

Report Number: SWT 159/20

Somerset West and Taunton Council

Special Full Council – 8 December 2020

Sale of a portion of Galmington Playing Fields land

**This matter is the responsibility of Executive Councillor Federica Smith-Roberts,
Leader of the Council**

Report Author: Alison North, Director for Internal Operations

1 Executive Summary / Purpose of the Report

1.1 In 2011, the Taunton Deane Borough Council Executive resolved that:

(1) The principle of selling a small part of the Galmington Playing Field to Maggie's Cancer Charity for the development of a new psycho-social support centre at Musgrove Park Hospital, Taunton be agreed; and

(2) Maggie's and Musgrove Park Hospital be requested to give careful consideration at the design stage to the potential impact on local parking issues and the provision of access to the new centre through the hospital grounds.

1.2 Since that decision Maggie's have received detailed planning consent on the 29 March 2019 and are ready for the Council to proceed with the land disposal process.

1.3 There has been continued community interest in the 'in principle' decision to sell a small part of Galmington Playing Fields and feedback has challenged the appropriateness of the location of the centre and the impact that would have on playing field provision in Taunton.

1.4 Following the formation of Somerset West and Taunton Council, the significant community interest and the fact that the Executive made an in principle decision in 2011, it is appropriate for the Council to consider this matter and make a final decision as to whether it wishes to proceed with the sale.

2. Recommendations

2.1 That Full Council resolves to authorise Officers:

2.1.1 to progress the disposal of a parcel of land at Galmington Playing Fields (as shown in Appendix D – Land Requirement) to Maggie’s for the purpose of a new cancer support centre; and if so

2.1.2 to report back to Full Council following statutory publication of the disposal for consideration of any representations received and a final decision on disposal; and

2.1.3 to investigate placing the remaining land into trust.

3 Risk Assessment (if appropriate)

3.1 None

4 Background

4.1 Somerset West and Taunton Council (the Council) are the freehold proprietors of playing fields at Galmington. The Galmington playing fields are located immediately adjacent to the NHS Musgrove Park Hospital – **Appendix A (Enclosure 1)**

4.2 The playing fields were gifted to the Mayor Aldermen and Burgesses of the Borough of Taunton by Andrew Hamilton Gault via a Deed of Gift dated 31st December 1931.

4.3 The Galmington playing fields were made registered as a charity on 13th December 1962 the charitable objects are stated to be the *“provision and maintenance of a recreation ground for the community as whole”*

4.4 As sole trustee, the Council, as a corporate body, both holds the property and oversees its application as the charity trustee. The charity is not a legal entity in its own right hence the title to the land is held in the name of Somerset West and Taunton Council. The charity land is not part of the corporate property and funds of the Council and is dealt with separately. Under the Council’s current constitutional arrangements, any decisions relating to the charity are to be taken by Full Council.

4.5 In 2011, Taunton Deane Borough Council (TDBC) was approached by Maggie’s – a charity which specialises in support to people with cancer and their family and friends. It should be noted there have been previous approaches to the Council in 1952 and 1987 from Musgrove Park Hospital for the hospital which resulted in the transfer of two small parcels of the playing fields. There was also an approach by the Hospital in 2002 for land for a car park which was declined by the Council.

4.6 Since 1996, Maggie’s have constructed a number of Centres across the UK within the grounds of NHS cancer hospitals with their own professional staff to offer the above support. Maggie’s are seeking to acquire the freehold ownership of a small part of the Galmington playing fields to allow for the construction of a new Centre. The area of land in question is located immediately adjacent to Musgrove Park Hospital and the new

Centre would be accessed through the Hospital. A drawing showing the location of the proposed Centre is attached **Appendix B (Enclosure 4)**.

4.7 The request for disposal of the land was considered by TDBC's Executive Committee on 16th November 2011. The Executive resolved as follows:

- (1) *The principle of selling a small part of the Galmington Playing Field to Maggie's Cancer for the development of a new psycho-social support centre at Musgrove Park Hospital, Taunton be agreed; and*
- (2) *Maggie's and Musgrove Park Hospital be requested to give careful consideration at the design stage to the potential impact on local parking issues and the provision of access to the new centre through the hospital grounds"*

4.8 Following the 'in principle' decision of 2011, the project was held in abeyance by Maggie's for a number of years due to other commitments. On 29 March 2019, Maggie's applied for and obtained planning permission for the proposed new two storey cancer care centre (38/19/0008).

