

# Southend-on-Sea Borough Council

Agenda  
Item No.

**23**

Report of Corporate Director for Place

to  
Cabinet

on  
5<sup>th</sup> January 2016

Report prepared by: Dean Hermitage  
(Group Manager Planning & Building Control)

---

## Shoebury Garrison Land Transfers

Place Scrutiny Committee – Executive Councillor: Councillor D Norman  
Part 1 (Public Agenda Item)

---

### 1. Purpose of Report

- 1.1 To set out the current position in respect of the Section 106 Agreement dated 6<sup>th</sup> February 2004 (as subsequently modified) (“S106”) relating to land transfers at Shoebury Garrison, and seek agreement in terms of these transfers to the Council.

### 2. Recommendations

- 2.1 To note that the land shown on the plan at Appendix 1 comprising the sea walls and associated structures will be transferred to the Council by ~~from~~ Avant Homes (“the developer”) in accordance with the terms of the S106, once all repair works required by the S106 have been completed to the Council’s reasonable satisfaction;
- 2.2 That the additional land shown in Appendix 2a and 2b be transferred to the Council by the developer, and the additional land shown in Appendix 2c be transferred to the Council by the Ministry of Defence (“MoD”);
- 2.3 That all areas of foreshore comprised within the land referred to in 2.1 be transferred to the MoD as soon as possible and until such transfer that the foreshore at Shoebury Garrison remain closed to the public;
- 2.4 To note the allocation of departmental duties and responsibilities for future management of the land to be transferred to the Council;
- 2.5 To delegate authority to the Corporate Director for Place to determine the best possible solutions in relation to other minor related issues including (but not limited to) a procedure for works in the park and foreshore, a media / communications strategy, the surface water outfall, positioning / ownership of navigation aids, drainage ditches / scrapes / swales etc.

### **3. Background**

- 3.1 Most of the S106 obligations in connection with the development of the Garrison Site at Shoebury have been delivered by the developer (Avant Homes, formerly Country and Metropolitan Homes and before that Gladedale), including over five million pounds of improved sea defences and provision of recreational facilities in Gunners Park. Only minor works remain to be completed.
- 3.2 The Council is contractually obliged (by the S106) to take a transfer of the sea walls and associated structures from the developer once the prescribed repair works have been carried out to the reasonable satisfaction of the Council and a Deed of Covenant with the MoD is completed. Upon transfer, maintenance responsibility for the sea walls and associated structures will pass from the developer to the Council.
- 3.3 On 12 November 2014 the Development Control Committee agreed a much higher specification for the repair works to the sea walls and associated structures and a formal Deed of Variation was completed 15th January 2015. This resulted in a lower commuted sum being payable to the Council for future maintenance costs (£78,000), but the Council's Coastal Defence Engineer estimated that overall this would result in a better financial position for the Council – see section 6.6.2 below.
- 3.4 To ensure the sea walls and associated structures have been properly repaired in accordance with the higher specification prior to transfer, the Council commissioned an independent assessment by Mott MacDonald (Flood Management Engineers). This has demonstrated that the required works have been duly completed in accordance with the higher specification, subject to resolution of one or two minor defects.
- 3.5 The sea walls and associated structures represent one of the last parcels of the land to be transferred to the Council under the S106. Only the Heritage Centre remains and this is very close to completion with the Council aiming to take transfer in the near future. New Gunners Park and related open space has previously been transferred to the Council and this is now substantially being managed by Essex Wildlife Trust (EWT) under a lease from the Council.
- 3.6 The sea walls and associated structures to be transferred include a number of structures associated with the sea walls, which will come under Council ownership. These are:
- Repository berth
  - Boat House
  - Search Light Emplacements
  - Machine Gun Emplacement
  - Experimental Casemates
  - Gog's Berth
  - Barge Pier
  - Summer House

- 3.7 As part of the original S106, upon transfer of the sea walls and associated structures, the Council will be contractually obliged to the MoD to maintain and repair the sea defences. These defences will be in the ownership of both the Council and the MoD and includes the sea walls, the groynes and navigation aids. These obligations will be set out in a Deed of Covenant with the MoD which also secures a right of access for maintenance purposes in favour of the Council.

