

Report to the Cabinet

Report reference: C-008-2010/11

Date of meeting: 19 July 2010



**Epping Forest
District Council**

Portfolio: Legal and Estates

Subject: Roding Valley Recreation Area Transfer to Buckhurst Hill Parish Council

Responsible Officer: John Gilbert (01992 564062).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) To note the current stance of the Buckhurst Hill Parish Council regarding the transfer of the Roding Valley Recreation Area;**
- (2) To consider the options available to the Council as set out in paragraph 17 of the report;**
- (3) Subject to recommendation (2) to make appropriate Continuing Service Budget provision to meet the management requirements;**
- (4) Subject to recommendation (2) to bring a report to cabinet following any further discussions with the Buckhurst Hill Parish Council; and**
- (5) To recommend to Council for approval a supplementary DDF estimate in the sum of £10,000 to deal with the urgent works required to reinstate key features of the recreation area.**

Executive Summary:

In 1997, as part of the creation of the south of the District Parish and Town Councils, the District Council decided to transfer to them areas previously financed through the Chigwell Special Fund. This included halls, allotments, open spaces and playgrounds etc. However, the District Council wished to continue to exercise some control over the Roding Valley Recreation Ground and decided that the management of the area should be transferred to the Parish and Town Councils of Loughton, Buckhurst Hill and Chigwell and that the setting up of a trust for the area should be explored. In 1999 members resolved that the Town and Parish Councils were to be offered a management agreement for the area but this process stalled on the requirement of the parish councils for a freehold transfer of the land. In February 2004 Cabinet agreed a compromise position whereby the parishes would be granted a 125-year lease of that part of the Roding Valley in their area

Loughton Town Council agreed to enter into a lease which was finally concluded in January 2008. Buckhurst Hill had agreed that the negotiations would be conducted by Loughton Town Council and when a final or near final draft was agreed this would be sent to the Parish's solicitors for approval. However when it came to them being required to formally sign they declined to do so for a range of reasons. Since then it has not been possible to

conclude a lease with Buckhurst Hill Parish Council and this reports sets out options for Cabinet to consider. There are potentially significant budgetary implications depending upon the decisions made.

This is a key decision

“A safe, healthy and attractive place”:
maintain the special character of the District
address local environmental needs
address leisure needs

Reasons for Proposed Decision:

To enable the Council to decide how it wishes to proceed with the management of the Roding Valley Recreation Area and to seek the short term (DDF) and longer term (CSB) funding required to implement that decision

Other Options for Action:

Not to agree to enter into a (revised) management agreement of the land and to directly manage the area.

As above but with the Buckhurst Hill Parish Council being requested to continue with funding equivalent to the costs currently met by them for grass cutting etc.

To agree the terms as proposed.

Do nothing.

Report:

Background

1. In 1997, as part of the creation of the south of the District Parish and Town Councils, the District Council decided to transfer to them areas previously financed through the Chigwell Special Fund. This included halls, allotments, open spaces and playgrounds etc. However, the District Council wished to continue to exercise some control over the Roding Valley Recreation Ground and decided that the management of the area should be transferred to the Parish and Town Councils of Loughton, Buckhurst Hill and Chigwell and that the setting up of a trust for the area should be explored. In 1999 members resolved that the Town and Parish Councils were to be offered a management agreement for the area but this process stalled on the requirement of the parish councils for a freehold transfer of the land. In February 2004 Cabinet agreed a compromise position whereby the parishes would be granted a 125-year lease of that part of the Roding Valley in their area.

