

BABERGH DISTRICT COUNCIL

COMMITTEE: Babergh District Council Cabinet	REPORT NUMBER: BCa/21/27
FROM: Cabinet Member for Assets & Investments	DATE OF MEETING: 1 November 2021
OFFICER: Corporate Manager – Strategic Property Estate Surveyor – Strategic Property	KEY DECISION REF NO. CAB319

TRANSFER OF OPEN SPACE LAND TO BURES ST MARY PARISH COUNCIL & GREAT WALDINGFIELD PARISH COUNCIL

1. PURPOSE OF REPORT

- 1.1 This report seeks approval to transfer land at Pikes Marsh, Bures and Green Acre, Great Waldingfield, to the respective Parish Councils. This will enable the Parish Councils to have control of these areas for better local management and for the improvement of the economic, social or environmental well-being of these areas.

2. OPTIONS CONSIDERED

2.1 The District Council to retain ownership

- 2.1.1. This will retain control for the District Council but also the responsibility and cost to maintain the open spaces and any play equipment or fixtures thereon.

2.2 Transfer the open space land to the Parish Councils.

- 2.2.1. This will allow the Parish Councils to take on the responsibility and maintenance at a more local level, removing cost liability from the District Council and empowering the local community to deliver the services they want and need. The District Council owns many Community Assets that bring a benefit to local communities. In many cases, the voluntary sector is best placed to host community facilities as their management and use can be more responsive to the needs and opportunities of communities. Assets held in this way can also play an important role in supporting and sustaining the third sector with facilities being managed by the people who regularly use them.
- 2.2.2 By transferring the open space land to Bures St Mary Parish Council and Great Waldingfield Parish Council, the land will be effectively managed at a local level thereby maximising community benefit and will also minimise financial liability for the District Council in the future.

3. RECOMMENDATIONS

- 3.1 Approve the transfer of open space land at Pikes Marsh to Bures St Mary Parish Council.

3.2	Approve the transfer of open space land at Green Acre, Great Waldingfield Parish Council.
REASON FOR DECISION	
To ensure the land is effectively managed at a local level maximising community benefit and mitigating financial liability for the District Council in the future	

4. KEY INFORMATION

- 4.1 In 2019 the former Corporate Manager of Public Realm agreed to the transfer of the open spaces at Pikes Marsh and Green Acre to the respective Parish Councils.
- 4.2 It is proposed that the Parish Councils will take on ownership and all maintenance liabilities associated with the open spaces. In respect of Green Acre; Great Waldingfield Parish Council intend to provide additional seating and flower beds, alongside using the space for community events such as a summer fayre and Christmas lights. For Pikes Marsh; Bures St Mary Parish Council wish to improve the space by tidying the landscape and providing play equipment.
- 4.3 Since June 2020, officers have been investigating the ability to transfer the open spaces, particularly with regard to Land Registry matters and title review.
- 4.4 Shared Legal Services have been able to complete title amendments and first registration in relation to Pikes Marsh, Bures under title SK402424. Green Acre, Great Waldingfield is already registered under Land Registry title SK315667.
- 4.5 Heads of terms have been agreed for the proposed transfers. The purchase price has been agreed at £1 (One Pound) for each transfer.
- 4.6 Due diligence has been conducted to confirm that both Parish Councils have sufficient funds to manage the open spaces and ongoing maintenance.
- 4.7 Under Section 123 of the Local Government Act 1972, Babergh District Council is duty bound to advertise the proposed transfers of open space within a local newspaper, whereby any objections to the transfers will need to be considered.
 - 4.7.1. Advertisements were published within the East Anglian Daily Times (EADT) on 30th September 2021 & 7th October 2021. See Appendices E & F for reference.
 - 4.7.2. During the consultation no objections were raised.

5. LINKS TO CORPORATE PLAN

- 5.1 The Joint Corporate Plan (2019-27) is designed to address the challenges and seize the opportunities facing the districts and their organisations for the foreseeable future. The Councils' vision is to have 'great communities with bright & healthy futures that everyone is proud to call home.'
- 5.2 Asset Management has a significant part to play in supporting the strategic priorities and ensuring the Councils make the best of their assets. The Strategic Asset Management Plan (SAMP) was adopted in January 2021 and supports the transfer

of community assets to Parish Councils and third sector organisations where appropriate management structures are in place.

