

BABERGH DISTRICT COUNCIL

FROM: Director of Corporate Services

REPORT NUMBER: **H205**

TO: HADLEIGH AND DISTRICT SWIMMING
POOL TRUST COMMITTEE

DATE OF MEETING: 12 March 2009

**CONSIDERATION OF THE COUNCIL'S PROPOSAL TO FENCE IN LAND IN
LEASEHOLD OWNERSHIP OF THE TRUST IN ORDER TO PRE-EMPT ANY
PUBLIC CLAIM THAT SUCH LAND IS "COMMON LAND"**

1. PURPOSE OF REPORT

- 1.1 This report asks the Committee to grant consent to the Council's proposal to fence in land which would form part of the area to be used for the proposed Hadleigh Community Facility. The land is currently in the leasehold ownership of the Trust while the freehold is owned by the Council as local authority. The proposal and the reason for it is fully explained in Tim Mutum's letter of 23 February 2009, annexed to this report as Appendix A. A plan referred to in that letter is annexed as Appendix B, on which the Trust's leasehold land (save for the Stonehouse Road car park) appears outlined in dark blue, while the areas proposed to be fenced in are outlined in green.

2. RECOMMENDATION

- 2.1 That the Committee grants consent for the fencing in of the land outlined in green on the plan which forms Appendix B to this report for an initial period of six (6) months, to be subject to review on expiry of that period.

The Committee is able to resolve this matter.

3. FINANCIAL IMPLICATIONS

- 3.1 The Council as local authority is to bear the cost of the fencing.

4. RISK MANAGEMENT

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
A member or members of the public may make a claim that the Trust's leasehold land is "common land". If successful such a claim would impact on the trust's freedom to manage and/or dispose of the land as it sees fit.	Possible, though such a claim is unlikely to be successful, even if the land is left unfenced.	Significant	If the land is not fenced in then this might <i>support</i> a claim that the land is common land. Fencing in the land might help to defeat such a claim, if any is made.

5. **KEY INFORMATION**

- 5.1 The Committee has not met since the Council issued a proposal to build a community centre on land currently in the Trust's leasehold ownership. The proposal to build the centre has impacted on the proposed method of disposal (previously referred to as the "tripartite agreement"). As a consequence, further expert legal advice on the disposal has been sought from Bates Wells & Braithwaite Solicitors, who are presently in discussions with Lawrence Graham Solicitors on behalf of the South Suffolk Leisure Trust. A report will be made to the Committee in due course regarding the proposed disposal. That report is very likely to indicate that the construction of the Community Facility would have a positive impact on the Hadleigh Pool, so that any recommendation in the report for dealing with the Trust's land would be likely to accommodate and support the Council's proposal to construct the facility.
- 5.2 As it is anticipated that the proposed Community Facility would have a positive impact for the Hadleigh Pool, the fencing off of the identified areas and the protection of that land from any claim (in relation to common land) is likely to be consistent with the future plans of the trust for its leasehold land.
- 5.3 Even if the Trust Committee ultimately were not minded to dispose of the land on which the facility is intended to be built, it would still be advisable to protect the land from any public claim which might arise in response to the Council's public notice of their intention to dispose of open space land. NB - the Committee should note that although the Council, as freehold owner and local authority, has advertised its intention to dispose of the land (the "disposal" in this respect refers to the Council's intention to grant a future lease of the Community Facility land to SSL) this advertisement does not compel the Council either as local authority or as Trustee to dispose of the land, it merely reserves a right for the Council to do so. This would be subject to the Trust's giving up the land to the Council in the first instance.

6. **APPENDICES**

- A Letter from Tim Mutum dated 23 February 2009
- B Plan referred to in Tim Mutum's letter

7. **BACKGROUND PAPERS**

None.

