

**CABINET**

Wednesday, 11 April 2018

**TRANSFER OF OPEN SPACES/PLAY AREAS AT WORLINGHAM (REP1751)**

**EXECUTIVE SUMMARY**

1. A freehold transfer of open spaces/play areas currently owned by Waveney District Council to Worlingham Parish Council is being negotiated.
2. Cabinet approval is now sought 'in principle' to allow final details to be progressed

Is the report Open or Exempt?	Open
<b>Wards Affected:</b>	Worlingham
<b>Cabinet Member:</b>	Councillor Bruce Provan Cabinet Member for Resources
<b>Supporting Officer:</b>	Tony Rudd Valuer 01502 523356 <a href="mailto:tony.rudd@eastsoffolk.gov.uk">tony.rudd@eastsoffolk.gov.uk</a>

## **1 INTRODUCTION**

- 1.1 In line with the divestment process, a transfer of play areas owned by Waveney District Council (WDC) at Worlingham to Worlingham Parish Council (WPC) is in the process of being negotiated. Waveney Norse, as day to day managers of the sites, and Sentinel Leisure Trust, given their role in the provision and development of community leisure facilities, have also been involved in the negotiations.
- 1.2 The parish council have confirmed that they are 'in principle' happy to proceed and Cabinet approval is now sought on a similar basis.

## **2 BACKGROUND**

- 2.1 WDC owns four play areas in Worlingham:
  - All Saints Green
  - Bluebell Way (also known as Foxglove Close)
  - Woodfield Park (also known as Cedar Drive)
  - Werels Loke (also known as Pepy's Avenue or Janet Hadenham Close)
- 2.2 In support of its process of divesting suitable assets to town and parish councils a transfer is being negotiated. Locations of the particular play areas and proposed heads of terms are provided in Appendix A (red outlines) and Appendix B respectively
- 2.3 WDC also owns a similar site at Codlins Lane. This has been excluded from this report as discussions on this site are not as far advanced. The site is located within Worlingham but the only entrance is from Codlins Lane, which is within Beccles. WPC would only consider accepting a transfer of this site if a new entrance can be formed from Newland Avenue to the east, which is within Worlingham. These works, even if they prove viable, are likely to take some time to progress.
- 2.4 WPC require certain works to be carried out at all sites before transfer. WPC also require WDC, through Waveney Norse, to provide 24 months maintenance of the sites after transfer. This is a recent change and is therefore not as the heads of terms at Appendix B – the period previously discussed was 12 months. WPC also require replacement of a roundabout item at the All Saints Green site.

## **3 HOW DOES THIS RELATE TO EAST SUFFOLK BUSINESS PLAN?**

- 3.1 The empowerment of local town and parish councils by continuing to transfer amenity and community assets to them with their agreement is one of the planned actions for the whole of East Suffolk within the East Suffolk Business Plan. This planned action supports the Critical Success Factors related to Leisure, Community and Resources.

## **4 FINANCIAL AND GOVERNANCE IMPLICATIONS**

- 4.1 Waveney Norse estimate that the costs of the initial works to the four sites will be in the order of £14,000. They estimate that the annual cost of maintaining and managing the sites are in the order of £1,500 per year or £12,000 for the four sites over two years. Waveney Norse have indicated that if agreement is reached, to aid the transfer the initial works could be carried out by Waveney Norse within the existing repair and maintenance budgets provided by WDC. Most of the works are items of repair/renewal which would need to be carried out at some point in any case.