4.9 It should be noted that in addition to any consideration paid for the land, Maggie's would also be required to cover the cost of providing and equipping a new children's play area on the playing fields and realigning the sports pitches.

5 The proposal from Maggie's and site considerations

- 5.1 Maggie's nationally build and operate a psycho-social support centres for people with cancer and their families, friends and carers. The proposed Building will be used as a Cancer Caring Centre providing practical, social, emotional support for people with cancer and their friends and families. Maggie's previous presentation given to Council about their building and services is attached in **Appendix C (Maggie's slide pack)**
- 5.2 Maggie's have national presence and have chosen Taunton to be the South West site as it would sit well alongside Musgrove's current cancer care provision of The Beacon Centre. The Beacon Centre was built ten years ago as a result of a public campaign to have world class cancer care provided in Somerset, it was recently voted the third best cancer centre in the country by the national cancer patient survey.
- 5.3 Site selection is a key component of Maggie's strategy and operating model. The centres are purposefully designed and located as close to oncology wards (no more than 100 metres away) as possible to ensure the care is accessible for patients and for the oncology clinicians. For example doctors will often use Maggie's to have very difficult conversation with families in an environment that is less clinical, this is especially key when dealing with young families. So the ability for a busy doctor to access the space easily is very important.
- 5.4 The site location that is able to achieve the above requirements is the small piece of Galmington Playing field as indicated in **Appendix D and D1**. The Galmington Playing fields area is 3.85ha and amount of land sought is 1840 m (72m x 24m) located in the North West Corner. This amounts to 4.6% of the total playing fields. **Appendix E**

(Design Statement) provides the detailed design statement of the site as provided to planning committee.

- 5.5 Meetings have taken place with Taunton and Somerset NHS Foundation Trust in January 2020 and November 2020 to understand and explore alternative options within the hospital estate. They have confirmed that there are limited and unacceptable options for locating the centre on the hospital site itself. They have an estate management plan that extends to 2030. These plans have no proposals to develop further healthcare facilities on any part of Galmington Playing Fields, the plans are focused on better using the existing hospital site to meet the needs of providing modern healthcare services. **Table 1** below provides the full statement
- 5.6 The hospital's redevelopment plans are complex and involve an extended programme of decants and multiple site moves that preclude their being any viable option that would be suitable or easily accessible to the patients of the Beacon Centre. In addition, since the beginning of COVID 19, there are now further significant pressures on the estate that have increased the challenge on this site further.
- 5.7 For example some areas that were explored with the Trust are:
- Galmington Fields car park as a temporary area next to the Beacon Centre and the Beacon Centre Car Park– the temporary location next to the beacon centre is still within the playing field boundary of land and is heavily used for matches played. The beacon centre car park is now part of the site and continued ambulance access for critical care facilities so is not suitable. In addition another temporary operating theatre will be housed on site.
 - The demolishing the Parkside building - Parkside is in use and the beds are occupied with NHS patients. There isn't a current plan to demolish Parkside in the next few years
 - The single story and low rise buildings, sheds and stores at that end of the hospital site and possible integration of space - all of these are in use and either house existing facilities, including gas manifolds, estates facilities, mortuary etc. They will cost to move and there are at present no other spaces to house them.
- 5.8 Site visits have taken place with officers and Maggie's to explore alternative options not on the Musgrove Park estate that would negate the need to utilise the piece of land from Galmington Playing Fields. Such as areas adjoining the Council Car Park, re-ordering some of the housing to create sufficient space. The conclusion was that all of these options were very difficult to achieve without some very significant or legal obstacles to address or they are not within the 100 metre distance from the oncology ward criteria set by Maggie's operational strategy.
- 5.9 Sites away from the Musgrove Park Estate in other areas of Taunton were also explored with Maggie's however as outlined in 5.3 the connectivity with the hospitals oncology ward is a crucial part of the operation of Maggie's and for the clinical staff of the hospital so are not viable as the building strategy requires a distance no more than 100 metres from the Beacon Centre

Table 1:

Statement from Taunton and Somerset NHS Foundation Trust

The Trust has long held ambitious plans to redevelop the older facilities on the Musgrove Park Hospital site. These plans are regularly reviewed and updated; currently the development proposals extend up to 2040. Over the long evolution of our site plans there has never been any discussion or proposal to develop healthcare facilities on any part of the Galmington Playing Fields. Our redevelopment plans are very much focused on better using our existing hospital site to meet the needs of providing modern healthcare services.

