finances are under more pressure than ever.

1.3 I commend this report to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

2.1 This report seeks the authority to dispose of a parcel of freehold land held by the Council at Chipping Ongar, Essex.

2.2 The Council has no reason to retain this land and the money secured by its sale would represent a useful contribution to the authority's overall financial position.

3. RECOMMENDATION(S)

3.1 To authorise the disposal of the freehold of the land edged in black on the attached plan.

3.2 To delegate authority to the Group Director of Finance and Corporate Resources to settle all commercial terms in relation to this disposal in discussion with the Mayor as portfolio holder for Property.

3.3 To delegate authority to the Director of Legal Services to agree and sign all transfers and other legal agreements necessary or expedient to facilitate this disposal.

4. REASONS FOR DECISION

4.1 Sale of freehold land requires a specific Cabinet authority but the leaseholder has an option to acquire the land upon meeting certain conditions. This report seeks to regularise that situation by authorising the sale of land so that no issue arises when the option conditions are met.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5.1 The lease granted on the 16 March 1998 allowed the developer an option to purchase land on fulfillment of certain conditions. Without the necessary authority the Council could find itself in the position of being contractually obliged to sell the land but without the necessary authority to do so. Doing nothing is therefore not an option.

5.2 The only other option would be to accept a surrender of the lease. There is no guarantee the leaseholder would acquiesce and such a route would be very expensive if they did. Under the current arrangements the leaseholder is obliged to undertake the work necessary to achieve planning permission and so accepting a surrender would place those costs in terms of money and time onto the Council

6. BACKGROUND

6.1 The Hackney Cottage Homes were built between 1903 and 1905 as a home for children in care for whom foster parents could not be found. The homes were designed to accommodate 300 children but housed more at its peak but falling numbers saw the facility closed in 1939. After the war the site was renamed the Great Stony School and housed children with learning difficulties before finally being closed in 1994.

6.2 Following closure the site was sold for residential development and as part of that deal the developers took a 999 year lease at a peppercorn rent on the land that is now the subject of this report.

6.3 This land extends to around 8.63 acres and lies to the west of the former Great Stony School on the other side of Chipping Ongar High Street. It is currently used for grazing horses.

6.4 Chipping Ongar is part of the Epping Forest District Council (EFDC) administrative area and the land at Bowes Field is currently situated within the green belt. EFDC have produced a new local plan and it underwent its examination in public during the summer of 2019. One of the proposals in this new draft local plan is to remove the green belt designation for Bowes Field and allocate it for residential and commercial development.

6.5 Following the hearing the planning inspector issued advice to EFDC requiring some main modifications to the plan. The most serious of these are regarding the effect of the plan on Epping Forest, where objections by Natural England and the Conservators of the Forest relating to the Habitats Regulations Assessment.

6.6 The Council has to undertake additional work to provide more evidence to enable the inspector to conclude beyond any reasonable scientific doubt that adoption of the plan would not adversely effect the Forest.

6.7 Without this clarification the plan in its current form will not be adopted and although the removal of Bowes Field from the green belt does not appear to be an issue, future development of the site is wholly reliant on this plan being adopted.

6.8 There is however no indication at present that the plan will not be adopted in which case certain obligations within the lease will start to be triggered.

6.9 The lease requires the tenant to use its reasonable endeavours to realise the development potential of the site if it becomes “susceptible to development”. The lease goes on to state that the tenant must apply for planning permission and appeal a refusal if reasonably required to do so by the landlord. The lease also contains an option for the tenant to acquire the freehold from the landlord with the payment of 65 % of the market value of the land with planning permission a condition precedent to the exercise of this option.

6.10 The draft policies in the revised local plan join the land at Bowes Field with other adjoining land and seek a comprehensive development of all parcels within the allocation. The tenant, City and Country Residential Ltd (formerly Sarbir Developments Ltd) is currently engaged in putting together a development agreement with the adjoining land owners.

6.11 The terms of the lease by which the Council disposed of the land at Bowes Field in 1998 are such that on meeting certain conditions the leaseholder has a right to acquire the freehold of this property. Disposal of any freehold interest of Council owned land requires Cabinet authority and in the absence of any authority dating back to the originating transaction the purpose of this report is to fully regularise the situation and enable the Council to meet its contractual obligations.

6.12 Policy Context

There is no policy context relating to the London Borough of Hackney. The local plan process and policies referenced in this report are those of EFDC.

6.13 Equality Impact Assessment

There are no equality impacts associated with this proposal

6.14 Sustainability

The sale is dependent on the local plan process and EFDC will have to undertake a sustainability appraisal as part of the iterative process in developing the plan and proving its soundness.

6.15 Consultations

There has been no consultation regarding this proposal. EFDC will have consulted widely during the preparation of their plan.

6.16 Risk Assessment

There are no discernible risks in taking this course of action and it appears that any risks are reputational if the Council did not put itself in a position to enable it to honour the rights under the existing lease.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 This report seeks authority to dispose of a parcel of freehold land in Chipping Ongar, Essex, owned by LBH and leased to City and Country Residential Ltd on a long lease since 1998. Within the terms of the lease, City and Country have the option to acquire the land under certain conditions, which it is in the process of addressing.

7.2 In the event that the leaseholder is in a position to acquire the freehold from LBH, this would trigger an overage payment to LBH of 65% of the market value of the land. The sale of the land is dependent on the local plan process, and whilst timescales are not entirely clear at the moment, the recommendations in this report will ensure the path is clear for the land sale to proceed, in the event that it becomes necessary.

8. VAT Implications on Land & Property Transactions

8.1 The land referred to in this report is not opted to tax. Any income received would therefore be exempt for VAT purposes. If there are no other major costs to the Council the VAT impact on the Council Partial Exemption would be the VAT incurred on any external cost (e.g. if external legal is used for the sale).

9. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

9.1 Section 123 of the Local Government Act 1972 enables the Council to dispose of land provided the best consideration reasonably obtainable is achieved but if best consideration is not achieved then only with the consent of the Secretary of State. The General Disposal Consent 2003 (“the 2003 Circular”) was issued by the Secretary of State and permits an undervalue in respect of best consideration reasonably obtainable not to exceed £2 million where the proposed disposal has as its aim the promotion or improvement of the economic, social or environmental well-being of its area. Legal understand from property services that the disposal meets the best value criteria.

10. COMMENTS OF THE DIRECTOR OF STRATEGIC PROPERTY SERVICES

10.1 The sale of this property will need to meet the best consideration requirements of section 123 of the Local Government Act 1972. The provisions of the lease are such that the value of the land is nil, therefore a transfer at nil consideration will meet the requirements of the Act.

10.2 Officers are in communication with the leaseholder and will act to ensure that all that is due to the Council through the overage clause operating in the lease is duly paid.

APPENDIX 1

Plan of the site

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

None

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