

Regeneration and Property Committee	
Meeting Date	6 th July 2023
Report Title	Land at Great East Hall
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods Lisa Fillery, Director of Resources
Head of Service	Joanne Johnson, Head of Regeneration, Economic Development and Property and Interim Head of Planning
Lead Officer	Kieren Mansfield, Strategic Programme and Assets Manager David Johnson, Interim Property Advisor
Classification	OPEN
Recommendations	To delegate authority to the Head of Regeneration, Economic Development and Property and Interim Head of Planning in consultation with the Chair of the Regeneration and Property Committee to secure the transfer of the land, against the draft Heads of Terms set out at Appendix 2, subject to a variation to the relevant section 106 agreement, further due diligence and contract.

1 Purpose of Report and Executive Summary

- 1.1 This report updates members in respect of the discussions between Swale Borough Council and Countryside Properties regarding land at Great East Hall, in Sittingbourne, and recommends that officers have delegated authority to secure the transfer of the land.
- 1.2 This is further to the Regeneration and Property Committee (8th March 2023) agreeing ***“that in principle officers can proceed with negotiations for the transfer of the site to Swale Borough Council, with any transfer subject to terms that can be agreed and an application to vary the relevant section 106 agreement for final Committee approval.”***
- 1.3 The future use of the majority of the site is not yet defined, but a small proportion of the land has been proposed as appropriate to support the development of a community shop, should this come forward.

2 Background

- 2.1 The land to which this report relates is identified at Appendix 1. The site extends to 0.848ha (2.01 acres) and is set adjacent to the Lakeview Village Hall and land already owned by Swale Borough Council. It is currently unmanaged, open space, dissected by a haul road that was laid to support the construction of the Great East Hall development.
- 2.2 This land was originally identified for a Neighbourhood Equipped Area for Play (NEAP) in the outline planning permission for the Great East Hall housing development (SW/02/1180). The subsequent reserved matters (SW/06/0717) details a NEAP of c.1000sq.m with the balance of land comprising an adjacent area of managed grass with landscaping planting around the boundaries. On delivery, this would revert to the Council's ownership and management, with provision for £52,668 for maintenance costs in a 2007 amendment to the original section 106 agreement (c.£97,000 as at March 2023, taking account of indexation).
- 2.3 An offer was made by Countryside Properties, to transfer the land with a commuted sum of £100,000 in lieu of their current obligations, whilst also committing to *“Undertake work to remove the section of haul road within the site and make good”*.
- 2.4 Since the meeting of the Regeneration and Property Committee on 8th March 2023, further negotiations regarding the Heads of Terms have been concluded. The draft Heads of Terms that have been reached can be found at Appendix 2.
- 2.6 This would see the transfer of the site as unfettered, other than overage provisions detailed in the original sale agreement. This would mean that any uplift in value achieved on the land transferred, through development, would be shared proportionately with the original site owner. Further due diligence is required regarding this existing provision, which we understand runs until January 2025.
- 2.7 Swale Borough Council would be bound to this should the land transfer proceed, but only until this date. Thereafter any future use of the site that generates value could be progressed.
- 2.8 A transfer of land would also require a variation to the Section 106 agreement. As the Section 106 agreement is more than 5 years old, this would need to be done through formal application, which can be determined under delegated authority, or referred for determination by Committee.

3 Proposals

- 3.1 If Countryside Properties were to deliver its current obligations under the Section 106 agreement the land will be transferred to the Council, landscaped and with a NEAP, which would incur associated costs and liabilities. This is currently estimated at £10,540 per annum but would be subject to inflation. This would be

offset for a number of years by the maintenance contribution that would be payable under the existing s106.

