

TONBRIDGE & MALLING BOROUGH COUNCIL
FINANCE, INNOVATION and PROPERTY ADVISORY BOARD

15 September 2021

**Joint Report of the Leader, Cabinet Member for the Environment & Climate Change
and Director of Central Services & Deputy Chief Executive**

Part 1 - Public

Matters for Recommendation to Cabinet - Key Decision

1 RIVER LAWN, TONBRIDGE

This report updates Members on the proposed disposal of open space at River Lawn, Tonbridge and asks that the Advisory Board considers options for the future.

1.1 Background

- 1.1.1 The identification of the area of open space land at River Lawn Road, Tonbridge for potential redevelopment first arose in 2015. Following the withdrawal by Sainsbury's from the proposed scheme to redevelop the Botany Quarter, Officers commenced a review of Council owned assets within Tonbridge Town Centre with the intention of identifying a range of potential redevelopment opportunities. The aim was to utilise these assets to help add vitality to the town centre as well as optimising their use in terms of service delivery and financial return.
- 1.1.2 The review identified at an early stage an opportunity to redevelop land and buildings owned by the Borough Council on River Lawn Road. The opportunity to redevelop this land at this time arose in part following an approach by Assura Medical Group Ltd ('Assura'), who wished to acquire land in this area for the purposes of constructing a new medical centre to be occupied by the Tonbridge Medical Group. As Members will be aware, the proposals for the new Medical Centre were agreed and following disposal of the land to Assura, the new Centre opened in December 2020.
- 1.1.3 Hartnell Taylor Cook, who were instructed to conduct the review on behalf of the Borough Council, also identified the land adjacent to the site of the proposed Medical Centre as a suitable site for residential development, ideally as Retirement Living Accommodation. A plan detailing the area of land in question is attached as **Annex 1**.
- 1.1.4 At the Cabinet meeting on 11 October 2017, Cabinet resolved to dispose of the area of open space, subject to any process arising from the inclusion of the land on the register of the Assets of Community Value (the land had been accepted for

inclusion in the Borough Council's register of Assets of Community Value following an application in August 2017).

- 1.1.5 On 19 March 2018 the Council gave notice of its intention to dispose of the land as required under the provisions of the Localism Act 2011 relating to Assets of Community Value. No eligible community interest group expressed an interest to be treated as a bidder for the land within the relevant period.
- 1.1.6 On 24 November 2017 an application was made to Kent County Council ('KCC') to register certain paths which cross River Lawn as public rights of way ('PROW'). Currently the paths are tarmacked and are used both as footpath and as a cycle path which link with the River Walk along the side of the River Medway and onwards. A plan detailing the paths in question is attached as **Annex 2**.
- 1.1.7 Around the same time an application was made to KCC to register the land as a Village Green – this application (which was opposed by the Borough Council) was ultimately rejected by KCC in January 2020.
- 1.1.8 In respect of the public rights of way application, the Borough Council wrote to KCC in August 2018 to register its objection to the proposed PROW. 2 legal points were raised at that time by way of objection –
1. That River Lawn and all paths over it have been used by the public for many years with TMBC's consent and permission and under TMBC's control at all times and as such they have not been used as of right as required to support the application. The ways have not been enjoyed as of right and without interruption for 20 years so the presumption that the paths are dedicated as a highway has not arisen.
 2. In addition, the land and the footpaths have been closed on various occasions during the necessary twenty-year period. So even if any presumption had been raised, this would then have been broken and the necessary period of 20 years of continuous use is not demonstrated.
- 1.1.9 Notwithstanding the objections of the Borough Council at the time, KCC proceeded to modify the definitive map in November 2020 by the addition of 3 new Public Rights of Way –
- a) from River Lawn Road to Buley's Weir Bridge
 - b) from Weir View Scout Hut to Lambert's Yard
 - c) from Lambert's Yard to the Buley's Weir Bridge.
- 1.1.10 In December 2020 the Borough Council submitted a formal objection to the Order modifying the definitive map (attached as **Annex 3**). The submission of a formal objection means that KCC is not able to confirm the Order (unless the objection were to be withdrawn). The matter must instead be submitted to the Secretary of

State for the Environment, Food and Rural Affairs for determination. It is expected that this would be heard by the Planning Inspectorate by way of local inquiry, as the representation has been made by another local authority. If this is the route the Inspectorate follow, then the Inspectorate advises that it will normally take up to 45 weeks from the start date for the decision to be issued. The start date may itself be up to 10 weeks after the date KCC submit all the necessary paperwork to the Inspectorate, so realistically we might potentially be looking at 55 weeks or more from submission of the paperwork to the Inspectorate before we get a decision. At the time of preparing this report we have not been notified that KCC has submitted the necessary paperwork to the Inspectorate.