The proposal to locate the Maggie's Centre on the Galmington playing fields arose from discussions in 2011 about the very limited and unacceptable options for locating a centre on the hospital site itself. Currently our site is very congested, with the older buildings predominantly in the location of the existing Beacon Centre. Since this discussion there has been significant further developments on the site including the development of the new surgical centre, and the announcement of the new hospital buildings programme which Musgrove will benefit from. This will result in significant site disruptions and decants required to deliver the updated facilities by 2030. Our redevelopment plans are complex and involve an extended programme of decants and multiple site moves that preclude there being any viable option that would have located a Maggie's Centre on our site, which could be easily accessible to the patients in the Beacon Centre. The Trust still considers the current proposed site for the Taunton Maggie's Centre is the best and only solution in the medium term that will allow cancer patients visiting the Beacon Centre to benefit from the services provided at the Maggie's.

The impact of Covid has also had a significant impact on space available, the creation of additional critical care beds and theatre, and the services required have added very tangible space and accommodation issues. A number of these have been addressed by moving a number of corporate colleagues off the site however the pressures overall are now higher than envisaged both in 2011 and in February of this year.

6. The concerns from residents

6.1 During the planning application stage, several concerns from residents were raised which can be summarised under the following themes. This is not an exhaustive list of all the concerns but does reflect the main issues consistently raised:

- (a) Loss of Playing Field and Green Space
- (b) Parking and the effects on residents
- (c) Loss of playing pitches
- (d) Loss of a play area

6.2 With regards to points (a), (b) and (d) planning permission conditions prevent the creation of any pedestrian link to the centre through the playing fields (except in emergencies). There is a condition which ensures that the construction of the new play area and pitch realignment is carried out before the Centre is brought into use.

6.3 With regard to point (a), as per point 5.4 above, the loss of playing field equates to 4.6 % of the whole playing field. There are concerns that the build of the centre may provide a 'green light' for further works and the total loss of the playing field. The land is subject to charitable trust and any sale would need to meet the criteria of the Charities Act 2011 in the same way the proposed land sale to Maggie's will need to if it is to proceed. One option is for the Council to explore the possibility of entering into a Deed of Dedication under the Fields in Trust scheme. This would provide an additional level of protection (over and above charity law) and would prevent any future disposal without the consent of Fields in Trust

7. The legal position

7.1 At the time of decision in 2011, it appeared that there were two legal restrictions affecting the land of Galmington Playing Fields, meaning that the Council would have needed to follow two steps as follows:

(i) There is a covenant on the title which requires the land to be only be used as public recreation grounds or open spaces. It was thought that this covenant could only be removed either by the existing legatees of Brigadier Gault giving consent or by an application to the Lands Tribunal (now the Upper Tribunal) for the covenant to be lifted.

(ii) The land is subject to a charitable trust and the Council as sole trustee can only sell the land on terms set out in the Charities Act 2011 which obliges the Council to comply with various requirements, including to be satisfied that it is obtaining the best terms possible for the sale.

7.2 The Council has sought external Counsel's opinion and solicitor advice on both of these restrictions in October 2019 and November 2020. The opinion and advice are subject to legal privilege and, therefore, will not be disclosed. However, the above legal advice is clear that the land is not encumbered by a restrictive covenant which would prevent the sale to Maggie's. In short, the burden of a restrictive covenant can only be enforced where the covenant was entered into for the benefit of ascertainable land. The Deed of Gift did not identify any land which was retained by Brigadier Gault. As such, the covenant was personal only to him.

