

CABINET

9 AUGUST 2016

CALL-IN: VARIOUS LAND DISPOSALS

Portfolio Holders: Councillor Adrian Gulvin, Resources
Councillor Rupert Turpin, Business Management

Report from: Perry Holmes, Chief Legal Officer

Author: Julie Keith, Head of Democratic Services

Summary

This report advises the Cabinet of the outcome of a call-in considered by the Business Support Overview and Scrutiny Committee on 7 July 2016, in relation to Cabinet decision (87/2016) to close, appropriate, declare surplus and dispose of various council owned properties, applying for planning permission and entering into any necessary agreements in relation to the re-provision of services and undertaking the procurement of development/alternative facilities where appropriate.

The Committee referred two matters back to Cabinet for reconsideration as set out below.

1. Budget and Policy Framework

- 1.1 The rules relating to call-in are set out in section 15 of Part 5, Chapter 4 of the Constitution.
- 1.2 On this occasion, the Business Support Overview and Scrutiny Committee have agreed to refer two matters back to Cabinet for reconsideration, in accordance with paragraph 15.6 of Part 5, Chapter 4 of the Constitution.

2. Background

- 2.1 The Cabinet considered a report entitled Various Land Proposals on 7 June 2016 and made a number of decisions, as set out in Appendix A.
- 2.2 The above decisions were subsequently called in by six Members of the Council and referred to the Business Support Overview and Scrutiny Committee on 7 July 2016 for consideration. The reasons for the call in were as follows.

“Medway Council, like all local authorities across the country, is having excessive budget cuts put upon it by the Conservative Government. As an opposition group we understand that the administration will need to find alternative funds. We reiterate the point that we are not principally opposed to the concept of the disposal of land.

However we are incredibly concerned at the approach taken by the Cabinet in agreeing 87/2016 – the decision is clear that the sites, which included valued community facilities like car parks and community centres, are declared surplus and to be disposed of.

This is before any public consultation on the matter takes place. During the cabinet meeting, Councillors including the Leader of the Council made indications there would be public consultation but that was not in either the decision or the paragraphs in section 3 which go into detail about plans for each of the seven sites.

Earlier in the agenda for that particular Cabinet meeting there was a decision which agreed to start a public consultation (84/2016). That is the type of decision that should have started this process. We will be seeking at the Overview and Scrutiny Committee to send the issue back to cabinet with a recommendation to start a public consultation on the seven sites.”

- 2.3 The Chief Legal Officer originally provided the following comments in the report to the Business Support Overview and Scrutiny Committee:
 - 2.3.1 Cabinet has so far decided to delegate declaring surplus of the various assets and their subsequent disposal to officers in consultation with the Leader and Cllr Gulvin, Portfolio Holder for Resources. No actual disposal has been agreed yet.
 - 2.3.2 The Cabinet made reference to the requirement for consultation to take place before any further decision making and that has started. Conversations have taken place with stakeholders and building users and will continue to do so. These will inform design decisions if these proposals are taken forward. There have also been conversations with disabled car park users and they will continue and inform the Diversity Impact Assessments that will be completed before any further decisions are taken.
- 2.4 The record of the Committee’s full consideration of the call-in is set out in Appendix B to this report. In summary, the Committee agreed the following:
 - 2.4.1 The Committee recommended to Cabinet to reconsider decision no. 87(iii)/2016 as follows (recommended revisions to the Cabinet decision are set out as tracked changes):

“To close the Hook Meadow Community Centre, Library and Changing Rooms, Chatham, and declare them surplus, appropriate them and dispose of them on the best terms reasonably obtainable ~~and to enterwhilst entering~~ into any necessary agreements concerning the re-provision of the community facilities at Hook Meadow as set out in paragraph 3.3 ~~of the reportabove~~”.

- 2.4.2 The Committee recommended to Cabinet to reconsider decision no. 87(iv)/2016 as follows (recommended revisions to the Cabinet decision are set out as tracked changes):

“To close the White Road Community Centre, Chatham, declare it surplus, appropriate it and dispose of it on the best terms reasonably obtainable ~~and to enterwhilst entering~~ into any necessary agreements concerning the re-provision of the community facilities ~~on theat~~ White Road Community Centre ~~site~~, as set out in paragraph 3.4 ~~of the reportabove~~.”

