

Southend-on-Sea Borough Council

Report of Corporate Director of Support Services
to
**Special Council,
Special Cabinet,
Special Economic & Environmental Scrutiny
Committee; and
Ordinary Council**
all on

Agenda
Item No.

4th November 2010

Report prepared by:
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**New Link Road between Eastwoodbury Lane and Nestuda Way.
Economic and Environmental Scrutiny Committee
Executive Councillor: Councillor N. Holdcroft
*A Part 1 Public Agenda Item***

1. Purpose of Report

- 1.1 To set out all land and highways arrangements required to enable London Southend Airport Company Limited ('LSACL') to build a new road between Eastwoodbury Lane and Nestuda Way ('the New Link Road') which although part of the development comprised in planning permission SOS/09/01960/FULM (relating to the proposed runway extension), will also bring significant benefits to the Town irrespective of whether the runway extension and other development comprised in the planning permission occurs.
- 1.2 To agree a minor amendment to the user clause in the Airport lease to permit the construction and use of the proposed hotel adjacent to Warner's Bridge roundabout in accordance with planning permission SOS/10/01155/FULM together with an amendment to how rent is calculated on this area only.

2. Recommendations

- 2.1 That the following land transactions be completed to enable the construction of the New Link Road between Eastwoodbury Lane and Nestuda Way as shown on the plan at **Appendix 1** ('the Plan') and to provide an area of 2.1 Hectares (5.2 Acres) to form an extension to St Laurence Park enabling existing open space to be appropriated for highway use, also shown on the Plan and marked C:
- a) To accept the surrender of the agricultural land areas marked A, C, G and H on the Plan,

- b) To accept the surrender of, or make other appropriate arrangement in relation to, the area marked B on the Plan (being part of the 5.7A Field leased to LSACL) to accommodate the new Roundabout on Eastwoodbury Lane.
- c) To grant a Building Licence and any consents, easements and wayleaves necessary for the construction of the New Link Road and service diversions. This will include of an amendment of the user clause of the Runway End Safety Area (RESA) Lease.
- d) To grant landlord's consent to allow the construction of the New Link Road through part of the RESA Lease land and St Laurence Park.
- e) To transfer area E to the Royal Bank of Scotland (RBS) and to acquire area F from RBS.
- e) To proceed with all advertisements and formal processes as required under s.122 Local Government Act 1972 in relation to the appropriation of land currently used as public open space for highway use, namely that part of St Laurence Park which is no longer required for such use and on which the New Link Road is to be built.
- f) To appropriate the land required for the construction of the New Link Road to highway land. This land will be replaced by the new open space land referred to in 2.1 above which in turn needs to be appropriated for public open space in advance of, or simultaneously with the highway dedication; thereby resulting in a small net increase in the size of St Laurence Park and no reduction in public open space at any point during the works, other than for essential temporary access.
- g) That the Corporate Director Support Services in consultation with the Leader of the Council be given delegated authority to make any minor amendments, and agree any other minor land and lease transactions required for the construction of the New Link Road.

2.2 That the Council proceeds with the advertisement and necessary changes to public footpaths and highways to enable the construction of the New Link Road (but not any physical changes to the operation of Eastwoodbury Lane) as set out in this report and that the Corporate Director Enterprise Tourism and the Environment in consultation with the Executive Councillor for Planning and Transport be given delegated authority to deal with minor amendments to the road, footpath and highway related matters including if deemed necessary, any reversals and re-dedications resulting in the event that the planning permission is quashed.

2.3 That LSACL shall meet all costs:

- a) related to the transactions referred to in 2.1 and 2.2 above including, but not limited to, any compensation payable, all costs associated with the New Link Road, the cost of boundary treatments and all costs associated with providing replacement parking spaces for RBS and laying out the new park land.

b) incurred by the Council (internally and externally) in respect of legal, surveying, valuation, engineering and other professional advice and services required. Such costs will where appropriate, be agreed with LSACL in advance.