### **Land Transfer: The Foreshore**

- 3.8 The seawall and associated structures to be transferred to the Council includes an area of foreshore (i.e. the foreshore above the mean high water mark). This runs alongside MoD owned land (below mean high water), which has implications for land management and restricting public access. Only the lower / MoD-owned part of the land is covered by the Shoeburyness Artillery Ranges Bye-Laws 1936, which restricts access.

As this foreshore area falls within the former Shoebury Old Ranges (a disused former army training facility within the wider MoD Shoebury Ranges) there is a significant risk of unexploded ordnance (“UXOs”) being present. Therefore officers have carried out a due diligence exercise in advance of the proposed transfer of the sea walls and associated structures. As part of this exercise officers commissioned an Explosive Ordnance Desktop Threat Assessment (“Threat Assessment”) by a specialist company called Dynasafe BACTEC, ordnance disposal experts.

Dynasafe BACTEC was asked to look not only at the sea walls and foreshore area, but also to consider other land previously transferred to the Council (particularly New Gunners Park) as referred to in 3.5 above which also falls within the area of the former Shoebury Ranges. The Council wants to be aware of any risks in relation to future projects it may wish to carry out on its land (i.e. intrusive works, landscaping, seawall maintenance works), even though the MoD did undertake clearance work prior to selling the Garrison site to Gladedale for development.

- 3.9 The Threat Assessment concludes there is a high possibility of UXOs on the foreshore area, which is not unexpected. While Gunners Park is also identified as within a “high risk zone” there are distinct differences between the nature of the risk in these areas. In Gunners Park there is a risk if intrusive ground works be undertaken or if earth is moved. However, in the foreshore continual tidal and wave action results in additional items of UXO being washed up, which are more likely to be disturbed by individuals at surface level. This area of foreshore has long been closed to the public for this reason.

- 3.10 Due to the nature of these risks and the difficulties of controlling access to the foreshore area to be transferred to the Council, there is a very strong argument that the MoD should take ownership and control of it. Accordingly it is recommended that all areas of foreshore that are transferred to the Council by the developer should be transferred to the MoD as soon as possible and until such transfer that the foreshore at Shoebury Garrison continues to remain closed to the public.

In this context it is significant that it was never part of the master plan for the Shoebury Garrison that the foreshore area would transfer to the Council.

#### **Land Transfer: Other Areas**

- 3.11 East Beach and Garrison residential areas are not covered by the Threat Assessment; however, the Assessment notes that a number of clearance operations have taken place over the years, and that the MoD previously cleared East Beach.
- 3.12 Additional land shown on **Appendix 2a** and **Appendix 2b** was not originally intended to be transferred to the Council; however, the benefit in doing so is that it is necessary for effective maintenance of the park, sea defences and public cycleway. This has been agreed by the developer and is only subject to Council approval. Also, it was not originally intended to take the surface water outfall at Gog's Berth (shown in **Appendix 2c**), which is currently owned by the MoD. However, the Council needs to take ownership of this so that it can correctly exercise its responsibility in terms of managing surface water drainage in the wider Shoeburyness area.

### **4. Other Options**

#### **4.1 Transfer of land from Developer**

The Council is legally obliged to take a transfer of the sea walls and associated structures shown on **Appendix 1** and to take over any repairing obligations that come with that transfer.

The additional land referred to in **Appendix 2a** and **Appendix 2b** does not have to be acquired by the Council, but not to do so would cause difficulties effectively maintaining the sea defences, cycleway and park.

#### **4.2 Transfer of foreshore to the MoD**

- 4.2.1 The area of foreshore can either be (1) retained by the Council following transfer, or (2) the Council could seek to transfer to the MoD.
- 4.2.2 The plan included in **Appendix 3** shows the area of foreshore in question. It should be noted that the area of potential transfer is between the sea wall and the mean high water mark, and the latter is subject to change over time with a trend to it moving closer to the sea wall in recent years. Therefore, it is likely to be a smaller area than shown on the plan.