- 2.4.2.1 With regards to the recommendation from the Committee in respect of the White Road Community Centre, please note that the Cabinet had originally agreed “...the re-provision of the community facilities on the White Road Community Centre site...” whereas the Business Support Overview and Scrutiny Committee recommended “...the re-provision of the community facilities at White Road Community Centre...” The Cabinet’s intention is to reprovide facilities on the site, therefore, the recommendation at paragraph 7.1.2 reflects this intention.
- 2.4.3 The Cabinet is also advised that at the conclusion of the called-in decisions, the Business Support Overview and Scrutiny Committee agreed that each of the proposals be reported back to the Committee before any decision is taken.

3. Options

- 3.1 The Cabinet is asked to reconsider the decisions, amending the decisions or not, before adopting a final decision (on the two matters set out in paragraphs 2.4.1 and 2.4.2 above).
- 3.2 To assist the Cabinet, details of the proposals relating to the referred matters are set out below:

3.3 Hook Meadow Community Centre, Library and Changing Rooms

- 3.3.1 This site is edged black on the attached plan (area approximately 0.3 ha.) Officers have developed a proposal to re-provide community meeting facilities including a library and sports changing rooms thus allowing the current site to be re-developed. It is proposed, that delegated authority is granted:
- To close it, declare it surplus and dispose of it with officers preparing a design brief before the site is offered for sale on the open market.

- Enter into any necessary agreements concerning the re-provision of community and library facilities.
- 3.3.2 Depending on negotiations it is hoped that the Council could bring this opportunity to the market before the end of 2016/17.
- 3.3.3 Officers have discussed the re-provision of both community and library services on adjacent land. The re-provision of the community space and library provision could be in the form of a “neighbourhood community hub” with longer library opening hours. The changing room facilities currently integral to the Community Centre would also need to be re-provided

3.4 White Road Community Centre

- 3.4.1 This site is edged black on the attached (area approximately 0.62 ha.) Officers have developed a proposal that would see the community centre footprint and the open land behind it which is designated as open space in the Local Plan but is not used as open space re-developed for housing. The proposal includes the re-provision of a new community centre on site. It is proposed, that delegated authority is granted:
- To close it, declare it surplus and dispose of it with officers preparing a design brief before the opportunity is offered on the open market.
 - Enter into any necessary agreements concerning the re-provision of community facilities.
- 3.4.2 It is hoped that the council could bring this opportunity to the market before the end of 2016/17.
- 3.4.3 The council would need to go through a procurement process before selecting a partner to re-provide the community centre in connection with the development of the site.

4. Chief Legal Officer’s Comments

- 4.1 This report advises the Cabinet of the outcome of discussion at the Business Support Overview and Scrutiny Committee on 7 July 2016 as a consequence of the call-in of Cabinet decision 87/2016. Section 9F of the Local Government Act 2000 requires a local authority’s executive arrangements to provide for Overview and Scrutiny Committees to have the power to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Executive (i.e. Leader and Cabinet). This includes the power to review or scrutinise a decision made but not implemented (known as the call-in procedure) and to recommend that the decision be reconsidered by the person who made it (in this case the Leader and Cabinet) or to arrange for scrutiny of the decision to be exercised by full Council. The decision(s) subject to call-in cannot be implemented until the conclusion of this process.