2. The area of Roding Valley as shown on the plan (see appendix) was split in accordance with the boundaries of the parish councils shown blue. As can be seen from the plan the land inside the Chigwell Parish boundary was very small and so Chigwell Parish Council agreed with the Loughton Town Council that the Town Council should manage that area on their behalf. This Council retained responsibility for the lake and the arboretum areas as shown on the plan

3. The draft of the lease of land to the parish councils specified that their responsibilities would include:

(a) to repair and keep the premises in repair;

- (b) to keep all ditches watercourses and bridges over those ditches and watercourses and their banks in good repair and condition;
- (c) to keep the fences, paths, bridleways, hedges and gates in good repair and condition;
- (d) to take joint responsibility for any fences and conduits for services running under the land;
- (e) grass cutting and limitations on works that could be carried out on the banks of the River Roding and the lake;
- (f) joint maintenance of the bridges over the River Roding; and
- (g) as head lessees to manage the existing leases on the Recreation Ground.

4. There was also a requirement that, because of the significance of the Roding Valley Recreation Area, there should be some consistency in the way the Loughton and Buckhurst Hill areas were managed. Members required that a Committee be created with representatives from Epping Forest District Council, Loughton Town Council and Buckhurst Hill Parish Council, with provision for other interested parties to attend. In this way Chigwell Parish Council would be able to have representation if it so desired. The role of the Committee was to essentially oversee the matters referred to in (a) to (g) above, discussing new developments as well as publicising the facilities, ensuring public access, and recognising the unique character of the area.

5. The Committee would have no funds of its own and the representatives would report to their respective Councils with regards to any works that required funding. In the respect of shared facilities where failure to carry out work could lead to a danger arising, the lease provided that the costs would be shared proportionally, for example bridge replacement.

6. After lengthy negotiations Loughton Town Council signed a 125-year lease on the 10th January 2008. There were various reasons for the length of time taken to complete the lease, including:

- (i) a flood relief scheme was proposed for part of the Roding Valley area and provisions were included which would allow the District to carry out this work. The Town Council did not agree these proposals and during negotiations the District decided that it would not proceed with the scheme and the documents had therefore to be redrawn;
- (ii) under the Council's original decision the parish councils were to take responsibility for the banks of the River Roding. Loughton Town Council did not wish to take on this responsibility and members were asked to agree a change;
- (iii) the original Council decision excluded responsibility for the lake. After negotiations this was included and then later excluded requiring a referral to Members; and
- (iv) the solicitors required the Council to register its title at the land registry. This took some time because of the number of and age of the documentation involved.

7. It had been agreed with the Buckhurst Hill Parish Council that the negotiations for the lease would be conducted by the Loughton Town Council and when a final, or a near final draft was agreed, this would be sent to the Parish's solicitors for approval. During the negotiation period with Loughton Town Council, legal services also sent copies of the first draft and all major amended drafts of the lease to Buckhurst Hill Parish Council. During this

period the District Council understood that the Town and parish Councils had the responsibility to maintain the areas that were designated to them in accordance with the draft of the first management agreement, which had been submitted but they had refused to sign.

8. This Council's budget for the Roding Valley area ceased when the parishes were created as it was understood that responsibility for management and maintenance of the area would fall to the Town and Parish Councils even though the actual documentation had not been finalised and signed. The draft lease prepared outlined all the areas and responsibilities as previously undertaken by Epping Forest District Council under the auspices of the Chigwell Special budget, as outlined in paragraph 3 .

9. In December 2007, Buckhurst Hill Parish Council appointed Foskett, Marr, Gadsby and Head (FMGH) to act as their solicitors and draft documentation was submitted to them for approval. Loughton Town Council was in a position to complete in January 2008 and anxious to proceed. Although Buckhurst Hill and their solicitors were not ready, the lease with Loughton Town Council was completed.

Present position with Buckhurst Hill Parish Council

10. Negotiations with Buckhurst Hill's representative continued but the parish was now not happy to accept a lease on the same terms as accepted by Loughton. On the 23rd of November 2009 FMGH returned the latest draft documentation stating that the Parish Council had met to consider the proposed lease at their full Council meeting on 22nd October and had come to the conclusion that they were unable to take the lease in the form currently offered. They were however keen to establish some form of relationship with Epping Forest District Council in order to allow them to manage this area in partnership. The factors that Buckhurst Hill Parish Council had considered were stated as:

- (i) the current financial climate;
- (ii) the present poor state of repair of the land and buildings at the Recreation Ground;
- (iii) the absence of any budget;
- (iv) the lack of any information in respect of the requested breakdown of costs for works undertaken by Epping Forest District Council;
- (v) the onerous obligations on the part of the landlord in respect of the existing leases and the lack of income from the rents of them;
- (vi) the fact that Epping Forest District Council have not been able to fully devolve title to the land; and
- (vii) the concern about management and repair of the riverbanks.