- 4.2 WDC would need to identify new funding in the region of £10,000 for replacement roundabout at All Saints Green. This is an item which might in any case require action whether the transfer proceeds or not. Waveney Norse have indicated that in such cases their usual process is to consider other funding options before requesting funding via any specific arrangement with WDC. These options would include sourcing from Waveney Norse's existing repair and maintenance budgets, or identifying Section 106 or similar funding.
- 4.3 If transfer of the four sites proceeds the overall cost to WDC is likely to be in the region of £36,000. The majority of this cost would currently be funded by WDC in any case through the management and maintenance of the sites over time. If it were to be funded through WDC's continuance of payments to Waveney Norse for regular ongoing management/maintenance of these sites a period of 6 years would elapse before any savings would be achieved i.e. £36,000 expenditure divided by estimated annual expenditure of £6,000 = approximately 6 years.
- 4.4 WDC may incur limited ancillary costs in the transfer e.g. public notices related to the Open Space Disposal process noted below. These are estimated to be in the region of £500.
- 4.5 In terms of governance this report is seeking Cabinet approval 'in principle' as some final details remain to be fully resolved, and objections may be received to the proposed disposal through the Open Space Disposal process noted below.
- 4.6 The legal issues of transfer are not felt to be especially problematic, although some of the legal titles to the sites do contain limitations regarding disposal and use. The proposed disposal would be subject to the statutory Open Space Disposal process under the Open Spaces Act 1906. This requires that the proposed disposal is the subject of a notice in a local newspaper for two consecutive weeks and that any objections arising are considered by WDC.
- 4.7 The risks to WDC involved in the proposed transfer would primarily be in losing the land as open space and in not achieving value for money. Given the legal restrictions on use or disposal which exist, or can be applied through the transfer, these risks can largely be mitigated.
- 4.8 In terms of partnership working Waveney Norse and Sentinel Leisure Trust are both supportive of the proposed transfers.
- 4.9 A valuation of the freehold land carried out in January 2018 indicated that the unrestricted freehold value of the subject site is £108,000. It may also be necessary to consider the 'restricted value' of the site i.e. a value which takes in to account any relevant voluntary conditions to be imposed by WDC through the transaction. This might include, for instance, restrictive covenants in respect of disposals. In this matter voluntary conditions may be considered e.g. to try to ensure that the use of the sites remains as at present i.e. 'open space'. These are not relevant conditions under the General Disposal Consent (England) 2003 as the provision of open space is a discretionary action. The restricted and unrestricted values are therefore the same.
- 4.10 Under the Local Government Act 1972 Section 123 WDC may not dispose of land for a consideration less than the best that can reasonably be obtained without consent of the Secretary of State. The General Disposal Consent (England) 2003 provided that the consent of the Secretary of State is not required where the unrestricted value of the land does not exceed £2,000,000.

- 4.11 Certain other conditions also apply under the General Disposal Consent (England) 2003. The disposal must be likely to contribute to the improvement of economic, social or environmental well-being of persons resident or present in its area.
- 4.12 It is accepted that divestment of sites to town or parish council generally aids the provision of local facilities through a more focused local approach. This occurs through improved community engagement and better local democracy. These both contribute to improved social well-being. In some cases external funding towards local projects is only available to town and parish councils. The proposed transfer will enhance the opportunities for such funding and thereby may also contribute to improved social well-being.

## **5 OTHER KEY ISSUES**

- 5.1 No detailed or formal Equality Impact, Assessment, Sustainability Impact Assessment or Partnership Impact Assessment have been carried out. This is because the sites are intended to continue their function as open spaces/play areas open to the community.

## **6 CONSULTATION**

- 6.1 As indicated above the primary consultation/discussion regarding the proposal has been carried out between WDC and WPC. The proposed transfer could not be completed unless both or these parties wish to do so.
- 6.2 Consultation has also taken place internally including the WDC legal team together with partner consultation including Waveney Norse and Sentinel Leisure Trust.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 The main alternative to the proposed transfer would be for WDC to continue to own and manage the various open spaces. This is not favoured given the commitment in the East Suffolk Business Plan to continue to transfer amenity and community assets to town and parish councils. This option would also mean that WDC would continue to incur management and maintenance costs indefinitely.
- 7.2 Another alternative might be use of the land by WDC for other purposes. No formal enquiries as to alternative uses have been made of WDC Planners. Informal discussions have indicated that there might be very limited development opportunities. Most of the various sites are subject to restrictions in respect of the Open Spaces Act 1906 meaning any opportunities for alternative used would be severely restricted. Part of the Woodfield Park site is not covered by such a restriction, but is within a site noted in the Local Plan as protected as Open Space under Development Management policy DM25. Alternative uses for this area would therefore also be very limited. In the case of the Bluebell Way/Foxglove Close site there are no such restrictions, but WDC has no proposals for alternative uses. Any development opportunities which do exist may in any case require agreements with adjacent owners. Action would be taken to protect WDC's interests under the proposed transfer through restrictive covenants as to use or other suitable legal means.