7.3 Accordingly there is no requirement to lift the covenant on the land to enable the sale to Maggie's as it is no longer enforceable (see 7.1 (i) above).

7.4 The legal position is also clear that the land is subject to a charitable trust and therefore any such disposal of the land would have to be justified as being in the best interests of the Charity (and not by reference to any other considerations) and in compliance with the Charities Act 2011. The Council has power under Section 6 of the Trusts of Land and Appointment of Trustees Act 1996 to dispose of a piece of land to Maggie's. If the sale is to proceed then the requirements under Section 117-121 Charities Act will be complied with and set out as the sale proceeds. This will include a requirement to publically advertise the proposed disposal under Section 121 and take into account any representations received prior to final decision on disposal.

- 7.5 Therefore, the key legal consideration for Members is whether the disposal of the parcel of land to Maggie's is in the best interests of the Galmington Playing Fields Charity and its stated charitable objects which are - *"Provision and maintenance of a Recreation Ground for the community as a whole"*
- 7.6 It should be noted that in addition to any consideration paid for the land, Maggie's would also be required to cover the cost of providing and equipping a new children's play area on the playing fields and realigning the sports pitches. The consideration achieved from the sale of the land would be used to further enhance and maintain the Galmington Playing Fields, in the interests of the charity. This would be in addition to the replaced play equipment and realignment of the playing pitches that Maggie's would provide.
- 7.7 When considering the planning application, the Planning Officer concluded that the development would enable the provision of a new children's play area, thus enabling a community benefit greater than the long term recreational value of the recreational facility that would be lost. The replaced play equipment would be new and modern in contrast to the existing very old equipment. Sport England did not object to the planning application as, in their view, the parcel of land was incapable of forming part of the playing pitch, did not reduce their size or quality to prevent their use. As stated above the realignment of the pitches would be paid for by Maggie's.
- 7.8 If the Council are minded to continue with the 'in principle' decision to sell the land, then next steps will be a land valuation, working through the Charities Act process, advertisement of the proposed disposal and a further report for decision at Full Council for the final agreement to sell the land.
- 7.9 Whilst it is not necessary to obtain a Charity Scheme or Order from the Charity Commission, it is deemed prudent that the Council inform the Commission of the proposed disposal.
- 7.10 As the land in question is open space, it will also be necessary to advertise the intended disposal under Section 123(2A) Local Government Act 1972 and consider any objections received before a final decision on disposal is made.
- 7.11 The Council would ensure that it continues to provide The Friends of Galmington Playing Field with regular liaison during this process.

8 Summary

- 8.1 A decision 'in principle' to dispose of a portion of Galmington Playing field was made by Taunton Deane Borough Council in 2011. Since that decision, planning consent has been granted for the Centre in March 2019 and Maggie's now wish to proceed with the land purchase
- 8.2 The community of Galmington have voiced concerns about the location of the Centre and have a preference that it is located on a different part of the Musgrove Hospital site
- 8.3 Taunton and Somerset NHS Foundation Trust and Maggie's have confirmed there are no other suitable locations

8.4 There is no legal impediment to the Council disposing of this part of the land providing it is compliant with the Charities Act 2011 and Section 123 Local Government Act 1972

9 Links to Corporate Strategy

9.1 None

10 Finance / Resource Implications

10.1 Land sale funds are held by the Charitable Trust for sole use of the Galmington Playing Fields. The charity land is not part of the corporate property and funds of the Council and must be dealt with separately.

11 Climate and Sustainability Implications (if any)

10.1 No anticipated impacts

12 Safeguarding and/or Community Safety Implications (if any)

12.1 None

13 Equality and Diversity Implications (if any)

13.1 None

14 Social Value Implications (if any)

14.1 None

15 Partnership Implications (if any)

15.1 None

16 Health and Wellbeing Implications (if any)

16.1 None

17 Asset Management Implications (if any)

17.1 None

18 Data Protection Implications (if any)

18.1 None

19 Consultation Implications (if any)

19.1 Consulting with Galmington Friends of

20 Scrutiny/Executive Comments / Recommendation(s) (if any)

20.1 None

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Executive – No**
- **Full Council – Yes**

Reporting Frequency: Ad-hoc

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