11. Officers reviewed these issues and commented that :

(ii) As from the initial transfer in 1997 the maintenance was deemed the responsibility of the Parish Council and thus should be being undertaken by them. This Council had understood that the original management and maintenance responsibilities had been transferred and undertaken Buckhurst Hill PC since 1997, but they appear to be implying that they have never maintained the ditches, fences etc. and this seems to be evidenced by the state of some infrastructure.

(iii) The financial clarification is as outlined in this report.

- (iv) Details and documentation was sent to the Parish Council on numerous occasions.
- (v) These were the same obligations as those held previously by the Council.
- (vi) This was regarding a small strip of land and all that was required was for a plan to be redrawn.
- (vii) These were the same obligations as those held previously by the Council.

12. Instead of the original agreement, the parish has offered to split responsibilities along the following lines:

- (a) Epping Forest District Council will be responsible for:
 - (i) the River Roding and the Lake and their banks, up to a point 8 metres from their banks; as denoted by the black line on the plan;
 - (ii) the bridges over the River Roding and any ditches;
 - (iii) the ditches of the Recreation Ground, principally the overflow brook and the ditch at Green Walk (although this is believed to be within the area already the responsibility of Loughton Town Council);
 - (iv) the repair and maintenance of the footpaths;
 - (v) the maintenance of all trees and hedgerows;
 - (vi) the collection of rubbish and dog litter from the bins;
 - (vii) the removal of graffiti; and
 - (viii) the maintenance and repair of the Bye-Law notice boards.
- (b) Buckhurst Hill Parish Council will be responsible for:
 - (i) grass cutting within their allotted area;
 - (ii) the upkeep of the fences to the Recreation Ground (provided that Epping Forest District Council meet the cost of that upkeep);
 - (iii) the dry ditch adjacent to the allotments;
 - (iv) the purchase and installation of new litter bins;
 - (v) the purchase and installation of new dog litter bins; and
 - (vi) the purchase and installation of public seating.

13. Furthermore, the Parish Council are seeking the right to erect and maintain a notice board at the Roding Lane entrance to the Recreation Ground and have stated that they do not wish to participate in the Joint Management Group.

14. According to the letter received from their solicitors the area that they wish to have under this agreement is stated as follows:

“The area over which Buckhurst Hill Parish Council proposes to exercise the licence is all of the Recreation Ground shown edged red on the draft Lease Plan excluding the 8 metres closest to the river bank and the lake, and excluding any area presently let to any third party.”

15. The reason for BHPC coming to this decision is stated as:

“Buckhurst Hill Parish Council has come to this decision based on their wish to provide local people with good facilities but also on their knowledge that many people from outside their parish make use of the recreation ground.”

Consequences of Buckhurst Hill Parish Council’s position

16. The Parish Council’s position differs significantly from the original terms of the lease agreed by members and entered into by Loughton Town Council. If the agreement as requested by Buckhurst Hill is accepted in its amended format there would be a significant impact on the budget for this Council in respect of:

- the upkeep of ditches;
- the repair and maintenance of footpaths;
- the repair and maintenance of bridges;
- the maintenance of trees and hedgerows;
- the collection of rubbish, litter and dog bin emptying;
- the maintenance of the bins as above;
- graffiti removal;
- the repair and maintenance of notice boards;
- the provision of third party insurance;
- the repair and maintenance of fences;
- the management of the sporting leases; and
- the strategic long term management of the area.