- 4.2 The options available to the Business Support Overview and Scrutiny Committee on 7 July in relation to this matter were either to consider the matter and accept the Cabinet decision, to ask the Leader and Cabinet to reconsider the decision or to refer the matter to full Council for scrutiny and a decision on whether to refer the issue back to the Leader and Cabinet (subject to guidance in the Constitution on the circumstances in which this may be an appropriate course of action). The Constitution is clear that a decision can only be called in once.
- 4.3 On 7 July the Business Support Overview and Scrutiny Committee decided to request the Leader and Cabinet to reconsider and amend Cabinet decisions 87(iii) 2016 and 87(iv) 2016 as set out in paragraphs 2.4.1 and 2.4.2 above. The Cabinet is required to consider whether or not to accept the recommendation from the Business Support Overview and Scrutiny Committee and to adopt a final decision which may then be implemented.
- 4.4 The changes recommended by the Committee are consistent with the intention of the Cabinet on these particular sites.
- 4.5 In this case, in addition to referring comments and a recommendation back to the Leader and Cabinet, the Business Support Overview and Scrutiny Committee has taken a decision that each of the proposals for land disposals covered in decision 87/2016 should be reported back to the Committee before any decision is taken. This was an unusual step potentially building in further delay in implementation of these executive decisions which exceeds the scope of the powers available to Overview and Scrutiny under the call-in procedure, as set out above. Statutory guidance is clear that call-in procedures should not be used unduly to delay decisions or slow down the process of decision making and the guidance clearly acknowledges that executive decisions may need to be implemented quickly. Once the Cabinet has considered and dealt with recommendations from an Overview and Scrutiny Committee under the call-in procedure the decisions can be implemented without further delay.
- 4.6 On this occasion in order to accommodate the wish of the Business Support Overview and Scrutiny Committee to have more information before the various disposals are finalised the Chief Legal Officer proposes to submit an overarching report to a future meeting of the Committee providing an update on each proposal. However, unless Cabinet determines otherwise, work to implement the decisions of the Cabinet at this meeting will proceed. In order to secure the best terms reasonably obtainable for the Council, action may be needed ahead of an update report to the Business Support Overview and Scrutiny Committee. The Chairman and Opposition Spokespersons of the Business Support Overview and Scrutiny Committee can be kept informed of progress informally as implementation moves forward.

- 4.7 For the avoidance of doubt, the remainder of the decisions, i.e. 87 (i), (ii), (v), (vi) and (vii), as set out in Appendix A, took immediate effect.

5. Risk Management

- 5.1 Members were advised of the following risk management issues in the Cabinet report on 7 June 2016:

Risk	Description	Action to avoid or mitigate risk	Risk rating
Objections from users of the operational facilities.	Users object to the proposals.	Consultation with users to make clear that alternative facilities will be provided.	B2
Lack of developer interest in the opportunities.	Some of the opportunities do not attract any developer interest.	Work with planning officers and service departments to develop viable proposals for the sites which may mean that there is less than 25% affordable housing and that the operational facilities are not replaced on a like for like basis.	C2

6. Financial and legal implications

- 6.1 The Council is under a duty to obtain Best Consideration when it disposes of interests in property, unless consent is obtained from the Secretary of State or one of the general consents applies. Before the council can dispose of the sites it will need to obtain reports on title and carry out checks for any statutory undertaker's plant on the land.
- 6.2 Part of the land at Hook Meadow is used for open space, the council will need to advertise and consider any objections before it can dispose of this land.

7. Recommendations

The Business Support Overview and Scrutiny Committee has recommended the Cabinet to reconsider decisions 87(iii) and (iv)/2016 as follows:

- 7.1 The Cabinet is asked to delegate authority to the Chief Legal Officer, in consultation with the Portfolio Holder for Resources and the Leader:
- 7.1.1 To close the Hook Meadow Community Centre, Library and Changing Rooms, Chatham, and declare them surplus, appropriate them and dispose of them on the best terms reasonably obtainable whilst entering into any necessary agreements concerning the re-provision of

the community facilities at Hook Meadow as set out in paragraph 3.3 above.

- 7.1.2 To close the White Road Community Centre, Chatham, declare it surplus, appropriate it and dispose of it on the best terms reasonably obtainable whilst entering into any necessary agreements concerning the re-provision of the community facilities on the White Road Community Centre site, as set out in paragraph 3.4 above.

