

Cabinet Meeting		Agenda Item: 12
Meeting Date	15 March 2017	
Report Title	Asset Transfer of facilities at Iwade Recreation Ground	
Cabinet Member	Cllr Duncan Dewar-Whalley, Cabinet Member for Finance and Performance	
SMT Lead	Dave Thomas, Head of Commissioning and Customer Contact	
Head of Service	Dave Thomas, Head of Commissioning and Customer Contact	
Lead Officer	Martyn Cassell, Leisure and Technical Services Manager	
Key Decision	No	
Classification	Open	
Forward Plan	Reference number:	
Recommendations	<ol style="list-style-type: none"> 1. To transfer Iwade Recreation Ground, car park and the changing pavilion to Iwade Herons Football Club on a 125 year lease at nominal rent. 2. To agree the principle of transferring the children's playground to Iwade Parish Council on a 125 year lease at nominal rent. 3. To delegate authority to the Head of Commissioning and Customer Contact and the Head of Property Services, in consultation with the Cabinet Member for Finance and Performance to negotiate the final terms of the leases. 4. To delegate authority to the Head of Mid Kent Legal Services to complete the documentation required for the leases on the terms as agreed by the Head of Commissioning and Customer Contact and the Head of Property Services, in consultation with the Cabinet Member for Finance and Performance 	

1 Purpose of Report and Executive Summary

- 1.1 The report provides Cabinet with an update of the Iwade Recreation Ground development and recommends transferring the site to Iwade Herons Football Club.

2 Background

- 2.1 Iwade Recreation Ground was previously managed and maintained by Iwade Parish Council via a lease arrangement with a local farmer.
- 2.2 As part of the Iwade housing developments, the site was secured and the developers requested that the transfer was made to Swale Borough Council. Provision was agreed through a Section 106 Agreement to construct sport and leisure facilities including a children's playground, hard surface car park and sports changing pavilion with social area. The whole grassed area was also redeveloped including fencing surrounds and now provides space for formal playing pitches.
- 2.3 Persimmon Homes has undertaken the development and is now looking for Swale Borough Council to take possession of the site. An indicative plan is shown at Appendix I, but the final area of land to be transferred will be subject to the final details of the transfer agreement received from Persimmon Homes.
- 2.4 A Cabinet decision was previously made on 7 September 2016 to transfer the whole site to Iwade Parish Council for 125 years. However subsequent legal advice received by Iwade Parish Council has led to them declining to progress the asset transfer. It was the intention of the Parish Council to sub-let the site to Iwade Herons Football Club, who had been based at the site prior to the building works and it was felt a direct transfer to the club would be more suitable.
- 2.5 Following an initial discussion with members of the Football Club Committee, a formal expression of interest was received from the club including a minute of the decision at their committee meeting of 11 January 2017.
- 2.6 Slightly amended Heads of Terms have been drawn up that capture these discussions in accordance with the Asset Transfer Policy. The draft Heads of Terms can be found at Appendix II.
- 2.7 Whilst the site is brand new, the benefit of the transfer is that Swale Borough Council will save longer term running costs with no grounds maintenance and inspections, no building maintenance or insurance liabilities, no administration of bookings and no requirement for the Council to allocate renewal funds for replacement at the end of the facility life. The Football Club will be able to apply for funding to help meet the terms of the lease and to develop the offer they provide. Furthermore the Parish Council have suggested they will support the club through the provision of funding/resources.
- 2.8 The proposed transfer is in line with the recommendations of the Swale Playing Pitch Strategy (PPS) and the lease will state the need to keep the site as a recreational facility and to make it available for junior football usage to help meet the identified deficit in the PPS.

- 2.9 Under the terms of the Community Asset Transfer Policy (CAT), it is normal for opportunities like this to be advertised for expressions of interest. However the policy also allows for this to be waived in part 5.11, where a voluntary or community sector organisation has already been in occupation for 3 or more years and has/will invest capital into the scheme. Iwade Herons FC meets both of these criteria.
- 2.10 Similarly, following the terms of the CAT, it has been determined that an external valuation under Section 123 of the Local Government Act 1972 is not required as there is no alternative non-community use. The proposed disposal would only be at an 'undervalue' if it was realistic to think that the Council could sell or lease the land/premises for a capital receipt or a higher rent. Given that the Section 106 Agreement includes the need to protect it as public open space and it is assumed the Transfer Agreement will also require this, the above options are not possible.
- 2.11 Furthermore an internal valuation is not proposed on the basis that the transfer will be undertaken on a back to back or very short interim period and therefore permission of the Section 151 officer is the only requirement.
- 2.12 The children's playground (shown in blue on plan in appendix I) was part of the original transfer to the Parish Council. This asset is not relevant to the Football Club's operation. Subject to a set of agreed rectifications being made by the playground installer, the Parish Council have agreed to consider taking it as an asset transfer. This would be undertaken on the same principles held in the terms in Appendix II.

