

Guildford Borough Council

Report to: Executive

Date: 04/01/2024

Ward(s) affected: Send and Lovelace

Report of Director: Place

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Report Status: Part Exempt

Send Hill Disused Sandpit

1. Executive Summary

- 1.1. Land West of Winds Ridge, Send Hill, known as Send Hill Disused Sandpit, is an old landfill site that is surplus amenity land which is used for the purposes of public recreation. It is identified in the Local Plan as development land for housing.
- 1.2. The site is heavily contaminated due to being used for landfill and if it were to be developed, a large amount of remediation work would need to be undertaken.
- 1.3. This site is not considered appropriate for development by the HRA due to remediation costs and resource implications. Officers are seeking consent for a disposal of the land to facilitate development, subject to the necessary planning consents. If the Council does not dispose of the site, future development options would be severely impacted due to site access constraints.
- 1.4. An independent external valuation has been undertaken and the current proposed transaction represents best consideration (as detailed in the “Not for Publication” Appendix 6).

- 1.5. This report seeks consent from the Executive to proceed with the recommendations detailed below.

2. Recommendation to Executive

That, in line with the Land and Property Disposal Policy, the Executive authorises The Joint Executive Head, Assets and Property to negotiate terms for a disposal at best consideration and to subsequently enter into all relevant legal documentation required to complete the transaction of the Council owned land comprising Land West of Winds Ridge, Send Hill in return for a capital receipt.

3. Reason(s) for Recommendation:

- 3.1. To facilitate the building of new homes in compliance with the local plan designation.
- 3.2. To generate Income (a capital receipt) and reduce revenue costs.

4. Exemption from publication

Yes, part of the report (Appendices 2 and 6)

The content is to be treated as exempt from the Access to Information publication rules because it contains information relating to the financial or business affairs of any person and information which is subject to legal professional privilege and is therefore exempt by virtue of paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 as follows:

“3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)”.

“5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.”

(b) The content is restricted to all councillors.

(c) The exempt information is not expected to be made public

(d) The decision to maintain the exemption may be challenged by any person at the point at which the Executive is invited to pass a resolution to exclude the public from the meeting to consider the exempt information.

5. Purpose of Report

The purpose of this report is to seek approval from the Executive to authorise the Joint Executive Head, Assets and Property to negotiate terms for a disposal at best consideration and to subsequently enter into all relevant legal documentation required to complete the sale of Council owned land comprising Land West of Winds Ridge, Send Hill in return for a capital receipt.

6. Strategic Priorities

In agreeing a disposal, new homes can be built which support the corporate priority to, “provide and facilitate housing that people can afford” under the corporate theme of Homes and Jobs – Residents having access to the homes and jobs they need.

7. Background

- 7.1. The land sits to the west of Send Hill opposite Winds Ridge. The site was used for sand extraction between the 1940s to late 1970s and was subsequently used as a landfill site until 1985. The freehold interest was transferred to the Council on 17 April 1985. It is held as surplus amenity land.
- 7.2. The site, along with the land immediately to the southwest of the site, is earmarked in the Local Plan for development under ‘Policy A43’. The site is allocated for approximately 40 homes (Town & Country Planning Act Uses Class C3) and 2 Traveller Pitches (Sui Generis) (see Appendix 1)
- 7.3. All concerns regarding development of the site were addressed before the site was allocated and the adoption of the Local Plan in 2019. The planning inspector’s comments were as follows:

“Policy A42 Clockbarn Nursery, Tannery Lane, Send, Policy A43 Land west of Winds Ridge and Send Hill, Send and Policy A45 Land at the rear of the Talbot, High Street, Ripley are modest-sized housing allocations (with 2 traveller pitches in the case of A43) on the edges of these villages. A42 is on the site of the Clockbarn Nursery; A44 and A45 are adjacent to existing development and are enclosed by vegetation. They are well-located and proportionate in relation to the

villages; their allocation would have limited impact on the openness of the Green Belt and in each instance, it would be possible to create good defensible boundaries. Their size is modest enough to have only a very limited effect on vehicle movements. There are therefore exceptional circumstances to alter Green Belt boundaries to provide for the allocations.”

- 7.4. The Council commissioned a stage 2 invasive contamination survey (Appendix 2) following a decision by the Executive on 05/01/2023. This concluded a moderate risk to future site users, flora and building occupants as well as Moderate/Low risks to potable water pipes and groundwater quality associated with contamination detailed in the section above. Construction phase issues have been identified relating to waste disposal, asbestos, foundation design and drainage that required further consideration. Acceptably low risks are anticipated with respect to buried concrete and risk from vapours. Remediation works would be required before any development which heavily impacts the value of the land.
- 7.5. The Land is surplus amenity land which is used for the purposes of public recreation. It has had recent incursions which resulted in a large wildfire, fly tipping and fly grazing of animals. Garden waste is also fly tipped on the land.
- 7.6. The Council’s Housing department were approached with a proposal to enter a joint venture to develop the land including the Council owned portion. The Council maintained a neutral position in respect of any proposed planning application. This land was identified for disposal and as a result has not been progressed for development by the Council. However, it was agreed that the Council could look at a disposal of the land to generate a capital receipt. Such a development would be required to meet the Council’s planning policy on affordable housing and there may be an opportunity for the HRA to be able to deliver those units. Any development of the site for housing would be subject to being 40% affordable.
- 7.7. The Council advised that it was not looking to work with anyone on a joint development. A further request was subsequently received to purchase the freehold interest.