8. Suggested Reasons for Decision

- 8.1 To respond to the recommendation from Business Support Overview and Scrutiny Committee to reconsider its decisions in respect of Hook Meadow Community Centre, Library and Changing Rooms and White Road Community Centre
- 8.2 To reduce revenue costs, obtain capital receipts and to bring forward land for much needed housing development

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Background papers

Report to 7 June 2016 Cabinet meeting – Various Land Disposals
<http://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=31329>

Report to 7 July 2016 Business Support Overview and Scrutiny Committee meeting – Call-In: Various Land Proposals
<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=123&MId=3521&Ver=4>

Appendices

Appendix A – Cabinet decisions 7 June 2016

Appendix B - Business Support Overview and Scrutiny Committee Minutes – 7 July 2016

Appendix C - Site Plans

Cabinet decisions on Various Land Proposals – 7 June 2016

<i>Decision number:</i>	<i>Decision:</i>
87/2016	<p>The Cabinet delegated authority to the Chief Legal Officer in consultation with the Portfolio Holder for Resources and the Leader:</p> <ul style="list-style-type: none">(i) To close, declare surplus, appropriate and dispose of the Whiffens Avenue Car Park, Chatham, on the best terms reasonably obtainable. However, no action to be taken to dispose of the property until the piece of work referred to in paragraph 3.1 of the report was completed.(ii) To close, declare surplus and dispose of the Kings Head Disabled Car Park, Rochester, on the best terms reasonably obtainable. However, no action to be taken to dispose of the property until the piece of work referred to in paragraph 3.2 of the report was completed.(iii) To close the Hook Meadow Community Centre, Library and Changing Rooms, Chatham, and declare them surplus, appropriate them and dispose of them on the best terms reasonably obtainable and to enter into any necessary agreements concerning the re-provision of the community facilities at Hook Meadow as set out in paragraph 3.3 of the report.(iv) To close the White Road Community Centre, Chatham, declare it surplus, appropriate it and dispose of it on the best terms reasonably obtainable and to enter into any necessary agreements concerning the re-provision of the community facilities on the White Road Community Centre site, as set out in paragraph 3.4 of the report.(v) To declare surplus and dispose of the land at the Esplanade, Rochester on the best terms reasonably obtainable, as set out in paragraph 3.5 of the report.(vi) To close, declare surplus, appropriate and dispose of the Luton Shoppers Car Park, Magpie Hall Road, Chatham on the best terms reasonably obtainable and to enter into any necessary agreements concerning the development of the Luton Shoppers Car Park site including the provision of replacement

parking, as set out in paragraph 3.6 of the report, which is to be retained on site.

- (vii) To declare surplus and dispose of the site of Aburound House, Gillingham, on the best terms reasonably obtainable, as set out in paragraph 3.7 of the report.

Reasons:

To reduce revenue costs, obtain capital receipts and to bring forward land for much needed housing development.

Appendix B

Business Support Overview and Scrutiny Committee – 7 July 2016

Call-In: Various Land Proposals – Minutes

Discussion:

Members considered a report regarding a call-in received from six Members of the Council of Cabinet's decisions (87/2016 – 7 June 2016) in relation to various land disposals. The Committee was requested to consider the Cabinet decisions and decide either to take no further action or to refer the decision back to Cabinet for reconsideration.

Councillor Maple, the Lead Member for the call-in, explained the reasons for the call-in as outlined in paragraph 2.2 of the report. In particular, he made the following points to the Committee:

That the Labour Group rarely used the call-in procedure in comparison, nationally, to opposition groups on other Local Authorities.

That the Labour Group was not opposed, in principle, to the disposal of land.

That the Labour Group recognised the Council's financial situation.

That given the Portfolio Holder for Resources had indicated that further reports may be submitted to Cabinet on land/property disposals, it was necessary to establish a set of principles for the process for such disposals, including how consultation should be undertaken.

That there were a variety of complex matters considered by the Cabinet on 7 June and that the form of consultation would be different for each of the matters.

That the Cabinet's decision and reasons for decision had not made reference to consultation nor the improvement of any facilities.

That the Cabinet had agreed consultation on proposals on a different matter at the same meeting (decision no. 84/2016 - Short Breaks Provision for Children with Disabilities and the Local Offer), and that the Cabinet should have formally agreed to consultation on the various land disposals.