## **8 REASON FOR RECOMMENDATION**

- 8.1 The recommendation will support the actions in the East Suffolk Business Plan.
- 8.2 The recommendation will allow the completion of final negotiations.

8.3 The recommendation will allow the consideration of any objections to the proposed disposal by the Cabinet in due course.

#### **RECOMMENDATIONS**

1. That the freehold transfer of the various open spaces identified in Appendix A is approved, in principle, to Worlingham Parish Council subject to the necessary advertisements required under the Open Spaces Act 1906 being placed and responses to them being considered further.
2. That if no objections to the necessary advertisements referred to in recommendation 1 above are received, delegated authority is granted to the Head of Operations Strategic Management, acting in consultation with the Cabinet Member for Resources, and Head of Legal and Democratic Services, to finalise all aspects of the transfer on terms that best protect the Council's interests.
3. That if objections to the necessary advertisements referred to in recommendation 1 above are received, they be reported back to Cabinet for its further consideration.

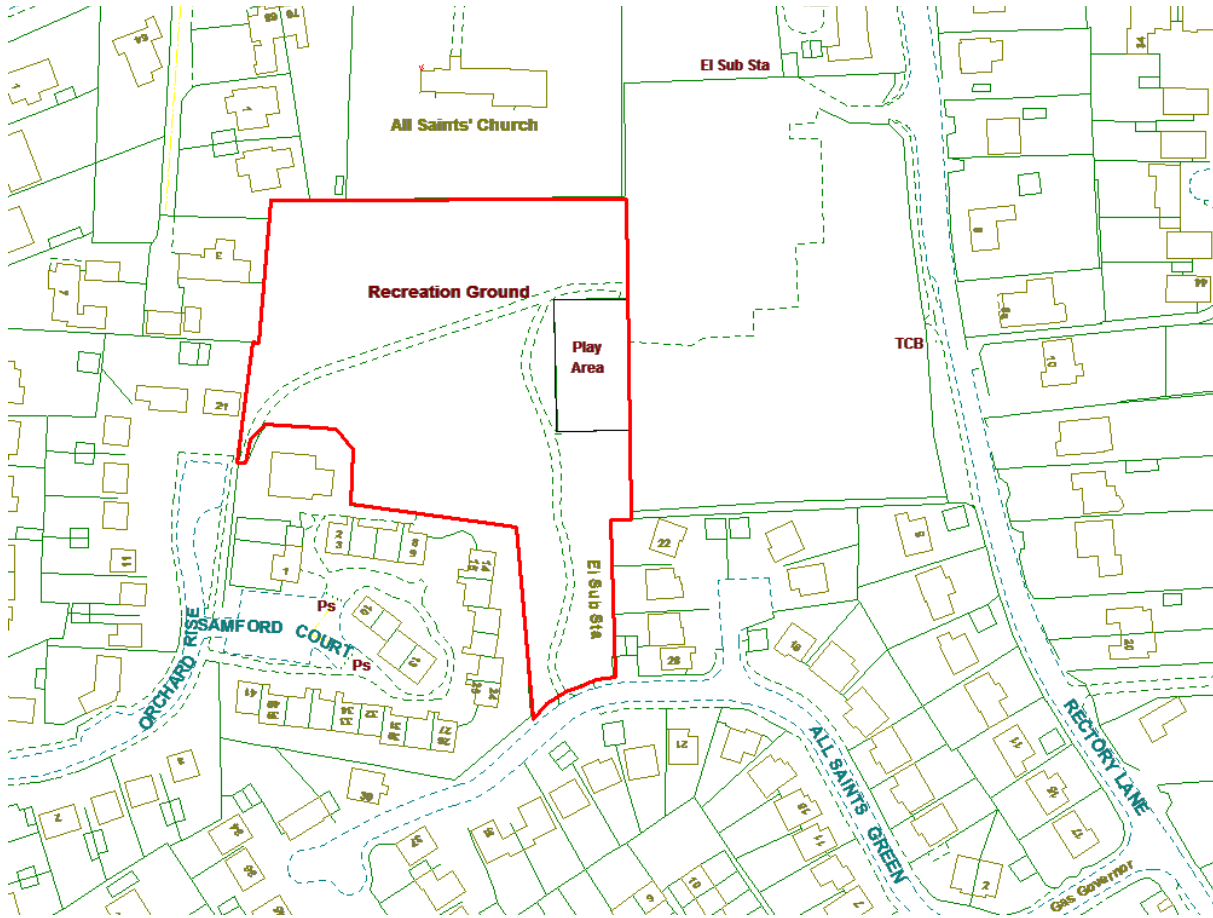
#### **APPENDICES**

<b>Appendix A</b>	Plans of the various sites
<b>Appendix B</b>	Proposed heads of terms for the transfer (but see paragraph 2.4 above)

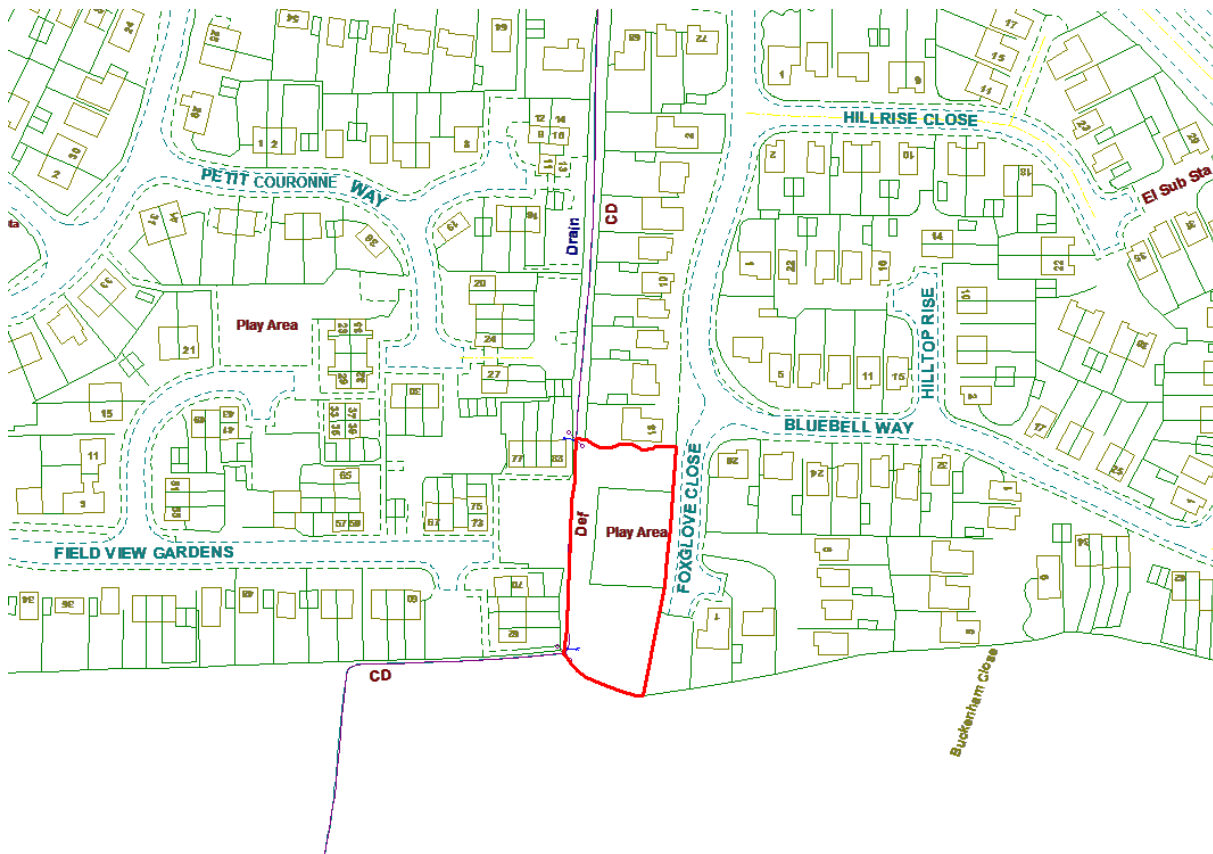
**BACKGROUND PAPERS – None**

Appendix A – Locations (Red outlines)