- 7.8. The Council's Land and Property Disposal Policy recommends a private sale should only be entered into after a period of extensive marketing including advertising (through an agent or directly) and, where appropriate, negotiating bids. There are exceptions to this, including the following:

"If land is to be sold by private sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an independent valuation to verify that 'best consideration' is being obtained or if considering the disposal of land and buildings (including leases) for less than best consideration, follow the Council's procedure. A private sale without the land being marketed may be justified where: ...

...the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained. ..."

- 7.9. The site allocation is for the site as a whole. Policy D4 (10) of the Local Plan Development Management Policies 2023 requires: 'Master plans and Design Codes will also be required for any site that will be developed in more than one phase or by more than one developer. Failure to agree a Design Code approach is likely to result in the refusal of any planning application'. Senior Council Planning officers have advised that the Local Plan site allocation is for the whole site and that the site needs to be developed comprehensively as a whole and not subdivided.
- 7.10. The access point onto Send Hill from the Council's land title is only circa three meters wide (see appendix 3). If the land were to be retained this would not be sufficient for future development purposes and also restricts the value of the land.
- 7.11. The Council currently maintains the land and carries out regular ground maintenance works, and weekly security patrols are being carried out to ensure there are no more incursions onto the land.

8. Consultations

- 8.1. Ward Councillors were consulted. Cllr Jason Fenwick noted the difficult decision the Executive need to make between disposal for a capital receipt and risks associated with continuing ownership on the land. Cllr Fenwick also had concerns over continuing public use and the Council's liability under the Occupiers' Liability Act 1957
- 8.2. Lead Councillor for Assets and Property, Cllr Richard Lucas, was consulted and supports the officer recommendations laid out in this report.
- 8.3. Parks and Countryside Leader, Hendryk Jurk, was consulted and had no objections to the recommendations.
- 8.4. The public were consulted via a notice being placed in the Surrey Advertiser Newspaper for fourteen days inviting any objections. (See paragraph 11.4 and 11.5)

9. Key Risks

- 9.1. The Council has carried out an invasive assessment of the site which has identified hazardous waste (fibrous asbestos) close to the surface. There is a risk of contaminants escaping the bounds of the site into neighbouring land and possible claims against the Council. Remediation as part of any development would mitigate this risk.
- 9.2. If the land is not disposed and the Council wishes to develop its own portion of the site in future, development would be unlikely as the access onto Send Hill, that the Council owns, is only circa three metres wide. Access for development would require purchasing land from the adjoining property, 'Homestead' or the neighbouring landowner, which would be a ransom situation. (see Appendix 3).
- 9.3. There are a number of houses that back onto the site and residents are against any development of the land. Development will be subject to planning consents and therefore they will have an opportunity to comment on any future planning application.

9.4. The Council is and will indefinitely remain responsible for securely retaining the waste transfer records and fulfilling any requests for information on the waste by the Environment Agency.

10. Financial Implications

10.1 If the land is not disposed of and contaminants impact users or neighbours of the land in future, there could be large remediation costs for the Council. The Council is now aware of the risks identified by an invasive stage 2 contamination survey.

10.2 There would be revenue savings of £3,500 for grounds maintenance and £975 for security costs annually.

10.3 There could be future costs associated with unauthorised encampments, fly grazing and fly tipping.

10.4 The Council has undertaken its own independent valuation of the site which considered the levels of contamination and remediation required for any future development (as detailed in the “Not for Publication” Appendix 6). This valuation, coupled with noted costs for remediation, represents best consideration. Any capital receipt is not currently included in the capital programme budget and would provide a financial benefit to reduce the Council’s underlying need to borrow for the capital programme and in turn reduce the Council’s General Fund borrowing cost (MRP and debt interest).

10.5 The party interested in purchasing the land is considered a ‘special purchaser’ given their relationship to the land. If the property were to go on the open market the value would likely be significantly reduced as our portion of the site would have to be developed in isolation and given the planning officers comments laid out in paragraph 7.9, would be unlikely to gain planning consent. This would also lead to the access issues previously referred to in paragraph 7.10.

10.6 A sale has not yet been negotiated and therefore any final purchase price will be subject to negotiations and contract.

