

# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

11 October 2017

### Report of the Director of Central Services & Monitoring Officer

#### Part 1 - Public

#### Executive Non-Key Decisions

#### **1 REPORT TO CONSIDER OBJECTIONS RECEIVED TO THE STATUTORY NOTICE IN RESPECT OF DISPOSAL OF AREA OF OPEN SPACE LAND AT RIVER LAWN ROAD TONBRIDGE**

##### Summary

This report presents Members with the responses received to the notices advertising the intended disposal of open space land at River Lawn Road, Tonbridge. Members are also invited to consider the petition submitted by 'Keep River Lawn Green' in respect of this intended disposal.

#### **1.1 Introduction**

- 1.1.1 At the cabinet meeting on 9 February 2017, Cabinet resolved to advertise the intention of the Borough Council to dispose of an area of open space land at River Lawn Tonbridge (plan attached as **Annex 1**). The area of land is held by the Council as open space; there is therefore a statutory requirement to advertise any proposed disposal under Section 123 of the Local Government Act 1972.
- 1.1.2 The notices advertising the intended disposal were placed in the Kent Messenger on, 23 March & 30 March 2017. These notices also appeared in the online edition of the Kent Messenger and on the Council's website.
- 1.1.3 Separate notices were placed in the Kent Messenger on 24 February and 3 March 2017 relating to a smaller area of open space at River Lawn Road required in connection with the proposed development of a medical centre on the site of the former Teen and Twenty Club. No objections were received in response to these advertisements and the land in question is not therefore included for consideration within this report. Members will be aware that a planning application for the demolition of the existing building and erection of a new medical centre/ pharmacy with associated parking and landscaping has also been submitted and will be determined by the Borough Council as Local Planning Authority in due course.

1.1.4 On 2 June 2017 the Council received via email a petition on behalf of 'Keep River Lawn Green'. At the time of initial submission the petition had 1,576 signatures. On 3 July the Barden Road Residents Association submitted an electronic copy of the petition on behalf of Keep River Lawn Green, with 1,617 signatories (attached as **Annex 2**), together with a separate paper petition containing a further 1,601 signatures.

1.1.5 The petition called on the Borough Council to 'stop their plans to sell off River Lawn and old CAB building in River Walk until a proper public consultation has been held.' The petition also comments as follows –

*'It has emerged that they plan to sell the River Lawn itself and allow luxury flats to be built there. This will not help to reduce the waiting list for families in need of housing and it is unacceptable to build on our recreational land.'*

*The River Lawn and former CAB building are being redeveloped to provide riverside apartments. When we need homes for over 900 families waiting to be housed in Tonbridge & Malling they are providing them for the highest bidders'*

1.1.6 The petition was considered by full Council on 11 July 2017 (report attached as **Annex 3**). At that meeting Members heard oral representations from the petition organisers. For the assistance of Members a letter from 'Keep River Lawn Green' containing the text of those representations is attached as **Annex 4**.

1.1.7 Council resolved as follows

*'The Council invites Cabinet to note the petition in respect of the open space at River Lawn when considering responses to the consultation on the disposal of the larger area of open space on this site. Council is mindful that a decision to proceed with the disposal of 1-4 River Walk was taken by Cabinet on 9 February 2017. Having carefully considered the matters raised in the petition, no recommendations are made to Cabinet on this disposal.'*

## **1.2 Response to statutory notices**

1.2.1 The deadline for responses to the proposed disposal of land at River Lawn was 5pm on Friday 21<sup>st</sup> April 2017. During this period 92 responses were received (**Annex 5**). They can be summarised as follows:

1.2.2 *Objections to the sale of River Lawn* - 92 received

1.2.3 *Objections to the sale of 1 – 4 River Walk* - 32 respondents make mention of the proposed sale of 1-4 River Walk.

Officer comment - at the meeting of Cabinet on 9th February 2017, Cabinet resolved to dispose of 1 – 4 River Walk, and Council subsequently resolved on 11 July 2017 not to make any recommendations to Cabinet in respect of this intended

disposal in light of its consideration of the petition. Marketing of this site commenced in September 2017.

River Walk is not held as open space and therefore there is no requirement to advertise the proposed disposal under the Local Government Act 1972.

Members are reminded that any development proposals arising from the disposal of any site referenced in this report will need to be the subject of conventional planning applications, including public consultation in the normal way and any applications will be determined by the Area Planning Committee.

- 1.2.4 *Loss of Trees and Green Space.* 52 respondents make reference to the loss of trees and green space.

Officer comment – The land at River Lawn covers an area of 0.22 Hectares (0.54 acres). Tonbridge Racecourse is located adjacent to River Lawn and offers 31 hectares (76 acres) of public open space, with formal play areas, picnic areas and sports facilities. An aerial photo showing the extent of these areas is attached as **Annex 6**.

The land at River Lawn contains 9 trees - 2 Horse Chestnut, 4 Norway Maple and 3 Common Lime. As the land falls within a Conservation Area proposals to fell, prune, lop or top any of the trees would need to be subject to a prior 6 week notice period given to the Council during which time the Council would be able to consider whether a Tree Preservation Order is necessary. In the event that the land was to be sold and an application made for redevelopment, the trees would remain protected and in practice their removal or retention assessed as part of the application for planning permission.

- 1.2.5 *Flooding issues:* 12 respondents make mention of flooding concerns.

Officer comment – Any flooding considerations or remedial requirements would be considered as part of the determination of any application for planning permission. The Environment Agency will of course be a consultee to any such application for development on the land.

- 1.2.6 *Public Consultation:* 54 respondents made mention of the lack or need for public consultation regarding the proposed disposal of River Lawn.