4.2.3 In retaining ownership, the Council would be taking on significant liability and risk due to the high likelihood of the presence of UXOs. It would be necessary to work in partnership with the MoD and QinetiQ, who operate the ranges on behalf of the MoD, to warn and inform the public of the risks e.g. additional signage may be required. Enforcement has always been an issue on the ranges as there are complexities around the inner and outer sea danger areas. By retaining ownership of the foreshore the Council will take on the risks associated with UXOs and will have to manage the issue of trespass by members of the public onto the area covered by the Bye-Laws. It would be impossible to show the public on the ground where the Council owned foreshore finishes and MoD land starts.

4.2.4 Should private property be damaged or any members of the public be injured, or at the very worst, there is a fatality as a result of detonation of ordnance within the foreshore area during the period within which the Council retains land ownership, the Council may be liable.

4.2.5 In considering the insurance implications of the transfer of the foreshore area, officers are of the view that this constitutes an extension of an existing risk rather than a new risk. Therefore, the following measures may need to be deployed to manage the risk:

- The foreshore at the Garrison should not be opened to the public until factual evidence supports a substantial reduction in the known risk and the beach has been declared as safe, which is likely to be the expectation of the Courts should an insurance case proceed. However, in the considered opinion of officers, it will not be possible to make the foreshore area safe as the MoD and Dynasafe BACTEC will never offer a guarantee even if expensive time-consuming clearance was to be undertaken.
- Continue signage and restriction of access to the foreshore as has previously been maintained by the MoD, whilst the Council continue to negotiate with the MoD to take ownership of the foreshore.
- Urgently inspect and fix railings and ensure all signs are replaced and any staircases are blocked to deter access to the beach.

*It should be noted that the change in ownership and implications need to be declared to the Council's insurers, who may have a different view about the necessary precautions.*

4.2.6 The Council could try to get the foreshore area cleared of UXOs although this would be a complex, labour intensive process, estimated at costing several million pounds and may take several years to complete. Clearance works could also be easily undermined in a short period of time as a result of tidal action. The professional opinion of Dynasafe BACTEC is that this area of foreshore should not be re-opened to the public at this time.

- 4.2.7 There is no practical way to allow the public to access the area of foreshore in question and prevent them from entering the MoD area. Partial public access to the foreshore would require installation of a fence dividing the foreshore to prohibit access to the restricted MoD area. However, this is not feasible as it would require a fence to be erected along the mean high water mark, which is subject to movement.
- 4.2.8 As there would be no public benefit to the Council retaining the foreshore area above mean high water mark (public access would need to be prohibited) it is recommended it be transferred to the MoD, who will then will be responsible for managing the risk to the public and enforcing the Bye-Laws relating to the land. The Council would need to prohibit access until the transfer to the MoD was completed to reduce its liability. As a potential incentive for the MoD to take the foreshore land, officers recommend that the Council agree to take ownership of the surface water outfall at Gog's Berth (as shown in **Appendix 2c**) from the MoD.

### 4.3 Departmental responsibilities

- 4.3.1 Responsibilities for Gunners Park (including historic structures), adopted roads, drainage ditches and the sea defences will predominantly fall within the responsibility of the Department of Place, although Asset Management within Corporate Services will have some involvement as far as any disposal of assets is concerned.
- 4.3.2 Attached as **Appendix 4** is a Management Plan showing areas (including highway) that are to be adopted and managed by the Council or EWT and those which are to be managed by the Garrison Residents Association/Management Company.
- 4.3.3 Members are advised that departmental responsibilities for management and maintenance of the various structures/areas of the Garrison are allocated as follows:
- Adopted, dedicated and Council owned highway (roads, footway, cycleway, verge management e.g. unauthorised parking) including related signage, enforcement and drainage gullies – Traffic & Highways Network (Place)
  - Adopted, dedicated and Council owned highway lighting – Street Lighting, Major Projects & Strategic Transport Policy (Place)
  - Adopted, dedicated and Council owned highway cleansing and street inspections – Waste & Environmental Care (Place)
  - Adopted, dedicated and Council owned highway verge maintenance e.g. grass cutting and tree maintenance – Parks Management (Place)