2.4 That LSACL shall be required to provide the Council with the following undertakings and indemnities:

- a) Once started, to complete the New Link Road at its own expense to an adoptable standard and to the satisfaction of the Director of Enterprise Tourism and the Environment.
- b) If required by the Council following a successful Judicial Review, to reinstate the land and remove the New Link Road in the event that enforcement action is considered by the Local Planning Authority to be necessary or expedient.
- c) To indemnify the Council against all costs (internal and external) incurred in any challenge or legal action arising from the decision to allow the New Link Road construction to progress while the Judicial Review proceedings remain inconclusive because this will constitute the commencement of development pursuant to application reference SOS/09/01960/FULM which is currently subject to Judicial Review.
- d) Any losses and compensation payments associated with enacting the land surrenders.
- e) That a parent company guarantee is provided for all payments, undertakings and indemnities once approved by the Stobart Plc Board or other suitable mechanism to safeguard the Council's position.

2.5 That the Corporate Director for Support Services in consultation with the Leader of the Council be given delegated authority to agree the terms and grant landlord's consent for a minor variation to the user clause in the current Airport lease to permit the construction and use of the proposed hotel adjacent to Warner's Bridge roundabout in accordance with planning permission SOS/10/01155/FULM.

3. Background

3.1 At Economic and Environmental Scrutiny Committee on the 5th April 2010 (Minute 1091 refers), the Leader of the Council gave an assurance that:

"assuming the Administration remains in control, when the report on the new leasing arrangements for the airport is prepared, it will go to full Council to ensure that all Members are involved in the decision making process linked with a further assurance that any Cabinet led by him will respect the full Council's recommendation".

3.2 This report does **not** deal with either:-

- the primary land and leasing amendments required to the main Airport Lease or the Runway End Safety Area Lease so as to facilitate the runway extension comprised in planning permission SOS/09/01960/FULM; or
- the closure of the part of Eastwoodbury Lane at the southern end of the runway, which LASCL plan to build over.

In due course, a report will come forward to Council on these matters, (hereinafter called the 'Future Works') for it to undertake pre-Cabinet scrutiny. In any event, none of the Future Works shall commence until a decision has been made in respect of the Judicial Review proceedings relating to planning permission SOS/09/01960/FULM, the Council's agreement has been obtained and there is a planning permission free of legal challenge.

This future report will include the following:

- Amendments and variations to the Main Airport Lease and Runway End Safety Area (RESA) Lease to facilitate the runway extension, essential landing light equipment and to vary the rent and address night-flying controls.
- Changes to Eastwoodbury Lane.
- Termination of a garden license South of Eastwoodbury lane.
- Various additional minor land transactions.

3.3 What this report **does** deal with is a proposal by LSACL to construct the New Link Road in advance of the runway extension. This still necessitates agreement by the Council to a number of land transactions and amendments to St Laurence Park, public highway and footpath arrangements as set out in this report.

3.4 It is important to note that;

- The New Link Road will bring significant benefits to the Town in its own right in terms of improving capacity and traffic flows, (particularly as it will not have any barriers or lights) and offering the opportunity for further road network improvements.
- The New Link Road forms part of planning permission SOS/09/01960/FULM (relating to the proposed runway extension) and therefore represents a material start to the development;
- LSACL needs to progress the New Link Road now, otherwise it will hold up the runway extension, assuming the legal challenge to the permission is unsuccessful;
- LSACL is prepared to accept the risk of constructing the New Link Road notwithstanding the uncertainty over the legal challenge to planning permission SOS/09/01960/FULM;

Accordingly the Council is being asked to support the New Link Road, separately from the question of the runway extension.

The question of the New Link Road would appear to be relatively non-controversial, nevertheless it is still being brought to Council for it to undertake pre-Cabinet scrutiny to comply with the spirit of Minute 1091 referred to above.

- 3.5 This report deals with each element of the proposed Land transactions in turn, and then with the park, highway and footpath implications with reference to the Plan.

3.6 Land Surrenders.

- 3.6.1 Although much of the land needed for the New Link Road is within St Laurence Park, additional land presently leased to a farmer is also required both for the road and to replace the lost parkland. Accordingly, the Farmer needs to surrender some of the leased farmland.