Officer comment The notices met the requirements of section 123 of the Local Government Act 1972, which provides that a principal council may not dispose of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them. The notices advertising the intended disposal were placed in the Kent Messenger on, 23 March & 30 March 2017.

These notices also appeared in the online edition of the Kent Messenger and on the Council's website.

- 1.2.7 *Impact on Public Services:* 10 respondents made comment that should River Lawn be developed consideration needed to be given for additional Public Services, such as doctor facilities and school provision.

Officer Comment. Any additional need for education or health provision arising directly out of any proposed development of River Lawn would fall to be considered as part of an application for planning permission and would need to meet the statutory tests set out in the Community Infrastructure Regulations 2010.

- 1.2.8 *Improvements to River Lawn.* 34 respondents made comments that River Lawn should be improved to enhance the facility. Ideas ranged from providing more bench seating to improving lighting.

Officer Comment: Tonbridge Sportsground is adjacent to River Lawn and provides 76 acres of open space, set out as; formal play areas, dedicated picnic areas, sporting facilities and open green space. There have never been calls to make any additions to River Lawn until recent months. In practice any future development of the site could provide for the enhancement of the river walk, but again that would be a matter for the planning process to address..

- 1.2.9 *Objections to flats being constructed:* 39 respondents commented on the suitability of flats being constructed on this site.

Officer comment: The acceptability of any specific type and form of development on the land would be a matter for future consideration by the Council in its capacity as Local Planning Authority. All material planning considerations would need to be taken into account at that stage and they would include an assessment against the character and scale of development in the locality and the contribution that any proposals would make to the regeneration and vitality of this part of the town centre.

- 1.2.10 *Footpaths:* In their representations to Council, reference was made by 'Keep River Lawn Green' to the existence of 'Two footpaths (including FP30) and a cycle path' running across River Lawn. Attached at **Annex 7** is an extract of the working copy of the Definitive Map of Public Rights of Way for the County of Kent (maintained by Kent County Council) showing the location and route of Public Right of Way MU30, which runs across the north-western boundary of the site, adjacent to the river. There are no other Public Rights of Way on the land – the path shown in yellow on the plan at **Annex 8** has not been dedicated as a Public Right of Way, nor as a cycle path.

- 1.2.11 As a Public Right of Way, footpath MU30 may only be stopped up or diverted by one of the statutory procedures. These procedures include stopping up or diversion (a) by order of a Magistrates Court (Highways Act 1980) and (b) to enable development to be carried out (Town and Country Planning Act 1990).

Given the location of MU30, it is considered unlikely that the sale of the open space at River Lawn would result in the stopping up or diversion of this footpath.

### **1.3 Asset of Community Value**

- 1.3.1 On 4 July 2017 the Council received an application from the Barden Road Residents Association to register the open space land at Annex 1 as an Asset of Community Value.
- 1.3.2 The application was accepted, and on 21 August 2017 the land was included in the Borough Council's register of Assets of Community Value.
- 1.3.3 The inclusion of the land in the register does not preclude the Council from seeking to dispose of the land. However, should the Council wish to proceed with a disposal at some stage, it would be required to:
- Give notice to the Barden Road Residents Association of its intention to dispose of the land;
  - Impose an initial 'moratorium' period of six weeks during which no disposal can take place;
  - During the initial moratorium period, the Barden Road Residents Association (or another local community group) can ask to be regarded as a potential bidder for the land. If such a request is received by the Council, the moratorium period must be extended to a total of six months.

It should be noted that, during the initial six weeks or full six months moratorium period, there is no obligation on the part of the Council (as owner) to negotiate with the community group or to agree a sale to them. The Council can simply await the end of the six months period and then it is free to dispose of the property if it so wishes. However, if a community group is able to raise sufficient finance during the moratorium period sufficient to persuade the Council to sell the asset to them, this disposal is allowed within the moratorium period.

### **1.4 Legal Implications**

- 1.4.1 The area of open space land at River Lawn Road detailed in this report is held by the Borough Council as public open space. In accordance with the requirements of the Local Government Act 1972, Members must consider any objections to the notice of intended disposal before any final decision is taken on the disposal.

### **1.5 Financial and Value for Money Considerations**

- 1.5.1 It is intended that any capital receipts obtained from the sale of the land detailed in this report would be re-invested into property investment funds, so as to provide a long term revenue stream to support the continued delivery of services. The use of property funds for long term investment was previously considered and endorsed by the Audit Committee, Cabinet and Council during January and

February of this year, with the use of such funds authorised for inclusion in the Treasury Management and Annual Investment Strategy for 2017/18.

- 1.5.2 Members will also be aware that 'Asset Management' is one of the themes of the adopted Savings and Transformation Strategy 2016/17 to 2020/21 (which sits alongside the Medium Term Financial Strategy). A key consideration for the Council in the delivery of this theme is to consider the opportunities to realise capital and/ or increased income streams from our existing asset base. The intended disposal of land at River Lawn is therefore directly relevant to this theme.

## **1.6 Risk Assessment**

- 1.6.1 As set out in paragraph 1.5.2 above, the realisation of capital and/ or increased income streams from the Council's existing asset base supports the 'Asset Management' theme of the Savings and Transformation Strategy. In the event that capital and/ or increased income was not delivered pursuant to this theme then additional savings would need to be identified and delivered elsewhere in the Strategy.

## **1.7 Equality Impact Assessment**

- 1.7.1 None arising from this report.

## **1.8 Recommendations**

- 1.8.1 Members are requested to consider the objections received in response to the statutory notices, together with the petition submitted by 'Keep River Lawn Green' and determine whether to proceed with the intended disposal of the open space land at River Lawn Road.

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Background Papers  
As annexed to report