- 1.1.11 Members are asked to note that the inclusion of the proposed PROWs on the definitive map would not preclude the sale of the land, as any prospective developer could apply to divert existing public rights of way under the Town & Country Planning Act 1990. However, there can be no guarantee that such an application would be successful, nor how long it would take. The existence of PROWs across the land may also affect the level of financial offer that any prospective developer would be prepared to make. The approach to date has therefore been to delay marketing of the land until the PROW application has been determined.
- 1.1.12 In the event that the Borough Council were successful in opposing the PROWs, we would not therefore be in a position to consider marketing of the land for disposal until mid to late 2022 at the earliest. The completion of any subsequent sale may take at least 12 months thereafter, potentially longer if the sale were to be conditional on the purchaser obtaining planning consent.
- 1.1.13 The Council would also be required to give a new Notice of Intended Disposal under the Asset of Community Value provisions, which would trigger a new moratorium period i.e., to allow community interest groups to express an interest to be treated as a bidder for the land. Whilst this Notice could be given in parallel with marketing the site, the operation of the Asset of Community Value provisions may create a delay of up to 6 months in the disposal process.
- 1.1.14 Given the uncertainties relating to both the local inquiry process and other projected timescales set out above, in addition to a reassessment of priorities by the new administration since it came into office in July, the Leader and Cabinet Member for Environment and Climate Change have investigated the area further and are recommending that Members of the Advisory Board consider other alternative options open to the Council for the future of the open space land.

1.2 Alternative options

- 1.2.1 If Members do not wish to continue with the proposed sale of the land, a suggested option would be to allow the site to rewild. This would have the potential to increase biodiversity in the area by significantly reducing the existing cutting frequency. The option would be progressed in liaison with the Medway

Valley Countryside Partnership and would contribute to the Council's Climate Change Strategy.

- 1.2.2 Alongside this, officers are presently working up a detailed brief to commission design work for improvements to the length of the riverside walk from Cannon Lane to Town Lock and onwards to the Avebury Avenue bridge. Opportunities are being investigated for how the project could be brought forward using a combination of committed developer contributions along with the potential for integrating the improvements with upcoming development opportunities along the route. The overarching concept being that the improvement works would have a holistic design-based approach at its core but could take place in phases to account for the likely phased approach developments commencing to facilitate the works either via contributions being paid or in terms of physical works on the ground. These aspects are all to be contained within the brief for the design work. Equally, the creation of a biodiverse environment at River Lawn could be incorporated as one of the options contained within the wider brief for these improvement works.
- 1.2.3 Members are advised that 3 of the trees on the area of open space (1 Horse Chestnut and 2 Lime trees immediately to the south of the River Medway) are subject to a Tree Preservation Order (TPO number 20/00006/TPO) in the interests of visual amenity. The remaining 6 trees are not subject to a TPO. However in accordance with the Tree Charter approved by the Cabinet Member for the Environment and Climate Change following consideration by the Street Scene and Environment Advisory Board on 31 August 2021, the Council will minimise the removal of trees on Council owned land, unless there are overriding arboriculture or health and safety needs for felling.

1.3 Legal Implications

- 1.3.1 As set out in paragraph 1.1 above.
- 1.3.2 Should Members decide to discontinue the proposed sale of the land and withdraw the formal objection to the proposed PROWs, the County Council would then be in a position to confirm the Order and update the definitive map.

1.4 Financial and Value for Money Considerations

- 1.4.1 It is intended that any capital receipts obtained from the sale of the land would be re-invested into property investment funds, so as to provide a long-term revenue stream to support the continued delivery of services. Indeed, the proposed sale of the land at River Lawn and generation of investment income is specifically identified within the adopted Savings and Transformation Strategy (STS) as contributing £73,000 towards the 'banked' savings targets within the Medium-Term Financial Strategy (MTFS).
- 1.4.2 The non-delivery of this proposed sale will have a detrimental impact on the STS and MTFS, and in the event that Members were not minded to proceed with the

sale, something else must take its place in order to preserve the integrity of our financial plans.

- 1.4.3 Within List C of the Capital Plan is a proposal for environmental improvements along sections of the River Medway, including along River Walk and through River Lawn. This scheme was originally brought forward following residents and Member requests to improve security of pedestrian access to the town centre. £42,000 has currently been secured through developer contributions and further opportunities for developer contributions may be forthcoming. The evaluation of the scheme was delayed due to the impact of Covid-19 and it was felt that the appointment of an external consultant to ensure a coordinated approach across the 3 sections was required. A budget for an external consultant has been included in the 2021/22 revenue budget to enable the scheme to be evaluated in this financial year.
- 1.4.4 Members should note that if a capital plan scheme was to be approved it could result in revenue budget growth further adding to the funding gap that currently exists. There will be no capital or ongoing revenue costs of allowing the site to rewild

1.5 Risk Assessment

- 1.5.1 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.

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Policy Considerations

- 1.7.1 Asset Management

1.8 Recommendations

- 1.8.1 Members are requested to consider whether they wish to discontinue the proposed sale of the open space land at River Lawn Road (including withdrawal of the objection to the public rights of way application) and allow the site to rewild to support biodiversity.

The Director of Central Services & Deputy Chief Executive confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

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