3 Proposals

- 3.1 To transfer Iwade Recreation Ground, car park and the changing pavilion to Iwade Herons Football Club on a 125 year lease.
- 3.2 To agree the principle of transferring the children's playground to Iwade Parish Council on a 125 year lease.
- 3.3 It is proposed the leases are at a nominal rent to allow for sustainable operation in the future.
- 3.4 To delegate authority to the Head of Commissioning and Customer Contact and the Head of Property Services, in consultation with the Cabinet Member for Finance and Performance to negotiate the final terms of the leases.
- 3.5 To delegate authority to the Head of Mid Kent Legal Services to complete the documentation required for the leases on the terms as agreed by the Head of Commissioning and Customer Contact and the Head of Property Services, in consultation with the Cabinet Member for Finance and Performance

4 Alternative Options

- 4.1 The site could be retained and managed by the Council. This is not recommended as it will increase on-going costs for the management of open spaces and sports facilities.
- 4.2 A shorter lease period could be proposed. This was not recommended as there are other precedents of community facilities being transferred to community and voluntary organisations for 125 years and this is the preferred term in the Community Asset Transfer Policy. The heads of terms also include clauses to forfeit the lease subject to the Football Club not meeting the terms or dissolving to counteract any concerns.

5 Consultation Undertaken or Proposed

- 5.1 The item has been raised at Asset Transfer Group and Asset Management Group.
- 5.2 An initial meeting has taken place with Iwade Parish Council and Iwade Herons Football Club. Cabinet members have been briefed.
- 5.3 There will be a requirement to advertise this transfer in the local newspapers as a disposal of public open space under s123(2A) of the Local Government Act 1972.

6 Implications

Issue	Implications
Corporate Plan	<p>A Borough to be Proud of – Protect and improve the natural and built environment</p> <p>A Community to be Proud of – encourage active communities and support the voluntary sector, work in partnership to improve health and mental health</p>
Financial, Resource and Property	<p>There are small cost implications if the acceptance of the site from the developer is prior to the agreed transfer date to the Football Club. The figures are low and can be absorbed into the existing open spaces and grounds maintenance budgets.</p> <p>It is proposed that the lease is at a nominal rent to allow for sustainable operation in the future by the Football Club/Parish Council. A business plan is being progressed and will be a requirement to be agreed prior to completion of the lease. A rent review option has been included in the Draft Heads of Terms with a trigger at 5 years and/or a clause based on implementation of a commercial venture.</p> <p>Retaining the site would increase the costs of the grounds maintenance contract and increase workload for existing resources</p>

	<p>in Customer Services, Environmental Response Team and Parks team.</p> <p>A low rental is proposed at £1 per annum for both transfers.</p>
Legal and Statutory	<p>The lease will be completed by Mid Kent Legal Services.</p> <p>There will be a requirement to advertise this as a disposal of public open space under s123 (2A) of the Local Government Act 1972. The costs of this will be borne by the Open Spaces budget.</p> <p>The transfer to the Football Club/Parish Council will be bound by the terms of the Section 106 Agreement and Transfer Agreement from the developer.</p>
Crime and Disorder	<p>The design of the building and site fencing has been considered with crime and disorder in mind. Good management of the site will ensure any issues are reduced. Leisure activities are evidenced to provide diversionary activity for young people to reduce ASB.</p>
Sustainability	<p>Modern standard changing pavilion designs take into consideration energy efficiency. The Football club will be able to use income derived from increased community usage and through application for grants to help maintain the building.</p>
Health and Wellbeing	<p>The recreational facilities promote healthy activity. The site will provide a base for local sports clubs and to use as a community facility.</p>
Risk Management and Health and Safety	<p>There is limited or no risk in the project as the facilities have been constructed by the developer. Prior to acceptance the buildings and site will be inspected by our in-house building surveyor. On-going risk will be passed onto the Football club/Parish Council under the terms of a full management and repairing lease.</p>
Equality and Diversity	<p>The children's playground was designed with disabled users in mind. The building complies with building regulations relating to access.</p>