17. Furthermore, there could be difficulties if the District wished to use the Recreation Grounds otherwise than in accordance with the management agreement. The Parish may also find it difficult to obtain funding from any charitable or government groups if it does not have a long-term lease meaning that there may not be any investment in the area unless provided by the District Council. However, the Parish has stated that it is not their intention to seek any such funding. The proposed split of responsibilities would also lead to mixed area management issues such as:

- (a) Buckhurst Hill Parish Council maintaining the fencing but with this Council meeting the costs, although at present it is not clear whether the District could veto any works being carried out;
- (b) the arbitrary boundary of 8 metres from the banks of the lake would bring with it difficulties as the boundary would have no definitive line. Also, this would mean that all paths round the lake would be EFDC’s responsibility thereby leaving the Parish with only grass maintenance responsibilities; and
- (c) there could be varying standards of maintenance based upon each council’s resourcing capabilities.

18. In 2008 BHPC completed an agreement with the Council for part of the Roding Valley land so that they could construct a playground, on the designated area only. The playground

was funded via a grant from EFDC and lottery funding. When the District agreed this licence it did so against the background that the lease of the recreation ground was in negotiation. Although the equipment must be kept in a safe condition there is no requirement to replace the equipment in the future. Either Council can give the other immediate notice to terminate if there is a breach; otherwise they can give the other one year's notice to terminate. If the agreement is terminated the Parish must remove the equipment and surfacing and return the playground to a grassed area. However, the Agreement can remain in place as long as both of the Council's are content with the arrangement.

19. There are several issues on the recreation area that have been highlighted recently as needing attention such as the gate in Roding Lane, the bye law and entrance signs need replacing and ditch ,hedge and path work needs to be undertaken. Under the original agreement, these were the responsibility of the parish, but they have now refused to accept responsibility. As there is currently no EFDC budget or authority to undertake works, neither council is undertaking the work. However EFDC has recently repaired a gate so as to prevent health and safety and access issues arising. Much of the current need for maintenance stems from the fact that Buckhurst Hill Parish Council has not undertaken the maintenance work as defined originally and therefore the infrastructure has deteriorated.

20. Both Loughton and Buckhurst Hill councils contract EFDC Grounds Maintenance service to undertake the maintenance work and therefore at present, the fulfilment of the Parish/Town Councils' responsibilities in this aspect is monitored. However, if in the future either could change their contractor, EFDC would need to have a more managed monitoring regime. If all or part of the responsibilities for the area return to EFDC as per the BHPC proposal then resourcing this from a management aspect will need to be reviewed.

Options available

21. There are four options available for action, each of which is detailed in the sections below.

Not to agree to enter into a (revised) management agreement of the land and to directly manage the area

22. This would mean that the area would be managed in a consistent manner and also in line with the management provided by Loughton Town Council. The increase CSB budget estimated at £42,080 could be funded from a one off DDF bid in the current financial year. The rental income as outlined in paragraph 21 would further reduce the ongoing CSB costs.

As above but with the Buckhurst Hill Parish Council being requested to continue with funding equivalent to the costs currently met by them for grass cutting etc

23. This provides the same outcome as the first option above but would see the Council's costs reduced by £20,998 (2009/10 budget).

To agree the terms as proposed

24. This would segregate the area into three areas of responsibilities and inconsistencies of standards would arise. The division of provision and maintenance of services would cause site management difficulties. A CSB increase would still be needed as described in paragraph 23. There would also be the unknown costs due to the additional items described in paragraphs 10 and 11. At present this has been estimated at £15,000. There would be difficulties in entering into or carrying out any long-term management proposals of the area by either party. Further negotiations would be required to establish the length of the term of the agreement, whether the Council's could determine it earlier, whether the parish would be

prepared to assist in the enforcement of the bylaws etc, whether the District could run events on the area etc. At present the parish receives the rents for the sports leases and it would have to be decided whether this money should continue to be paid.