*[NOTE: Private / unadopted highway is managed by the Garrison Residents Association/Management Company and **not** the Council]*

- Gunners Park (including all recreational facilities and related signage) – Parks Management (Place)
- SSSI – Parks Management (Place) in liaison with Coastal Defence Engineer (Place) due to flood alleviation function
- Car parks (main car park and Heritage Centre) – Parks Management (Place)
- CCTV – Community Safety and Crime Reduction (Place)
- Management of historic structures listed below – Parks Management (Place):
  - Search Light Emplacements
  - Old Powder Magazines
  - Heavy Quick Firing Battery
  - 9.2” Gun Pit
  - Sub-Station associated with 9.2” Gun Pit
  - Drill Hall Gun Pits
  - 1855 Magazine Site
  - Air Raid Shelters
  - Heritage Centre
  - Machine Gun Emplacement (unless relating to coastal defences)
  - Experimental Casemates
- Management of historic structures listed below – Asset Management (Corporate Services):
  - Barge Pier
  - Summer House
  - Boat House

*[Note: Any impact on the coastal defences will require liaison with the Coastal Defence Engineer (Place)]*
- Management of coastal defences and the sea wall associated structures listed below – Coastal Defence Engineer (Place) and Pier & Foreshore (Place):
  - Sea wall and revetment including associated warning signs, railings and access restrictions
  - Groynes
  - Navigation aids
  - Beach (except any owned by the MoD)
  - Gog’s Berth
  - Repository Berth
  - Machine Gun Emplacement (only if relating to coastal defences otherwise responsibility of Parks)
- Drainage ditches, balancing pond and tank, and surface water outfall – Coastal Defence Engineer (Place) and Parks Management (Place)

4.3.4 To ensure that the land at the Garrison (including Gunners Park, the sea defences and the foreshore) is managed in a safe manner, the Council will have to ensure that adequate risk assessments are carried out and procedures are in place due to the risk of UXOs.

## **5. Reasons for Recommendations**

5.1 The Council is contractually obliged (by the S106) to take a transfer of the sea walls and associated structures from the developer once the prescribed repair works have been carried out to the reasonable satisfaction of the Council and a Deed of Covenant with the MoD is completed.

5.2 For the reasons set out above, it is considered judicious to seek to transfer all areas of foreshore to the MoD as soon as possible after the transfer of this land from the developer to the Council. This will significantly reduce both the Council's liability in respect of occupiers' liability and on-going security and maintenance costs.

5.3 To ensure the Council's duties and responsibilities in relation to the land are adequately fulfilled, upon transfer the relevant departments need to be allocated key tasks (on-going inspections and maintenance), taking into account the potentially significant budgetary implications.

## **6. Corporate Implications**

### **6.1 Contribution to Council's Vision & Corporate Priorities**

The coastal defences are an essential part of protecting the well-being of Southend's residents and businesses. As such, they are linked to the Council's corporate priorities of 'safe, clean, healthy and prosperous'.

### **6.2 Financial Implications**

6.2.1 The Council will be financially responsible for the repair of the sea defences along with any necessary maintenance of the structures and property transferred (a maintenance fee of £78,000 has already been transferred to the Council). Regular inspections of the Garrison foreshore/sea defences have financial implications in terms of officer time. Routine inspections are to be carried out annually by the Coastal Defence Engineer plus additional inspections in the event of any storm event or after a report of damage. This is consistent with procedures elsewhere along the Borough's coastline. This may require making provision in revenue budgets going forward into the future; which will need to be considered as part of the budget process.

- 6.2.2 In terms of quantifying the financial implications, this is particularly difficult in the context of the sea defences as weathering damage is not predictable. However, it is worth noting that when the much higher specification for the repair works to the sea walls and associated structures was agreed by the Development Control Committee on 12<sup>th</sup> November 2014 (Deed of Variation completed 15<sup>th</sup> January 2015) the Council's Coastal Defence Engineer estimated that this would result in a financial saving for the Council over the next 30 years of approximately £880,000 in deferred maintenance and improvement costs.
- 6.2.3 It should also be noted that as the advice of a qualified ordnance disposal contractor and an ecologist will potentially need to be procured before carrying out any significant work within Shoebury Garrison. This also has financial implications (N.B. The expectation is that on land currently leased to EWT, these costs will be covered by the lessee).
- 6.2.4 Inevitably there is likely to be a demand on budgets, particularly in the Department of Place as a result of the land transfers. These will have to be factored into future budget rounds.