7 Appendices

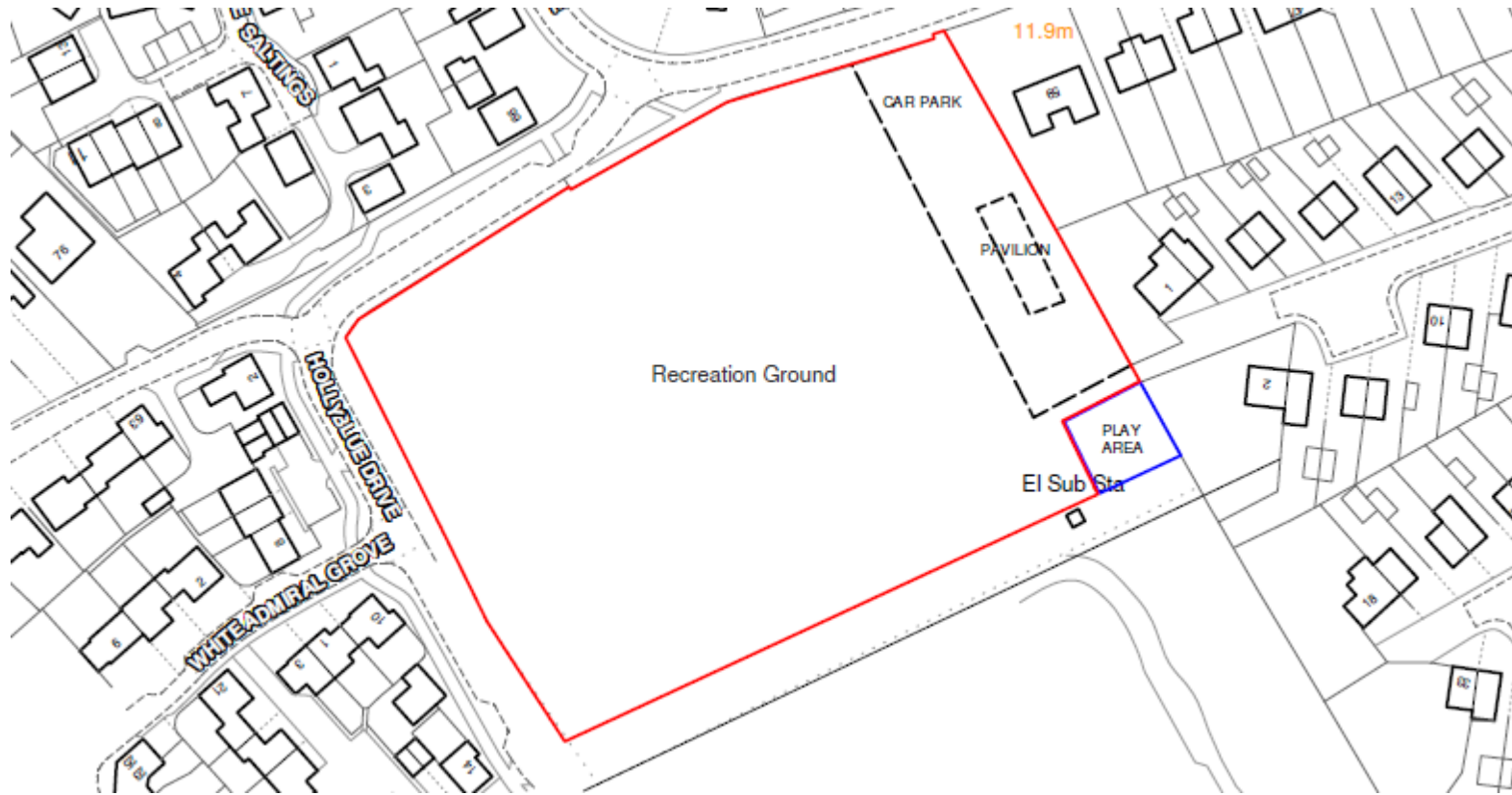
The following documents are to be published with this report and form part of the report:

- Appendix I: Indicative Site Plan
- Appendix II: Draft Heads of Terms for Iwade Recreation Ground Transfer

8 Background Papers

- Cabinet Report for transfer to Parish council 7 September 2016
<http://services.swale.gov.uk/meetings/documents/s5950/iTEM%207%20Cabinet%20Report%20-%20Iwade%20Rec%20asset%20transfer%20-%20Aug%202016%20CABINET%20FINAL.pdf>

Appendix I – Indicative Site Plan



Appendix II – Draft Heads of Terms for Transfer

Lease of Iwade Recreation Ground, School Lane, Iwade, Sittingbourne

HEADS OF TERMS

1.0 Initial information	
1.0 Property Address	The Iwade Recreation Ground, School Lane, Iwade, Sittingbourne, Kent. As shown edged red on the attached plan.
1.1 Title No.	
1.2 Landlord	Swale Borough Council, Swale House, East Street, Sittingbourne, Kent. ME10 3HT
1.3 Tenant	Iwade Herons Football Club
1.4 Rent	Sum to be mutually agreed.
1.5 Type of lease	Head lease
2.0 Lease length and breaks	
2.1 Lease start date and length	A 125 year lease from <i>[date to be agreed]</i>
2.2 Break clauses or renewal dates	Given Football Club are not a statutory organisation we are suggesting a forfeiture clause that can be triggered if the club dissolves or can no longer meet the terms of the lease e.g. repairs, misuse of site etc.
2.3 1954 Act protection	N/A
2.4 Rights	Rights are to be reserved for access and repair and maintenance of underground apparatus in favour of the relevant statutory undertakers.
3.0 Rent Reviews	After 5 years Commercial Venture trigger
4.0 Assignment and subletting	There shall be no assignment, sub-letting or parting of possession of the whole of the demised premises. Subletting of parts will be permitted with the Council's prior approval providing they are compatible with the primary aim of being a community facility. The hiring out to organisations approved by the Tenant for periods of less than 24 hours will be permitted.
5.0 Services and service charges	All services and service charges are the responsibility of the Lessee
6.0 Repairing obligations	The Tenant shall be responsible for keeping all buildings, grounds and

	structures and all fixtures and additions erected or to be erected on the demised premises in a good and substantial state of repair and condition throughout the term and for the maintenance of all boundary and site security fencing.
7.0 Alterations	The Tenant shall not carry out any structural or external alterations or new building works without the prior written consent of the Landlord. Non-structural internal alterations will not require prior consent.
8.0 Permitted use	The site shall be used for the provision of a [<i>recreation ground including the marking and use of formal sports pitches, car park and sports changing pavilion providing a social space to support service provision to meet the needs of the local community</i>]. No other use is permitted without the express consent of the Council.
9.0 Insurance	The Tenant shall insure the demised premises and any buildings erected thereon and indemnify the Council against any claims for damages, losses or injuries and any other claims whatsoever arising out of the use of the demised premises by the tenant.
10.0 Dilapidations	The Tenant shall be responsible for all costs charges and expenses including solicitors costs and surveyors fees incurred by the Council in respect of the preparation and service of a notice under sections 146 and 147 of the Law of Property Act 1925
11.0 Other issues	
11.1 Nuisance	The Tenant shall covenant not to cause or permit to be caused anything which may become a nuisance to the Council or adjoining property owners
11.2 Rates and Utilities	The Tenant shall be responsible for the payment of all future rates taxes assessments and all outgoings payable by law in respect of the demised premises by either the owner or occupier thereof.
11.3 Statutory Obligations	The Tenant shall conform at his own expense to all statutory and other regulations pertaining to the demised premises including all health and safety legislation and obtaining any necessary planning consent required and to

	indemnify the Council against any claims arising from any breach of such regulations.
11.4 Legal costs	Each party to pay own costs
11.5 Conditions	The proposed Heads of Terms are subject to Member approval.
11.6 General	An Energy Performance Certificate is to be provided by the building contractors.
11.7 No contract	These Heads of Terms are subject to contract.
11.8 Landlords solicitors	Mid Kent Legal Partnership, Swale Borough Council, East Street, Sittingbourne, Kent. ME10 3HT
11.9 Tenants solicitors	To be advised