Do nothing

25. This would be to the detriment of the planning and management of the area and environment and is therefore cannot be considered to be a satisfactory way forward. If the parish continued to manage as it currently does, the responsibility for any liabilities would remain unclear as outlined in this report and health and safety and environmental issues relating to gates, fences and ditches would be to the detriment of the area and its users. This would require this Council to set aside some monies to ensure that health and safety requirements are met.

Further negotiations with Buckhurst Hill Parish Council

26. To arrange further discussions with BHPC to emphasise to them the severity of the present situation and the strong likelihood that, given current financial constraints, if they remain unwilling to sign the agreement as originally envisaged and are also unwilling to accept the second option above, which will require them to continue to contribute towards the costs, then the Council will have no option other than to pursue the fourth option (i.e. Do Nothing) which will have significant consequences for the local community.

Resource Implications:

- In 1996/97 budget estimates were produced for the South of the District Parishes in readiness for the new structures. There was one year where EFDC worked alongside the newly formed Councils to assist in the transition but the EFDC budget ceased in 1997/98.
- When the new parish councils were formed, the balance of the then Chigwell Special Account, amounting to £124,653, was distributed to the parishes on an agreed basis. The Council held capital receipts from the sale of Chigwell Golf Course and allotments, Accounting arrangements then were that 50% of the receipt had to be set aside for repayment of debt and the remainder could be used for capital expenditure. The remaining usable element amounting to £154,255 was paid over to the parishes on the same basis as the Chigwell Special Account. However, there was no legal basis on which to redistribute the set aside amount and therefore agreement was reached that a revenue support grant would be paid over a five year period in recognition of the interest to be received on investing this money. The money transferred was on the basis that the parish councils would take over the management of the assets and include the running costs within their precepts
- To estimate the resource implications for the purposes of this report the 1996/97 budget figures have been used. The original budget for Roding Valley held within Leisure prior to the parish split includes sums to cover responsibilities for building maintenance, grounds maintenance, materials, electricity, water, direct officer costs for monitoring drainage works, drainage works, management of the area and support service costs. The expenditure for the area was split between Loughton, Chigwell and Buckhurst Hill parish councils. Finance officers have estimated that BHPC share was set at 20.3% although this cannot be confirmed from records. The budget pages from the 96/97 budget have been reviewed and is replicated in the table below. In the list below grounds and ditch maintenance are the actual work costs for 1996/97:

	Total Budget	BHPC @ 20.3%	Actual Costs	Total
Building Maintenance	6,310	1,281		
Grounds Maintenance	Actual		19,028	
Ditch Maintenance	Actual		2,707	
Material	2,490	505		
Direct cost Drainage Offices	2,480	503		
Third Party Payments	Actual		6,130	
				£30,154

- If updated by inflation to present day this would give a required budget of £42,080. This budget may be able to be reduced further with regards to the third party and managerial and professional costs once the requirements for management and monitoring are known.
- At present this Council collects and transfers to BHPC the rentals from various leases that were passed over to the Parish Councils. (2009-10) These are:
 - (a) Woodford Rugby Ground Limited: £940 p.a;
 - (b) Trustees for the Buckhurst Hill Cricket and Lacrosse Club: £1,000 p.a.;
 - (c) Trustees of the Roding Valley Cricket Club: £800 p.a.
- This amounts to £2,740 per annum. If the responsibilities for the area transfer back to this District Council then these rents would be retained and the estimated net increase in CSB budget would be marginally reduced.
- Until it is fully known what maintenance is required then budget costs have been estimated as above. If the Council agrees to the Buckhurst Hill proposal the budget estimate figure of £42,080 would be reduced by the cost of basic grounds maintenance, which would remain the responsibility of BHPC. In 2009/10 this was £20,998 but this would reduce due to their proposed changes in responsibility i.e. the maintenance on the 8m strip, any maintenance responsibility from any areas let to any third party and other items as in the report.
- The table below on the next page summarises the financial consequences of the options:

Option	Item	2010/11		2011/12 (onwards)	
		CSB	DDF	CSB	DDF
1.	Core maintenance Rental income to EFDC One off works		42,080 2,740 10,000 49,340	42,080 (2,740) 39,340	
2.	Core maintenance Rental income to EFDC BHPC contribution One off works		42,080 (2,740) (20,998) 10,000 28,342	42,080 (2,740) (20,998) 18,342	
3.	Core maintenance Rental income BHPC cover their responsibilities Est. Est. possible additional works re maintenance fences, bridges, clearance of additional litter/dog bins, One off works		42,080 (2,740) (10,998) 15,000 10,000 53,342	42,080 (2,740) (10,998) 15,000 43,342	
4.	One off works		10,000 10,000		15,000 15,000

- Note: For 2010/11 the maintenance responsibilities cost will be subjected to a pro rata basis depending on when the option chosen is put into action.

- Whether the area comes back to EFDC or if the proposal from BHPC is accepted there will still be a need for a condition review to be undertaken to assess the cost of urgent one-off maintenance work to bring the area up to its original condition as BHPC has not undertaken ditch work etc and their proposal continues not to include this. This will need to be funded via the DDF and is estimated at present at around £10,000. If the do nothing proposal is chosen the one off costs could increase each year due to the gradual decline of the site through lack of timely maintenance as the one off costs does not take into account regular maintenance such grass cutting etc.

- The CSB costs going forwards could be reduced depending upon the outcome of the VFM review of the Grounds Maintenance and Nursery services and any savings made through the on-going renegotiation of the Leisure Management contract.

- It is worth briefly considering the overall financial position of BHPC and their ability to meet both ongoing and one-off costs. The latest published accounts for BHPC are to the end of March 2009 and show reserves at that date in excess of £264,000. For 2010/11 BHPC has precept income of £366,201 and has the third highest band D charge amongst the town and parish councils of £69.25 for a band D property.

Legal and Governance Implications:

The creation of the three parishes in the south of the District led to an agreement of the functions that could be transferred. These functions included:

- Allotments;
- Cemeteries;
- bus shelters;
- bye laws in pleasure grounds and open spaces;
- clocks;
- entertainment and arts;
- highways - repair and maintenance of public footpaths, lighting roads and public places, shelters, roadside seats;
- litter – provision of litter bins and receptacles;
- public buildings and village halls; and
- recreation – management of open spaces (includes Roding Valley Recreation area park).

It has taken considerable time for BHPC to now consider that they do not wish to undertake the original outlined responsibilities regarding the open space. If there is a decision not to continue with the agreement along the lines as stated then there will be an impact on the part agreement with BHPC regarding the playground area.

Safer, Cleaner and Greener Implications:

The area is a major piece of public open space and if one part of it is not maintained to the required level then this could have an impact on the whole recreation area as well as the Nature Reserve and the river. As many members of the public use the area the infrastructure needs to be managed in a comprehensive way to ensure safety aspects as well as keeping the environment conducive to use.

Consultation Undertaken:

Buckhurst Hill Parish Council and their legal advisors.

Background Papers:

Report to CEF – 5th of May 2010

Correspondence from BHPC and their legal advisors Foskett, Marr, Gadsby & Head

Original Council decision to transfer land to Parish Councils

Impact Assessments:

Risk Management

There is a risk to health and Safety of the public if one part of the recreation area is not maintained to the required level. There would be an impact on the whole recreation area as well as the adjacent Nature Reserve, lake and the river. Many members of the public use the area and if the infrastructure were not managed in a comprehensive way then the standards of safety and the environment would be compromised.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? Yes

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
Possible inequality in terms of the standard of service and access to all users in the District.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
It is the intention that if the land is retained by EFDC that the area will be maintained similar to the long term agreement with Loughton Town Council and thus the standard and provision of the service and area as a whole will be uniform and equal to residents of Loughton and Buckhurst Hill and other users in the District.