- 3.6.2 The most significant area is marked C on the Plan. The tenant farmer has been represented by Whirledge and Nott in negotiations and the Council by Lambert Smith Hampton. Area C is slightly larger than the combined areas of open space lost to the construction of the new road. The other areas, A, B, G and H are all very small and referred to specifically in the recommendations and identified on the Plan.

- 3.6.3 The values of these surrenders are low (less than £10,000 in total) and can be dealt with under delegated powers in accordance with the Council's Constitution once the principle is approved.

- 3.6.4 Terms for the surrender of all these areas have been agreed, subject to contract. It is intended that all transactions which affect the Farmer will be dealt with at this point in time rather than going back to the tenant for land required for the Future Works. However, it is important to note that there is no question of the Council entering in to any agreement with LSACL about such land until the Council has considered the matter further. In particular, this covers an area which may be required for the instrument landing strip in the future.

- 3.6.6 LSACL has given an undertaking to pay all costs associated with obtaining possession including, but not limited to, any compensation payable and loss of rent to the Council together with all surveying, legal, engineering, boundary, landscaping and fencing costs and these will also be covered by the parent company guarantee and indemnity referred to above.

3.7 Grant of a Building Licence and variation of the Runway End Safety Area (RESA) lease.

- 3.7.1 LSACL requires the consent of the Council to construct the New Link Road which crosses St Laurence Park, RBS land and land leased to LSACL as the RESA.

- 3.7.2 The Council's lawyers have advised that (subject to discharging all relevant pre-commencement conditions) the most appropriate way forward is to grant a Building Licence for the New Link Road and works to provide replacement parkland, new play area and habitat land rather than granting a lease. The effect of this arrangement would be that if the planning permission was to be quashed and permission could not be obtained for the New Link Road then the Council

would be able to terminate the Building Licence and require the land to be restored and in addition to reinstate any parks, highway and footpath arrangements to their current designations. LSACL realise that there is therefore significant risk to them attached to proceeding with the New Link Road however they are prepared to take this risk and meet all costs associated with any restoration.

- 3.7.3 From the Council's perspective, the New Link Road will constitute an overall benefit to the town, irrespective of whether the runway extension proceeds and all costs risks are being covered by LSACL and consequently it is recommended that the Council should grant the Building Licence.

The New Link Road will bring significant benefits to the Town in its own right in terms of improving reliability and traffic management, particularly as it will not have any barriers or lights. It also offers the opportunity for further road network improvements as proposed in the Joint Area Action Plan (JAAP). In addition, the new construction standards and widths provide improvements to the existing highway which would not meet modern standards for a new carriageway; the improvements include pavement construction and geometry at end of existing runway). The New Link Road will have a 40 year design life, thereby reducing the revenue cost incurred in repairing and improving the existing road, which currently carries 17,000 vehicles a day. Improvements also include new drainage systems and cycling provision.

The proposed new roundabout at Nestuda Way has been tested for capacity and has been shown to be adequate for the design year flows. It is therefore anticipated that there will not be any significant disbenefits to traffic using Nestuda Way or Eastwoodbury Lane.

The diverted footpath will take a slightly longer route along the new carriageway but will replace the existing unbound track with a modern, well finished and improved surface including a new safe crossing point.

The small car park for Eastwoodbury Lane will be relocated adjacent to the new Roundabout as shown on the plan and will offer good vehicular access from the New Link Road to St Laurence Park.

The New Link Road will be either completely, or largely funded (see para 3.7.3 below) by LSACL, not the Council or other public body.

For the reasons set out above, on balance it is believed that the New Link Road is in the public interest and offers significant benefit to the Town in its own right.

- 3.7.4 The New Link Road will be constructed to a specification agreed by the Council's highway engineers and advisors.

Up to £2m is allocated in the Council's Capital Programme to contribute towards the cost of enhancing the New Link Road but not paying for its basic construction. The details of how, when and how much this payment will be have not been formally agreed and no contribution will be considered by the Council until there is a planning permission for the New Link Road free from challenge and the works have been completed.

Nevertheless, Highways Engineers are working to agree both a base specification and cost, and what the proposed enhancement works may consist of.

