

East Herts Council Non-Key Decision Report

Date: 18 July 2024

Report by: Lucy Smith

Report title: Proposed transfer of land adjacent to Thornbera Road, Bishop's Stortford

Ward(s) affected: Bishop's Stortford South

Summary

- Hertfordshire County Council (HCC) have requested the transfer of a strip of land-locked woodland and ditch to complete an Academy Transfer of the school. Terms have been agreed, subject to formal consent, for the transfer of the land for the sum of £1.

RECOMMENDATIONS FOR DECISION: That:

- (A) The freehold title to the strip of land outlined in red on the plan in Appendix A, be transferred to Hertfordshire County Council for the sum of £1 plus this Council's reasonable costs; and**
- (B) That the transfer will contain a covenant that the existing woodland will remain as woodland and to be used for educational purposes.**

1.0 Proposal(s)

1.1 That the freehold title to a strip of land-locked woodland/ditch and footpath be transferred to HCC to aid the completion of the academisation of the adjoining primary school.

1.2 That the transfer contains a covenant for the woodland to remain as woodland and for educational purposes.

2.0 Background

2.1 The Council owns a strip of unregistered land (Appendix A) on the northern side of Richard Whittington Primary School, and to the

south of allotments owned by Bishop's Stortford Town Council following a transfer from East Herts Council in 2013. A location plan is also attached (Appendix B).

- 2.2 Part of the strip includes a 21m section of public footpath on the west side which is maintained by HCC. (Appendix C, for information only as blue line is not accurate with onsite observation).
- 2.3 The remaining approximate 79m length of the strip is made up of ancient woodland and ditch. The width of this strip varies between approx. 2.2m and 4.97m. A lease of this woodland/ditch was granted to HCC in 1986 for a term of 7 years to be used as woodland for educational purposes for the benefit of the adjoining school. Both parties believe that this lease has never formally terminated, and that HCC are "holding over" under the terms of the lease. The lease plan is attached with leased out land shaded red. (Appendix D).
- 2.4 Photograph's are attached at Appendix E.
- 2.4 HCC own the land to the south of the strip. Their land is used by Richard Whittington Primary School. The Department for Education have approved a request for Academisation of the school and the site is due to transfer via an Academy Lease to the Ivy Learning Trust with a target date of 1 September 2024.
- 2.5 HCC have realised that part of the land within the school's physical boundary is not within HCC's registered title. This is the part that has been leased to HCC under the lease mentioned in 2.3. The freehold title to this land is unregistered at Land Registry.
- 2.6. HCC have made contact as they believe that the unregistered land may belong to this Council, and to request a transfer of the land in order to assist the swift transfer of the whole school site to the Ivy Learning Trust.
- 2.7 Our research has shown that the unregistered land was originally part of a wider ownership by the Council, however the transfer of the allotments in 2013 to Bishop's Stortford Town Council appears to have left this strip of land between the allotments and HCC's

land.

- 2.8 The woodland/ditch strip is of little value to the Council and represents a maintenance liability. The strip is also effectively land-locked making any maintenance extremely difficult.
- 2.9 The footpath section of the strip is already adopted by HCC, albeit that the Council likely own the sub-soil for this unregistered land.

3.0 Reason

- 3.1 The strip of land is of little value to the Council and future maintenance would be difficult and costly.
- 3.2 The woodland/ditch section is believed to be ancient woodland and therefore HCC have agreed to a covenant that this part of the land will remain as woodland, for educational purposes.
- 3.3. Transfer of the freehold of the short footpath section to HCC at the same time would be sensible as the remaining slither of sub-soil is of no real value to the Council.
- 3.4 If a transfer of title is not approved, the Council could negotiate terms for a new lease to the new Academy Trust, however this is of little benefit to the Council and would create a delay in the transfer of the school site to the Trust. It would also create a future liability for the Council if the Trust did not wish to take a lease now or in the future.

4.0 Options

- 4.1 Agree to transfer the freehold title of the whole of the unregistered strip on the terms agreed, i.e. subject to restrictive covenant regarding the use of the land.
- 4.2 Agree to the transfer of the freehold title of the whole of the unregistered strip with no restrictions as to future use.
- 4.3 Refuse the transfer and consider a lease of the woodland strip to the new Academy Trust.

5.0 Risks

5.1 If a transfer of freehold title does not proceed the Council will have the cost of future maintenance of the trees and ditch and access to do so will be very limited. With a public footpath on one side and a school on the other side, this will be quite a liability.

6.0 Implications/Consultations

6.1 Yes

Community Safety

Yes – if the strip of land is returned to the Council then there is a potential risk to community safety if trees are not able to be maintained due to poor access.

Data Protection

None arising directly from this report.

Equalities

None arising directly from this report.

Environmental Sustainability

Yes – a restrictive covenant in the title transfer will protect the woodland from future development. Emerging research is showing that trees can make a significant contribution to making our communities more resilient to the impacts of climate change. Trees have the potential to dramatically reduce urban temperature extremes and buffer surges in rainwater runoff, creating safer and more comfortable living conditions. They also absorb pollution, enhance ecological diversity.

Financial

Yes – if the title transfer is not agreed then the Council may incur maintenance costs in the future. There are no financial benefits to retaining the land.

Health and Safety

Yes. If the land is not transferred, then an annual tree inspection will be required as well as any maintenance of the trees arising from that inspection. This will incur additional cost as the land is not currently in our grounds maintenance contract and with difficult access this could incur additional costs if our contractor requires permits to work from

either the school or the county council.

Human Resources

Yes. Retention of the land will cause minor increases in workload in for the Strategic Finance Insurance Officer, the Property Services Surveyor and the Leisure and Parks client officer to ensure that the council's responsibilities for health and safety and public liability insurance are carried out. All of these activities would be in relation to a piece of land with no actual value and on work that is not a priority in the Corporate Plan.

Human Rights

None arising directly from this report.

Legal

The Council's freehold title is unregistered, however it was previously thought that the Council acquired this land as part of a larger plot under a Conveyance dated 13 March 1964, and with this belief a lease of the woodland/ditch was granted to HCC in 1986. The unregistered land is of no monetary value to the Council.

If the land reverts to the Council then, in broad terms, we as a tree owner, and the entity having control over it (the duty holder), has a duty of care in both civil and criminal law to take reasonable management measures to avoid foreseeable injury or harm. Duty holders are expected to consider the risks posed by their trees and manage those risks in a reasonable and proportionate way, usually through a [tree survey](#). There is well established case law upholding the principle that the standard of the duty of care varies according to the resources available to the duty holder, i.e. a large land owner such as the council would be expected to apply a higher standard of management than smaller land owners such as residential householders. In short, the law expects duty holders to act in a practical and sensible way, according to the size of their properties. Therefore regular tree inspections would be required, the frequency determined by a risk assessment undertaken by a qualified arboriculturist.

Specific Wards

Bishop's Stortford South

7.0 Background papers, appendices and other relevant material

7.1 **Appendix A** – Plan of subject land outlined in red

7.2 **Appendix B** – Location plan

7.3 **Appendix C** – HCC public footpath map

7.4 **Appendix D** – Lease plan

7.5 **Appendix E** - Photographs

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