11. Legal Implications

- 11.1. The Council acquired the Land pursuant to the Town and Country Planning Act 1971. There is a restriction on the title which states that “no disposition of the land is to be registered unless made in accordance with the Town and Country Planning Act 1971 or some other Act or authority”. The 1971 Act was replaced by the Town and Country Planning Act 1990.
- 11.2. The Land was acquired for planning purposes and, pursuant to s233(1) of the Town and Country Planning Act 1990, the Council is authorised to dispose of the Land.
- 11.3. The Land is surplus amenity land which is used for the purposes of public recreation. Whilst the Land is not formally designated as open space, it is considered open space because it falls within the definition of open space under s336 of the Town and Country Planning Act 1990 being “any land laid out as a public garden or used for the purposes of public recreation, or land which is a disused burial ground”. It should be noted that this is not a constraint to any future development and the ownership of a site does not change a site’s planning status.
- 11.4. Section 233(4) of the Town and Country Planning Act 1990 provides that before disposing of any land which consists of or forms part of an open space, a local authority shall:
 - (a) shall publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in their area; and
 - (b) shall consider any objections to the proposed disposal which may be made to them.
- 11.5. Section 123 (2A) of the Local Government Act 1972 mirrors this requirement and thus a notice was published to satisfy the statutory requirements prior to disposal of open space. Sub-section 123 (2) permits the Council to dispose of its land providing the consideration is the best that can be reasonably obtained.

- 11.6. A notice, as per paragraph 11.4, was published in the Surrey Advertiser for fourteen days and closed on the 25th February 2022. There were 93 objections to the sale of the land. The majority of the objections related to possible future development of the site for housing. The objections are listed in appendix 4.
- 11.7. There is a formally designated footpath crossing the eastern edge of the site (Footpath No. 58). This right of way would remain should the land be disposed of.
- 11.8. In response to the public consultation notice, a local resident has submitted a nomination for the land to be an Asset of Community Value which was rejected as the land did not meet the criteria set out in the Assets of Community Value Regulations 2012.

12. Human Resource Implications

There are no human resource implications and the matter would be finalised with existing resources.

13. Equality and Diversity Implications

- 13.1. The Local Plan site allocation includes the provision of two traveller pitches.
- 13.2. An impact assessment has been carried out. See appendix 5.

14. Climate Change/Sustainability Implications

- 14.1. The site, whilst mainly grass/scrubland, can contribute to the mitigation of CO2 emissions locally.
- 14.2. Any future planning consents for development will reflect current policies in this regard and dictate the outcomes.

15. Summary of Options

The options available to the Council are:

- 15.1 Do nothing – We can retain the land, keep it as amenity land and protect the biodiversity of the site. The Council will continue to have revenue costs associated with maintenance and security. There is a

risk of possible future claims if the made ground is disturbed. In addition, the Council would have to comply with the Occupiers Liability Act 1984 for members of the public using the land.

- 15.2 Pursue a joint development – This option has already been reviewed by senior officers and rejected due to a lack of in-house resources available and costs that the Council would need to bear for remediation. The site is also not considered suitable for development by the HRA. The Council's future development options will be extremely limited due to access issues.
- 15.3 Disposal – A disposal to a special purchaser would allow for development of the land in line with the Local Plan, subject to the necessary planning consents, support corporate priorities, remediate the land to mitigate risks from contamination and would generate a capital receipt in difficult financial circumstances. Given the access issues and Local Plan site allocation constraints, this is the recommended option.

16. Conclusion

- 16.1 As the land is surplus, it is not supporting the delivery of the Council's corporate priorities laid out in the current Corporate Plan. The land has social value as surplus amenity land, but this is limited due to the size and nature of the site which is mainly scrubland. The local residents mainly use it to cross over to get to the public footpath at the rear of the site where the boundary fence has been knocked down. Garden Waste is being fly tipped on the land. The land is contaminated.
- 16.2 The access point onto Send Hill that the Council owns is circa three meters wide. Whilst the owner of the neighbouring property, Homestead, has allowed unencumbered access over his land historically, this would not continue. It is unlikely that the three metre width would be sufficient for development purposes or access to and from the narrow lane that is Send Hill, if the Council wish to develop the site in future.

- 16.3 Since the Local Plan was adopted in 2019, planning applications approved for new homes in Send, already surpass the total allocation for the village for the full life of the development plan to 2034. If there were not access restrictions to the site, then a development for affordable social housing would be the preferred option. However, given the issues already detailed in this report it is unlikely to be an option in future. The planning status of the site under the local plan will not change.
- 16.4 The Council has an opportunity to realise a significant one-off financial receipt by making the best use of its land holdings to generate an income. A disposal would mean a contaminated site would be regenerated and deliver corporate priorities in providing and facilitating housing that people can afford, subject to the necessary planning consents. Officers can explore working with any developer to procure any section 106 units as part of the sale transaction.

17. Background Papers

None.

18. Appendices

Appendix 1 – Local Plan, Policy A43

Appendix 2 – Stage 2 Invasive Contamination Survey (Exempt – Not for publication).

Appendix 3 – Site access plan

Appendix 4 – List of objections

Appendix 5 – Equality Impact Assessment

Appendix 6 – Independent External Valuation (Exempt - Not for publication).