- 3.7.5 Presently, the user restrictions within the RESA lease would prevent the construction of the New Link Road. A variation of the lease will be necessary to enable this. In addition, consequential consents, easements and wayleaves will be required in connection with the New Link Road and it is recommended that these be granted.

3.8 Royal Bank of Scotland (RBS)

- 3.8.1 In order to provide the New Road, the corner of the Royal Bank of Scotland (RBS) car park is required.
- 3.8.2 This small area needs to be replaced and a land exchange has been negotiated with RBS to enable this to happen and for their parking to be re-provided. It is therefore necessary to transfer area E to RBS and to acquire area F from RBS. Area F will then become part of the Highway.
- 3.8.3 Terms have been agreed (between Lambert Smith Hampton acting for the Council and GVA Grimley acting for RBS) for this transaction which can be dealt with under delegated powers once the principle is agreed and all costs associated with the transaction and any works required including re-provision of parking spaces for RBS will be met entirely by LSACL.

3.9 Public Open Space – disposal and re-provision of space and play facilities.

- 3.9.1 Although all the Public Open Space impacted upon, or lost to the road will be replaced in the vicinity prior to any land being dedicated for other use, the proper process for appropriation of public open space for other purposes will need to be followed in accordance with s.122 Local Government Act 1972.
- 3.9.2 It will be necessary to comply with s.122 Local Government Act 1972 in relation to the appropriation of public open space for highway purposes, namely that part of St Laurence Park on which the New Link Road is to be built. This area of open space will no longer be required due to the replacement open space land made available in Area C.
- 3.9.3 The Area C new open space will therefore be made available either in advance of, or simultaneously with the highway dedication; thereby resulting in a small net increase in the size of St Laurence Park and no reduction in public open space at any point during the works, other than for essential temporary access.
- 3.9.4 In addition to the re-provision of open space, the play facilities in St Laurence Park are to be relocated south of their current location (to Area D on the Plan) to enable the construction of the New Link Road. LSACL will meet all costs associated with the relocation of this play facility and the work will be completed before the existing facility is decommissioned (except where the play equipment is to be relocated to the new site).

3.10 Highways and Footpaths:

- 3.10.1 The construction of the New Link Road will be included within the co-ordination processes set up for the Transport Access and Routing Plan (TARP) for the Better Southend Schemes.
- 3.10.2 As Highway Authority, the Council will approve hours of working, any diversion routes, temporary traffic diversions, programmes of work etc Environmental Health will approve noise levels and this will be included in the detailed specification to be agreed with LSACL.
- 3.10.3 It is important to note that the Airport will be signposted from the A127 Cuckoo Corner junction and it is therefore anticipated that the bulk of the traffic will take this route. There will be no changes to the route hierarchy and the current directions signs and information to drivers (including HGVs) will be to continue to use the principal classified roads - A127 to Cuckoo Corner and A1159 Manners Way to access the Airport.
- 3.10.4 The Council's Transport officers are in liaison with bus operators to ensure services are maintained to current levels as far as possible, particularly in relation to access to the Avro Centre. Some rescheduling may however be inevitable.
- 3.10.5 Although the scheme is scheduled to complete at a similar time to the Better Southend Projects at Cuckoo Corner, Victorias, Progress Road and City Beach, because only the junction work will affect the existing highways, disruption should be minimal and for short periods. Highways officers are working with LSACL to manage this with minimal impact.
- 3.10.6 The Authority is required to make any necessary Orders in connection with the New Link Road.
- 3.10.7 The need for stopping up of part of Footpath 121 arises from the grant of planning permission SOS/09/01960/FULM. The section of the footpath to be stopped up is shown clearly on the plan at **Appendix 2** with a dotted line between points A and B. The footway of the New Link Road will then continue the route to Eastwoodbury Lane to the East/North and to Nestuda Way to the West.
- 3.10.8 In the event that the highway consents and stopping up orders are made and the Planning permission is subsequently quashed, it may be necessary for the existing highway and footpath arrangements to be reinstated and the land rededicated as Parkland and Highway land as appropriate. It is recommended that in the event that this course of action is necessary, the Corporate Director for Enterprise Tourism and the Environment in consultation with the portfolio holder for Planning and Transport be given the delegated authority to deal with the necessary processes.