### 6.3 Legal Implications

The Council will be legally responsible for all structures and property transferred from the developer. This will comprise repairing responsibilities, including being legally obliged to repair the sea defences by the MoD, as well as having occupier's liability in relation to the property being acquired (including foreshore and structures).

### 6.4 People Implications

There are various departmental duties for managing the land and responsibilities the Council is obliged to take on. This will have staffing implications for various teams including those responsible for parks, foreshore, sea defences and historic structures. Regular inspections are necessary to ensure any damage is identified quickly thus minimising risks and repair costs to the Council. A procedure will need to be in place (including awareness training) for Council employed / contracted staff carrying out works in the park and foreshore to ensure their safety due to the risk of UXOs. This will be an extension of such processes already in place.

### 6.5 Property Implications

The Council must ensure public safety is maintained and responsibility is allocated within the Council for the on-going maintenance and security for the different areas thus mitigating the Council's liabilities to the public and other expenses relating to property.

### 6.6 Consultation

- 6.6.1 No formal public consultation is required but Members and residents will be kept advised and updated. A detailed media/communications strategy in relation to the issues raised in this report is being drafted.

6.6.2 Once agreed, draft works procedures will need to be circulated to EWT, Coastguard, Anglian Water (who own pumping station on Council land next to Coastguard Station), Essex and Suffolk Water, National Grid (Gas) and UK Power Networks to ensure risk awareness. Public Safety Information will be also be published on the Council website.

## 6.7 Equalities and Diversity Implications

The aim of the recommendations of this report is to protect all residents and groups within the community of Southend.

## 6.8 Risk Assessment

6.8.1 Risk mitigation has been on-going for some time as the S106 works have been carried out and completed at Shoebury Garrison to ensure all work is satisfactory prior to handover.

6.8.2 Most recently, the Dynasafe BACTEC Threat Assessment was commissioned to highlight any potential risks associated with land transferred or to be transferred to the Council.

6.8.3 A procedure will need to be in place (including awareness training) for Council employed / contracted staff and contractors carrying out works in the park and foreshore to ensure their safety due to the risk of UXOs.

## 6.9 Value for Money

The potential transfer of the Council's future asset (namely, the foreshore at Shoebury Garrison) to the MoD is considered to represent good value for money, even at a nominal consideration, as it significantly reduces Council's liability in respect of occupiers' liability and on-going security and maintenance costs.

## 6.10 Community Safety Implications

6.10.1 The work carried out by the developer in respect of the repairs to the sea defences at Shoebury Garrison is essential in terms of community safety to avoid potential flooding and the damage it can cause. The Council must therefore ensure that the works are completed to its reasonable satisfaction and in accordance with the specification outlined in the S106 prior to taking transfer of the sea walls and associated structures.

6.10.2 Although the recent Dynasafe BACTEC assessment has identified risks not only on the foreshore area, but also on land already transferred to the Council (particularly new Gunners Park) the risks are not the same – see 3.9 above.

## 6.11 Environmental Impact

The environmental implications are clearly evident should the sea wall become damaged or breached thus not acting as an effective defence against flooding.

## 7. Background Papers

Mott McDonald Assessment 2015  
Dynasafe BACTEC Explosive Ordnance Desktop Threat Assessment 2015  
Shoeburyness Artillery Ranges Bye Laws 1936

## 8. Appendices

**Appendix 1:** The sea walls and associated structures to be transferred to the Council

**Appendix 2:** Maps showing additional areas of land to be transferred to the Council

- 2a Land adjacent to New Barge Pier Road
- 2b Land north east of former Officers Mess
- 2c Gog's Berth Surface Water Outfall

**Appendix 3:** Area of foreshore to potentially be transferred to the MoD

**Appendix 4:** Draft Gunners Park Management Plan showing areas that are to be adopted and managed by the Council