6. FINANCIAL IMPLICATIONS

6.1 It is noted that there will be a saving in maintenance and management costs for the District Council. These estimated costs are as below:-

6.2 Pikes Marsh, Bures

Grass cutting

Annual tree and shrub maintenance and vegetation clearance

Weekly play equipment inspection

Quarterly play equipment inspections

Annual play equipment inspection

Total: Circa £2815.00 per annum

6.3 Green Acre, Great Waldingfield

Grass cutting

Annual tree lifting (for grass cutting purposes)

Total: Circa £1120.00 per annum.

7. LEGAL IMPLICATIONS

7.1 A straight transfer is recommended, whereby Babergh District Council would no longer be responsible for the open spaces or maintenance.

7.2 Detailed legal due diligence will be undertaken in preparing the sale contracts.

7.3 Restrictive Covenants – The land will be transferred with a restrictive covenant to ensure the land is used as open space only.

7.4 See Para 4.7 in relation to Section 123 of the Local Government Act 1972.

7.4.1. Under Section 123 of the Local Government Act 1972, Babergh District Council must comply with the rules surrounding 'less than best consideration'.

7.4.2. In selling the open spaces for £1, it is acknowledged that the sale reflects a 'less than best consideration' transaction with regard Section 123 of the Local Government Act 1972.

7.4.3. To comply with the Act, Babergh District Council must be satisfied that the transfer of 'less than best consideration' will provide improvement of the economic, social or environmental well-being of its area.

Secretary of State approval is not required in this case under Section 128(1) of the Local Government Act 1972 as the value of the under value is covered by a general exemption.

8. RISK MANAGEMENT

This report is most closely linked with the Significant Business Risk No.9 – We may not be able to help communities become more sustainable.

The Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
The Council cannot agree terms with the Parish Council.	Unlikely (2)	Noticeable/Minor (2)	Negotiations and discussions have taken place at an appropriate senior level with both parties, with heads of terms agreed and solicitors instructed.
Adverse reaction from users and residents.	Unlikely (2)	Noticeable/Minor (2)	A communications plan can be prepared and implemented to explain why these proposals are in the best interests of the site, users and taxpayers. Public consultation via Section 123 Local Government Act 1972 notices have taken place with no objections raised.
The Parish Council fail to manage the site properly and associated reputational issues.	Unlikely (2)	Noticeable/Minor (2)	The transfer agreement will commit the Parish Council to maintain the area as a public open space. The Parish Council is accountable to its electorate at a local level.
The Parish Council have insufficient long term funds to adequately maintain the open space.	Unlikely (2)	Noticeable/Minor (2)	If the Parish Council has lack of funds to maintain, they will be able to raise third party funding via CIL, Lottery funding etc.
There is no improvement of the economic social or environmental well-being of the area.	Unlikely (2)	Noticeable/Minor (2)	The Parish Council will be responsible in perpetuity and have plans to improve the open spaces.

			It is strongly believed the transfer will lead to an improvement of the area and benefit to local occupants.
The Parish Council decide to sell the open space at a later date.	Unlikely (2)	Noticeable/Minor (2)	It has been agreed the Parish Councils will retain ownership. A restrictive covenant is to be inserted into the transfer to restrict use of the land as open space.

9. CONSULTATIONS

9.1 Development of this project has included consultation with:

Babergh Portfolio Holder Asset & Investments

Babergh Portfolio Holder Environment

Babergh District Councillor for Bures St Mary & Nayland

Babergh District Councillors for Lavenham

Assistant Director Assets & Investments; Assistant Director for Environment and Commercial Partnerships

Public Consultation – via Section 123 Local Government Act 1972 Adverts published on 30th September 2021 & 7th October 2021.

10. EQUALITY ANALYSIS

In preparing this report, due consideration has been given to the Councils' statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

An EQIA has been undertaken which revealed no impact on the characteristics protected by the Equality Act 2010.

11. ENVIRONMENTAL IMPLICATIONS

11.1 There are no direct Environmental and Climate Change implications in transferring this land from the District Council to the Parish Councils, who will continue to maintain the land as open space.

12. APPENDICES

Title	Location
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(a) Heads of Terms – Land at Pikes Marsh	Attached
(b) Plan – Land at Pikes Marsh	Attached
(c) Heads of Terms – Land at Green Acre	Attached
(d) Plan – Land at Green Acre	Attached
(e) Section 123 Local Government Act Adverts – Land at Pikes Marsh	Attached
(f) Section 123 Local Government Act Adverts – Land at Green Acre	Attached

13. BACKGROUND DOCUMENTS

13.1 There are no further documents.

14. REPORT AUTHORS *Sara Cameron, Corporate Manager Strategic Property & Jack Glover, Estate Surveyor Strategic Property.*