

Disposal of land and public conveniences in Brenchley and Matfield

For Cabinet on 9th February 2023

Summary

Lead Member: Councillor Christopher Hall, Cabinet Member for Finance and Performance

Lead Director: Lee Colyer, Director of Finance, Policy & Development (S151 Officer)

Head of Service: David Candlin, Head of Economic Development and Property

Report Author: Max Horgan, Estates Surveyor

Classification: Public document (non-exempt)

Wards Affected: Brenchley and Horsmonden

Approval Timetable	Date
Management Board	11 th January 2023
Portfolio Holder	23 rd January 2023
Finance & Governance	24 th January 2023
Cabinet	9 th February 2023

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

1. To approve the freehold transfers of the land and public conveniences at High Street, Brenchley as identified on the attached plan shown in Appendix A and the land and public conveniences at Maidstone Road, Matfield as identified on the attached plan shown in Appendix B. The key terms of the transfers are detailed in Option 1 below. The other terms of the transfers are to be agreed under delegated authority to the Head of Economic Development and Property in consultation with the Director of Finance, Policy and Development and the Cabinet Member for Finance and Performance.
2. To delegate to the Head of Economic Development and Property in consultation with the Director of Finance, Policy and Development, the Head of Legal Services and the Cabinet Member for Finance and Performance the authority to

complete all necessary negotiations, legal processes and legal documentation to complete these transfers.

1. Introduction and Background

- 1.1 The purpose of this report is to obtain authority to dispose of the land and public conveniences at High Street Brenchley (shown in Appendix A) and land and public conveniences at Maidstone Road, Matfield (shown in Appendix B) to Brenchley and Matfield Parish Council.
- 1.2 Management Board declared both sites surplus to the Council's requirements on 21st December 2022.
- 1.3 Tunbridge Wells Borough Council was contacted by Brenchley and Matfield Parish Council on the expiry of their management and maintenance agreement in March 2022 in order to enquire whether the Council would consider transferring the public conveniences in Brenchley and Matfield to the Parish Council.
- 1.4 Since 2010 Tunbridge Wells Borough Council has transferred six public convenience sites to Parish Councils across the Tunbridge Wells borough.
- 1.5 Property and Estates officers recommend that the freehold titles of the land and buildings should be transferred to Brenchley and Matfield Parish Council for £1 each. This will be subject to 100% clawback in perpetuity on both transfers, if planning permission is obtained for any other use other than community use, or, if the land and property is sold and the proceeds of that sale are used for anything other than for community uses. These sale conditions have been included in each of the previous transfers of Public Conveniences to Parish Councils, therefore it is the Council's standard approach.
- 1.6 Brenchley and Matfield Parish Council have prepared a business plan shown in Appendix C which explains that the Parish can manage and maintain these assets moving forward into the future.
- 1.7 By transferring these sites, the Council will benefit from the saving of approximately £9,500 per annum which consists of utilities, contract cleaning and maintenance costs.
- 1.8 The Council has obtained valuations for both these public convenience buildings where it has been assumed there is potential for redevelopment into either residential or commercial uses. Brenchley land and public conveniences was valued at £80,000 and Matfield land and public conveniences was valued at £70,000.
- 1.9 The floor area of each building was 315 square foot (29.26 square metres) therefore this would potentially limit the conversion of each property into either residential or commercial uses.
- 1.10 There is in place a general disposal consent which provides the Council autonomy to carry out their statutory duties and functions, and to fulfil such other

objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, the Council must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. A Circular issued in 2003 gives authorities consent to a disposal of land at an undervalue provided that:-

- a) a local authority considers that the disposal is likely to contribute to the achievement of: i) the promotion or improvement of economic well-being; ii) the promotion or improvement of social well-being; iii) the promotion or improvement of environmental well-being;
- and
- b) the best price reasonably obtainable for the property does not exceed £2,000,000 (two million pounds).