That, in conclusion, the Cabinet should be asked to reconsider decision 87/2016 with a recommendation to start a public consultation on the seven sites.

Members then raised a number of questions and comments which included:

Concern was expressed that the Council's service departments had not objected to the proposals (paragraph 7.1 of the Cabinet report) which suggested that there had not been any analysis on the impact of the disposals

on the Council's strategies (e.g. Council Plan, Housing Strategy) or existing services.

That there had not been any reference to consultation with partners about whether any of the sites could be used to become community facilities.

That comparison with the issue with Short Breaks Provision was not appropriate given the scale and nature of the particular issues relating to short breaks provision.

That there was general support for the proposals, however, individual schemes needed to be looked at closely, for example, parking provision at Luton Road Shoppers Car Park, recognising that any improvement would be positive.

That the individual proposals presented to the Cabinet would have benefitted from being more developed and that it had been unhelpful that such a wide range of proposals had been included in one report and that any future proposals to Cabinet should be in single reports or grouped by type.

That there had been no analysis of the social impact of the disposal of Aburound House. The Head of Valuation and Asset Management informed the Committee that it was no longer used by the current leasee for operational purposes, however, the leasee had expressed an interest in acquiring the lease from the Council.

That there was some merit in some of the proposals, however, further detail was needed, as well as consultation being undertaken.

During discussion, the Head of Valuation and Asset Management confirmed that that Cabinet had agreed to delegate authority to the Chief Legal Officer, in consultation with the Leader and Portfolio Holder for Resources, to make the decisions set out in decision no. 87/2016.

Councillor Gulvin, Portfolio Holder for Resources, was invited by the Chairman to address the Committee to explain the basis for the Cabinet's decisions:

That it was not the intention to dispose of the community facilities at White Road and Hook Meadow without ensuring that community facilities were reprovided as part of the process.

That the redevelopment of the White Road site would enable the provision of much needed social housing as well as the reprovion of the community facilities.

That the Hook Meadow site was no longer fit for purpose and that redevelopment was necessary to allow the reprovion of community facilities.

That there would be extensive consultation in respect of these sites and that this would represent an opportunity to ask local residents what they would like to see provided.

That some of the sites (e.g. Whiffens Avenue and land at the Esplanade) represented a good opportunity to provide housing.

That the reprovision of disabled car parking spaces in Rochester would provide a better mix of parking (spaces would be reprovided at Northgate, Almond Place and at Rochester Station) whilst allowing the development of the Kings Head site which used to have buildings at that location.

In response to a question, the Portfolio Holder confirmed that the Hook Meadow and White Road community centres would be reprovided as part of the proposals.

In response to a question, the Portfolio Holder accepted that it had been unhelpful to submit one report to Cabinet given that some of the proposals in the report were more complex than others, that it would be appropriate for any future disposals to be submitted either in single reports or in reports grouped by type.

He also stated that Members would be able to consider these matters when presented to the Planning Committee for consideration, noting that, on certain occasions, it may be appropriate for the Council to apply for planning permission prior to the disposal of some of the sites.

In response to a question, the Portfolio Holder stated that he would expect Ward Members to be involved in consultation.

The Committee considered a proposal that the cabinet reconsider the decisions with a recommendation to start a public consultation on the seven sites, as set out in paragraph 2.2 of the report. On being put to the vote, the proposal was lost.

Decisions:

- (a) The Committee recommended to Cabinet to reconsider decision no. 87(iii)/2016 as follows:

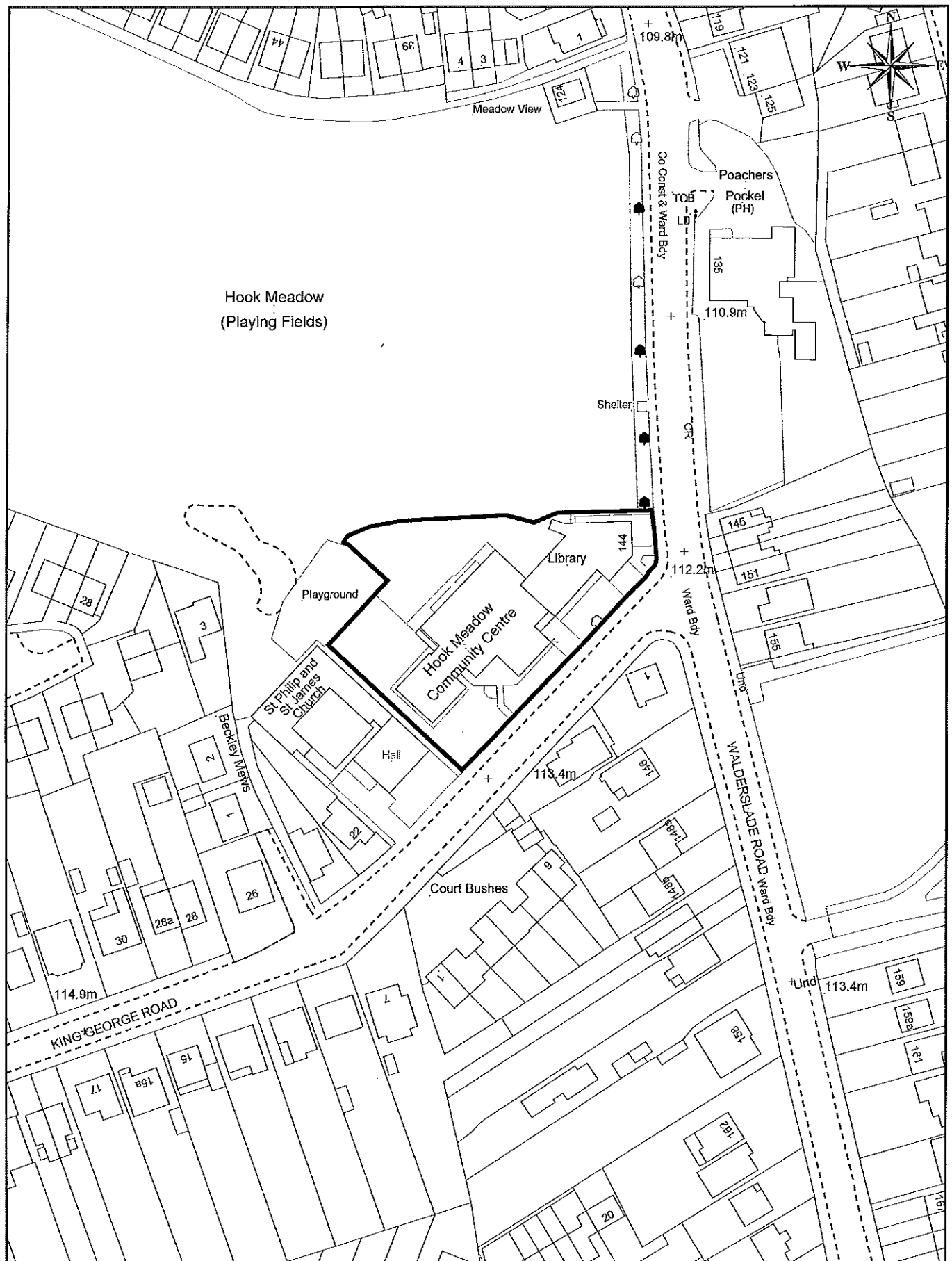
“To close the Hook Meadow Community Centre, Library and Changing Rooms, Chatham, and declare them surplus, appropriate them and dispose of them on the best terms reasonably obtainable whilst entering into any necessary agreements concerning the re-provision of the community facilities at Hook Meadow as set out in paragraph 3.3 above”.