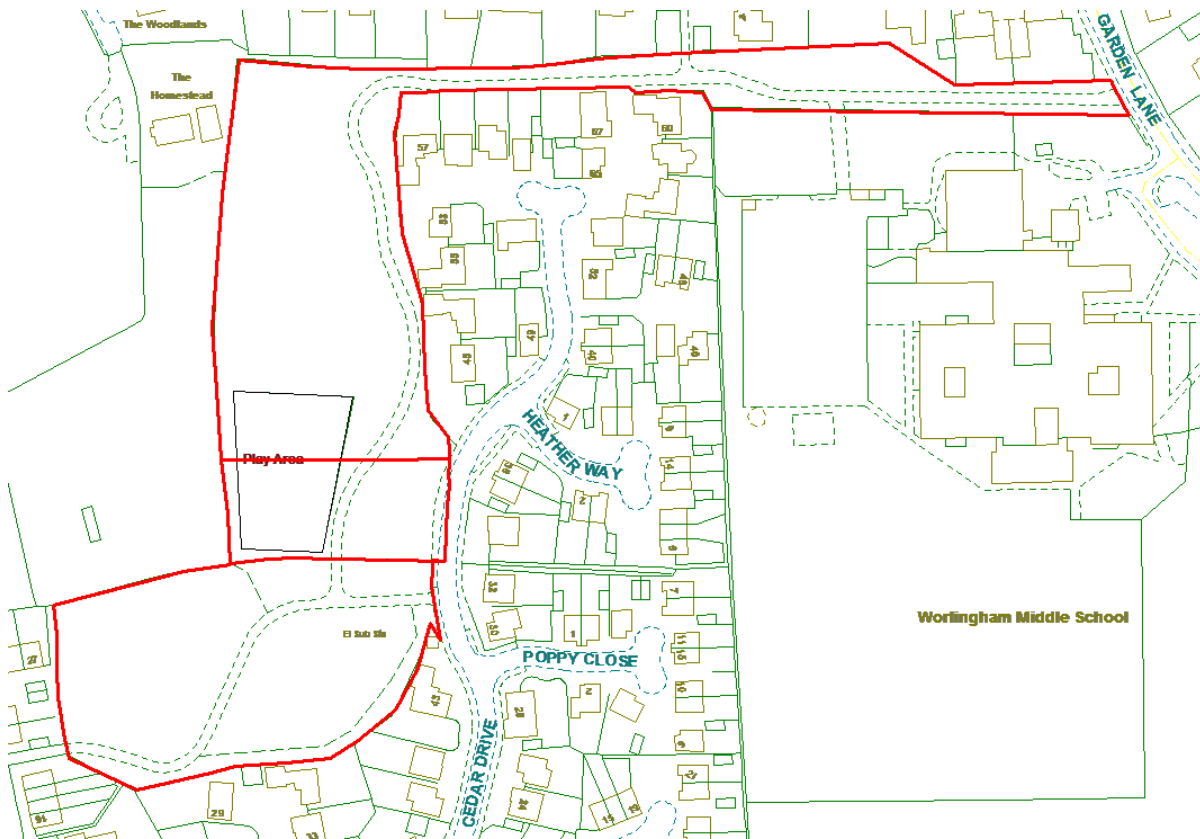
All Saints Green



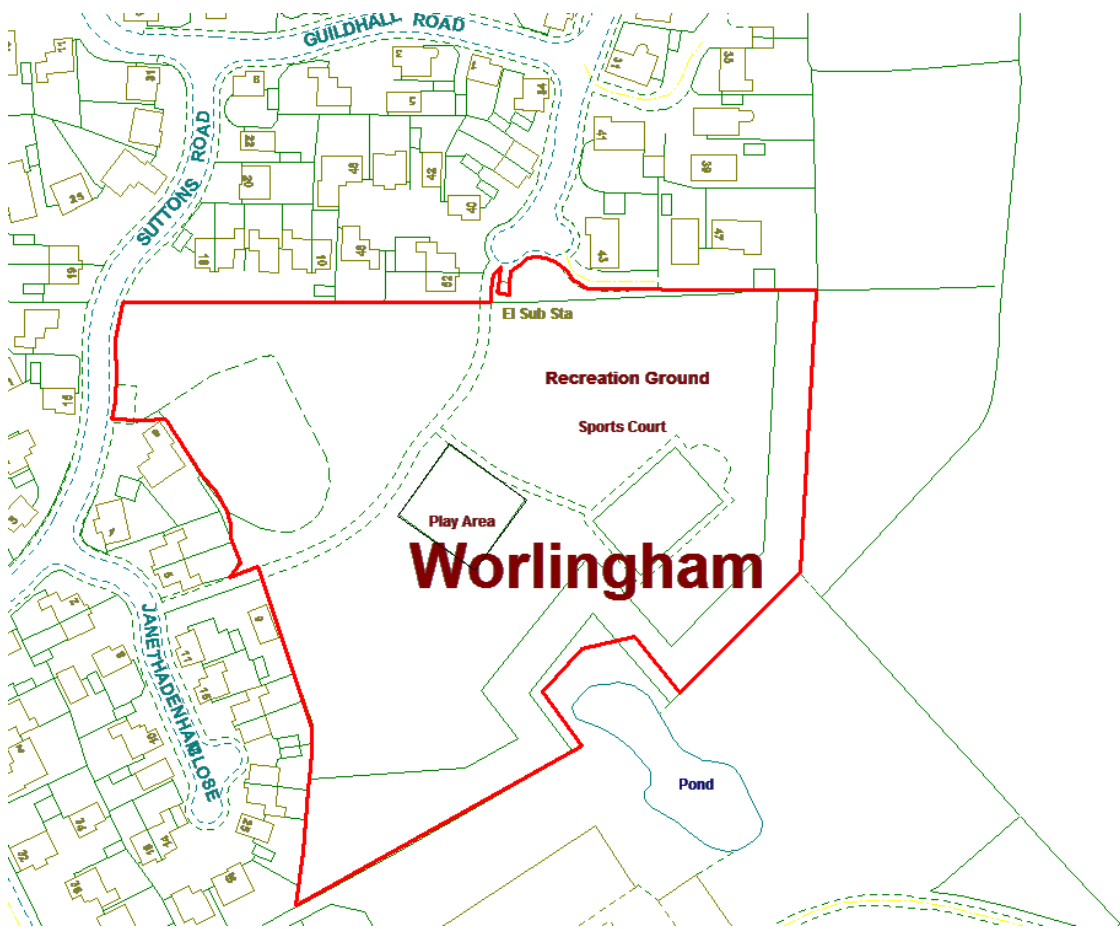
Bluebell Way (also known as Foxglove Close)




Woodfield Park (also known as Cedar Drive)



Werels Loke (also known as Pepy's Avenue or Janet Hadenham Close)



 <p>Waveney District Council Serving the Community</p>	<p>WITHOUT PREJUDICE AND SUBJECT TO CONTRACT</p> <p><b>8.3.1 HEADS OF TERMS SCHEDULE</b></p> <p>FREEHOLD TRANSFER</p>
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*You are strongly recommended to seek professional advice from a qualified surveyor, solicitor or licensed conveyancer before agreeing or signing a Land or Property transaction. Further guidance is available through professional institutions and trade associations.*

*Document dated: 27 April 2017*

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|------------------------------|---|
| <b>1.1 Parish:</b>           | Worlingham  |
| <b>1.2 Address:</b>          | Various parcels of open and play space within the parish of Worlingham as detailed in section 1.3 below.  |
| <b>1.3 Description/Plan:</b> | <p>Land parcels to be transferred:</p> <ol style="list-style-type: none"> <li>1. Land north of All Saints Green (coloured red) including a large area of recreational open space and a single equipped play area</li> <li>2. Land known as Bluebell Way west of Foxglove Close (coloured red) including a single equipped play area within an area of open space</li> <li>3. Land east of Codlins Lane (edged red) including a single equipped play area</li> <li>4. Land west of Cedar Drive known as Woodfield Park (coloured purple) including a playing field and a single equipped play area</li> <li>5. Land east of Janet Hadenhall Close and south of Pepys Avenue (coloured purple) including open space and two equipped play areas</li> </ol> <p>All land parcels are identified with either a block colour red or purple, or edged red on the attached location plans. These plans indicate the extent of the council's ownership at each location.</p> |
| <b>1.4 Rights Granted:</b>   | Freehold  |
| <b>1.5 Rights Reserved:</b>  | Usual conduit provisions and restrictive covenants, feasibility studies attached.   |