2. Options Considered

- 2.1 **Option 1:** Tunbridge Wells Borough Council transfers the freehold ownership of both sites to Brenchley and Matfield Parish Council. These transfers will be for £1 each and will be subject to clawback provisions in perpetuity. The clawback payment will be payable if either building is converted into any other planning use other than community use, or, if the land and property is sold and the proceeds of that sale are used for anything other than for community uses.
- 2.2 **Option 2:** Do nothing - this would result in the Council having to manage and maintain these buildings and therefore would not benefit from the potential savings.

3. Preferred Option and Reason

- 3.1 **Option 1:** That the Council transfers the freeholds of both public convenience sites to Brenchley and Matfield Parish Council. This would allow this Parish Council to manage buildings in their locality and also to ensure that both facilities remain open and operational in the future.

4. Consultation on Options

- 4.1 This report is going through the due process in accordance with the Constitution.

Recommendation from Cabinet Advisory Board

- 4.2 The Finance and Governance Cabinet Advisory Board were consulted on Tuesday 24 January 2023 and agreed that the recommendations set out in the report be supported.

5. Implementation

- 5.1 If Cabinet approves the transfers of these two sites the call in period will end after 5 clear days from the date the Cabinet decision is published.

6. Appendices and Background Documents

Appendices:

- Appendix A: Plan of land and public conveniences at High Street, Brenchley
- Appendix B: Plan of land and public conveniences at Maidstone Road, Matfield
- Appendix C: Business Case provided by Brenchley and Matfield Parish Council
- Appendix D: Climate Emergency Impact Assessment Form

7. Cross Cutting Issues

A. Legal (including the Human Rights Act)

The Council has a general power of competence under section 1 of the Localism Act 2011 to do anything an individual can do provided it is not prohibited by other legislation.

The Local Government Act 1972, section 111(1) also empowers a local authority to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

The Council has power under section 123(1) of the Local Government Act 1972 to dispose of land and property in any manner that it wishes. The proposed disposals must be for the best consideration reasonably obtainable in accordance with section 123 of the Local Government Act 1972 or meet the requirements of Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 - disposal of land for less than the best consideration that can be reasonably obtained failing which, the Secretary of State's consent would be required.

Acting on the recommendations is within the Council's powers as set out in the above statutory provisions.

There are no consequences arising from this report that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998.

Claudette Valmond, Head of Legal Partnership, 16/01/23

B. Finance and Other Resources

The disposal of these two public convenience sites will produce a saving of approximately £9,500 per annum in revenue costs. The inclusion of a clawback clause in the transfer documentation gives 100% of any sales proceeds back to the Council if either property is sold or redeveloped for anything other than community use, whether it be by the Parish Council or subsequently by any other owner.

Jane Fineman, Head of Finance, Procurement and Parking, 16/01/23

C. Staffing

There are no staffing implications from this report and can be delivered within existing resources.

Nicky Carter, Head of HR, Customer Service & Culture, 11/01/23

D. Risk Management

The risks involved in land and property disposal and the actions proposed to minimise and mitigate those risks are set out in the body of the report.

Max Horgan, Estates Surveyor, 05/01/2023

E. Environment (inc. Biodiversity) and Sustainability

The transfer of these two public convenience sites will reduce the Council's energy and water consumption and also reduce carbon emissions created by Council staff travelling to and from each building to carry out site inspections.

Max Horgan, Estates Surveyor, consulted with sustainability on 16/01/23

F. Community Safety

There are no consequences of concern arising from this report.

Terry Hughes Community Safety Manager, 06/01/23

G. Equalities

No specific issues.

Max Horgan, Estates Surveyor, 05/01/2023

H. Data Protection

No specific issues.

Max Horgan Estates Surveyor 05/01/2023

I. Health and Safety

At all TWBC owned sites they must protect workers and others from getting hurt, or ill through their work or actions. If this does not happen, then:

- A regulator such as the Health and Safety Executive (HSE) may take action against TWBC under criminal law.
- The person affected may make a claim for compensation against TWBC under civil law.

With TWBC no longer having ownership of this site then they will no longer be liable for any incidents on site.

Mike Catling, Corporate Health and Safety Advisor, 06/01/2023

J. Health and Wellbeing

There are no health and wellbeing implications.

Rebecca Bowers, Health Improvement Team Leader, 12/01/23