- (b) The Committee recommended to Cabinet to reconsider decision no. 87(iv)/2016 as follows:

“To close the White Road Community Centre, Chatham, declare it surplus, appropriate it and dispose of it on the best terms reasonably obtainable whilst entering into any necessary agreements concerning

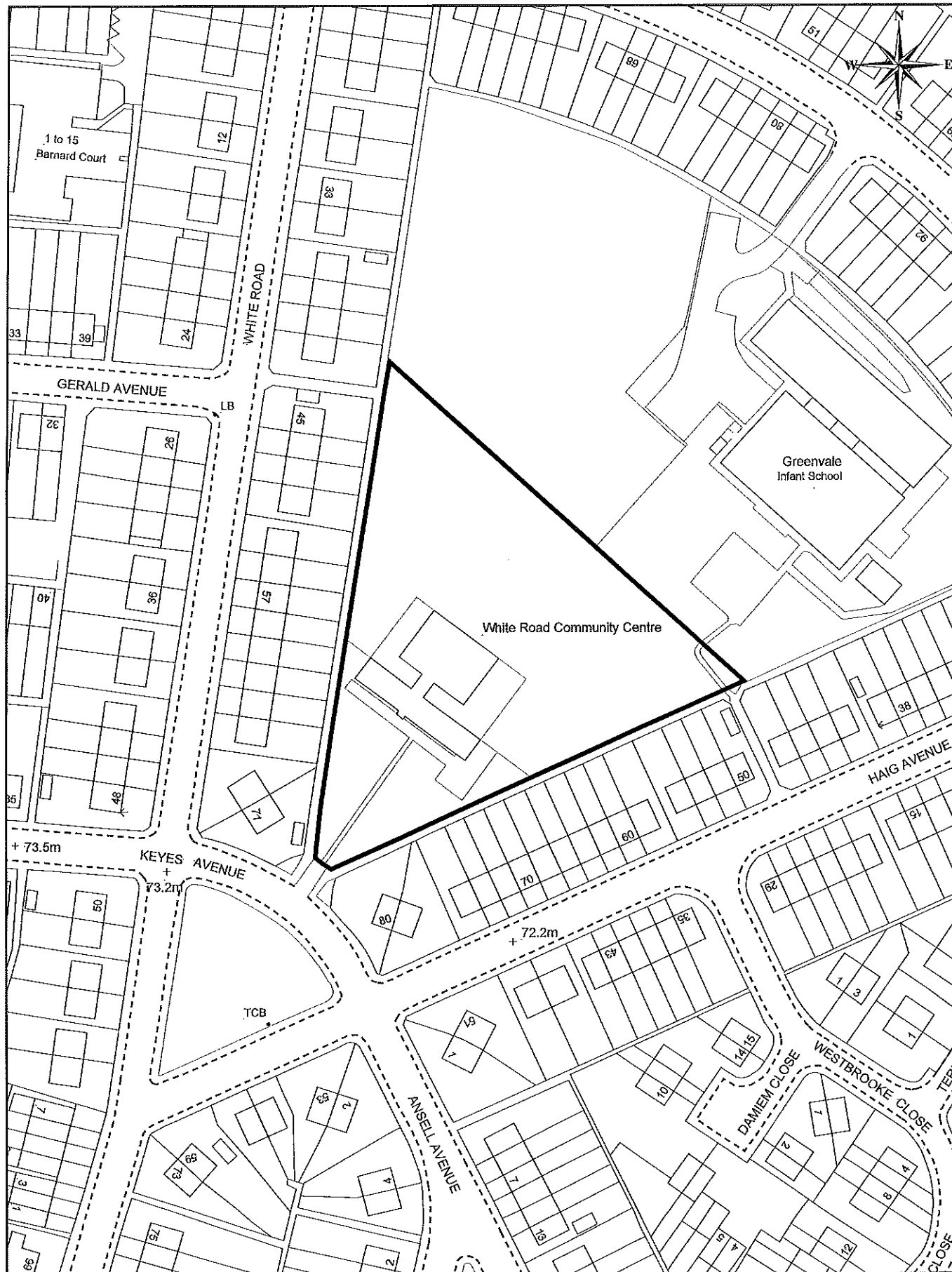
the re-provision of the community facilities at White Road Community Centre, as set out in paragraph 3.4 above”.

- (c) The Committee agreed that each of the proposals is reported back to the Committee before any decision is taken.



Hook Meadow Community Centre / Library

Area = 2,967 m²



White Road Community Centre
Area = 5,948 m²