**Parties**

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|------------------------|--|
| <b>2.1 Transferor:</b> | Waveney District Council   |
| <b>2.2 Solicitor:</b>  | Alistair Bissett, Property Lawyer, East Suffolk House, Station Road, Melton, Suffolk, IP12 1RT |



- 2.3 Agent:** Gayle Hart, MRICS  
Riverside, Canning Road, Lowestoft, Suffolk, NR33 0EQ  
Tel: 01502 523351  
Mobile: 07972851162
- 2.4 Transferee:** [gayle.hart@eastsoffolk.gov.uk](mailto:gayle.hart@eastsoffolk.gov.uk)  
Worlingham Parish Council
- 2.4 Solicitor:** To be advised
- 2.5 Agent:** To be advised

### **Permitted Use:**

- 3.1** Other than land to the land west of Foxglove Close the other areas of land are identified as designated open space under the 1906 Act. Please note, in relation to the Foxglove Close land, although there is no restriction to keep the majority of the land as Open Space specific restrictions are identified in the legal feasibility study attached.

NN: we await the results of a legal feasibility study for the Codlin Lane land. We will pass this information on to Worlingham Parish Council once received.

### **Consideration**

- 4.1 Price** £1.00 if demanded

### **Outgoings:**

- 5.1** Transferee responsible for all outgoings following completion of Transfer.

### **Repair:**

- 6.1 Boundaries/Other:** Transferee to keep in reasonable condition.
- 6.2 Grounds Maintenance:** Transferee to keep in reasonable condition including all equipment and surfacing on each parcel of land

### **Alterations/Improvements:**

- 7.1 General** The Transferee is not to carry out or allow to be carried out any development of the site subject to this provision not preventing works reasonably consistent with the maintenance or improvement of the site for use as a public space.

### **Disposal:**

- 8.1 Whole:** The Transferee shall not dispose of the site in any way except that disposal to a

body with similar aims to the transferee for a similar purpose may be permitted upon application to the transferor.

- 8.2** Part: The Transferee shall not dispose of the site in any way except that disposal to a body with similar aims to the transferee for a similar purpose may be permitted upon application to the transferor.

**Planning:**

- 9.1** Transferee to observe and comply with the Planning Acts and make no application under the Planning Acts without Transferor's prior written consent.(not to be unreasonably withheld)

**Costs:**

- 10.1 Of Transfer:** Each party to bear own costs although Transferee to reimburse any "cash" costs of Transferor if required ( e.g. Land registry costs, Local Search costs, Public notice costs etc)

- 10.2 Of Consents:** Transferee

**Indemnity:**

- 11.1** Transferee is to indemnify the Transferor against any claims arising from the Transferee's interest in and occupation of the premises.

**Insurance:**

- 12.1 Building:** Transferee to ensure appropriate insurance is in place at all times.

**Other Terms:**

- 13.1 Restrictive covenant:** The Transferee shall use the land for the permitted use only and the Transferor reserves the right to require any relevant wording to be included in the Transfer whether as a restrictive covenant and/or other means.

- 13.2 Income:** Any income gained as a result of ownership of the land is to be applied to maintenance or improvement of the land for the permitted use.

- 13.3 Operational Support** The transferor will provide the Transferee, via Waveney Norse, its operational partner, one years maintenance support.

- 13.4 General:** The Transfer shall contain any other terms and conditions as the Transferor's solicitor considers necessary for a transaction of this nature.

The Transferor shall not provide any title indemnity insurance or the like

The Transfer shall be subject to any existing agreements in respect of the land parcels.

I/We hereby indicate my/our agreement to the proposed heads of terms for the transfer of the land parcels identified as set out in section 1.3 above.

Signed:.....  
*On behalf of Worlingham Parish Council*

Name:.....  
*In block capitals*

Date:.....