- 3.2 The transfer of land to the Council, as unmanaged open space, would still incur additional maintenance liabilities for the Council, estimated at £1,000 per annum. A small proportion of the £100,000 commuted sum could offset this whilst the future of the site is determined, with the balance for community use.
- 3.3 Therefore the transfer of the land on this basis represents a reduced revenue cost to the Council over the long-term. The transfer of the site, unfettered beyond January 2025, would provide a potential future opportunity to utilise the land for community use and/or realise value from some form of development. This could potentially generate either income and/or a potentially substantial capital receipt for the Council. Potential uses are yet to be identified and would be subject to further consideration by officers and Members.
- 3.4 It is recommended that Members agree to delegate authority to the Head of Regeneration, Economic Development and Property and Interim Head of Planning in consultation with the Chair of the Regeneration and Property Committee to secure the transfer of the land, against the Heads of Terms set out at Appendix 2, subject to a variation to the relevant section 106 agreement, further due diligence and contract.

4. Alternative Options

- 4.1 Not to proceed with the transfer of the land as set out and request that Countryside Properties meet its existing S106 obligations. This is not recommended. There appears to no pressing need for the play area and delivery of the section 106 obligations would have greater long-term financial implications for the Councils revenue budget. The future potential of the site would also be limited by both delivery of the NEAP and the imposition of restrictive covenants on the land, which are included within the section 106 agreement.

5 Consultation Undertaken or Proposed

- 5.1 The proposed change to the Section 106 obligations for Countryside Properties will be subject to consultation through the relevant planning process.

6 Implications

Issue	Implications
Corporate Plan	If transferred, future potential use of the site for community and/or development could deliver against a number of priorities within the Corporate Plan. The opportunity to secure future uses for the site which are financially beneficial to the Council would also contribute

	to the priority to reduce dependence on government-controlled funding sources.
Financial, Resource and Property	<p>The land at Appendix 1 would be transferred to the Council, subject to a variation to the relevant Section 106 agreement. The required due diligence on the land in question is also required, as set out in the Council's acquisitions policy, with associated costs to be found from existing budgets.</p> <p>If Members agree to proceed with the transfer of land as per the recommendation, after January 2025 the land could be bought forward for other uses which have the potential to generate an income or capital receipt for the Council. If transferred as un-landscaped open space there would still be an increased maintenance and management liability for the Council, whilst the future of the site is determined. This is currently estimated at £1,000pa, but with some potential additional risks in relation to managing any unauthorised use.</p> <p>By not bringing forward the NEAP and landscaping of the site would also ensure that associated maintenance costs would not be incurred in perpetuity, acknowledging that these would be offset for a number of years by a commuted sum towards maintenance.</p>
Legal, Statutory and Procurement	Officers would need to undertake due diligence, agree draft contracts and undertake the work required in consultation with the Head of Mid-Kent Legal Partnership. Any future development of the site will be subject to all necessary consents being secured.
Crime and Disorder	The vacant site would become the responsibility of the Council and addressing any issues with anti-social activity, such as fly-tipping, would become the Council's responsibility. This would ultimately be the case whether the site were transferred as recommended, or the section 106 obligations were delivered.
Environment and Climate/Ecological Emergency	None identified at this stage. Any future use of the site would be subject to planning application(s) that will require environmental assessments. The existing unmanaged site, which has now remained relatively undisturbed for some years, may also be contributing to local biodiversity.
Health and Wellbeing	The transfer of land would mean that a planned Neighbourhood Equipped Area for Play (NEAP) would not be delivered. However, there is other provision of open space in the immediate vicinity of this site.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage

Risk Management and Health and Safety	<p>Any transaction is subject to the determination of an application to amend the relevant Section 106 agreement. Other risks associated with the proposed transaction will be assessed and considered through the due diligence process.</p> <p>The land would be covered by the Councils public liability insurance. There are risks in respect of potential unauthorised use of the site, in addition to instances of anti-social activity, which the Council would be required to manage. However, these risks will ultimately fall upon the Council in the event that the section 106 obligations were delivered, with the transfer of site to the Council.</p>
Equality and Diversity	None identified at this stage
Privacy and Data Protection	None identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- **Appendix 1** –Site plan of land at Great East Hall
- **Appendix 2** – Draft Heads of Terms

8 Background Papers

- Land at Great East Hall report to the Regeneration and Property Committee, 8th March 2023
- Swale Borough Council Property Asset Strategy 2017-2020

APPENDIX 1 – THE SITE