CONTACT: Caroline Whatling **EMAIL:** caroline.whatling@babergh.gov.uk



2004-2005
Supporting People
2006-2007
Waste and Recycling
2006-2007
Culture and Sport for
Hard to Reach Groups

Tim Mutum FCIS
Project and Programme Executive
Babergh District Council
Corks Lane, Hadleigh, Ipswich IP7 6SJ

DX NO: 85055 Exchange: Babergh
Website: www.babergh.gov.uk

Caroline Whatling
Hadleigh and District Swimming Pool Trust
C/O Babergh District Council
Corks Lane
Hadleigh
IPSWICH
IP7 6SJ

Your Ref:
My Ref: TBM/JB

Please ask for: Mr Mutum
Phone Direct Line: **01473 825718** ☎
Fax: 01473 825738
Email: tim.mutum@babergh.gov.uk

23 February 2009

— Dear Caroline

PROPOSED HADLEIGH COMMUNITY FACILITY

At the end of last year Babergh District Council advertised its intentions to dispose, by way of lease, public open space at East House meadow and adjoining the swimming pool to enable a new Community Facility to be built. As you are aware part of this land is currently subject to a lease to Hadleigh and District Swimming Pool Trust of which the Council is sole Trustee.

Three objections were received to the proposed disposal one of which suggested that part of the land, including an area leased to the Trust, is "common grounds". This is almost certainly a reference to a town or village green. The land is not registered for this purpose, no application has been made and indeed Babergh does not believe that the land can be registered as a town or village green. However it is possible that an application for registration could be made.

Babergh has decided to continue with the project which, as you know, will be linked to the Hadleigh Swimming Pool and should provide a boost for that facility. However to be able to do so it needs to implement advice put forward by its Solicitors and insurers. The Council has been advised to take some physical steps to enclose and secure the site (the two grassed areas shown on the attached plan) so as to completely exclude use by any members of the public by the installation of good and substantial fencing. The fencing (chestnut pale, 1 metre high) will display a prominent notice stating the intentions for development of the site and contact details to whom all representations or concerns should be made. The fencing would be in existence for a period of at least six months but an initial review would take place after that first period.

Clearly the Council cannot erect the fencing on land in the occupation of the Hadleigh and District Swimming Pool Trust without the consent of the Trustee. I should be grateful therefore if you would seek consent from the Council, in its capacity as Trustee to the Hadleigh and District Swimming Pool Trust, to the erection of fencing around the land edged red on the attached plan for an initial period of six months.

Continued/.....

Caroline Whatling

23 February 2009

In this connection I should be grateful if you would treat this as a matter of urgency and let me have your response as soon as possible and preferably within the next 10 working days.

Your cooperation in this matter will be much appreciated.

Yours sincerely

Tim Mutum
Project and Programme Executive

Car Park

STONEHOUSE ROAD





Path

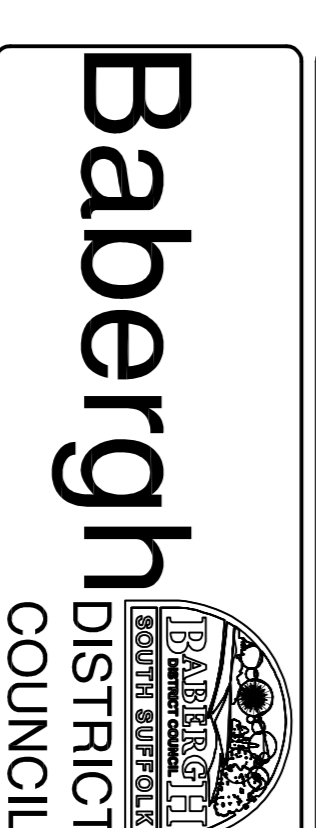
Proposed
New
Leisure
Facility

Existing
Swimming
Pool

Path (um)

Putting Green

KEY	
	Original Hadleigh & District Pool Trust
	Area of land advertised for disposal
	Line of fencing within original Trust area
	Line of fencing outside original Trust Area



COOKS LANE HADLEIGH SUFFOLK IP76SU
Tel: 01473 822801
Fax: 01473 82370

Mike Hammond FRICS MBA
Corporate Director

CONTRACT AND ASSET MANAGEMENT DIVISION

Ryan Jones BSc, CEng MICE
Head of Contracts and Asset Management

Location:
HADLEIGH SWIMMING POOL, STONEHOUSE ROAD, HADLEIGH.

Project title:
SITE PLAN

Project title:
FENCING PROPOSALS

Scale: NTS (APPROX 1:200) SI
drawn: SJ
date: FEB 2009
checked: SHG

Project number: 1407
drawing number: FENCE/001