3.11 Indemnities.

As explained above, granting LSACL a Building Licence to construct the New Link Road results in some risk which LSACL is prepared to take given its desire to keep up with its investment programme.

Accordingly, the Council has obtained LSACL's agreement to provide the following undertakings and indemnities:

- a) Once started, to complete the New Link Road in accordance with terms of the licence at its own expense to an adoptable standard and to the satisfaction of the Corporate Director of Enterprise Tourism and the Environment.
- b) If required by the Council, to reinstate the land and remove the New Link Road in the event that enforcement action is required.
- c) To indemnify the Council against all costs (internal and external) incurred in any challenge arising from the decision to allow the new road construction to progress whilst a decision on the Judicial Review proceedings in respect of application reference SOS/09/01960/FULM is pending.
- d) Any costs, losses and compensation payments associated with enacting the land surrenders and lease variation(s), including any losses of rent resulting from the surrenders.
- e) That a parent company guarantee is provided for all costs, payments and indemnities.

4 The Hotel:

- 4.1 The Airport has recently secured consent for the construction of a new 129 bedroom hotel. [ref SOS/10/01155/FULM]. The lease requires variation to enable the delivery of the proposed hotel and provisional terms have been agreed and endorsed by the District Valuer for best consideration.
- 4.2 Although the hotel is wholly within the boundary of the main lease, the hotel revenues and costs are to be excluded from the calculation of Airport Turnover for the main lease and dealt with as a separate rental arrangement as part of the proposed variation
- 4.3 Terms have been negotiated and the District Valuer has certified them for Best Consideration and can be dealt with under the usual scheme of delegations.
- 4.4 The Main Airport Lease will need to be varied to enable this development and no other variations are proposed at this time.
- 4.5 The main reason for the need for a variation is that the lease presently prohibits sleeping at the aerodrome and this needs to be amended specifically in relation to the hotel site so that the development can proceed. Landlord's consent will also be required for the construction of the hotel and this will be dealt with at the same time.

5 Other Options

The Council could decide not to agree to grant the Building Licence requested but this would mean that LSACL could not carry out the works required for the New Link Road.

6 Reasons for Recommendations

The Council wishes to support LSACL's proposals for the New Link Road which will bring significant benefits for the town in its own right.

6 Corporate Implications

7.1 Contribution to Council's Vision & Corporate Priorities

The New Link Road will provide a cleaner, safer highway network and the recommendations support LSACL's investment in the Airport and the surrounding area which in turn will bring additional investment and business to Southend.

7.2 Financial Implications

Set out in the report.

7.3 Legal Implications

Set out in the report and SNR Denton UK LLP is advising the Council.

7.4 People Implications

None

7.5 Property Implications

Set out in the report and Lambert Smith Hampton is advising the Council.

7.6 Consultation

Extensive consultation has been undertaken by the Airport and the usual Planning consultations have been completed.

7.7 Equalities and Diversity Implications

None

7.8 Risk Assessment

The Airport is managing all elements of the construction works and associated risks.

The risks associated with commencing development under SOS/09/01960/FULM while the consent remains subject to challenge have been carefully considered by SNR Denton expert advisers and independent Senior Counsel and the risks associated with the proposal set out in this report are considered to be acceptably mitigated by the undertakings and indemnities secured.

7.9 Value for Money

The Council's specialist advisers, Lambert Smith Hampton and SNR Denton UK LLP have certified the proposed transactions and leasing arrangements will deliver best consideration for the Council and the Airport is meeting all associated costs.

7.10 Community Safety Implications

Dealt with through the Planning Process.

7.11 Environmental Impact

Dealt with through the Planning Process.

8 Background Papers

None

9 Appendices

Appendix 1 – the Plan

Appendix 2 – Plan showing Footpath 121

Appendix 1

A. Farmland land to be surrendered for safety area.

H. Farmland to be surrendered for future construction / maintenance of landing lights

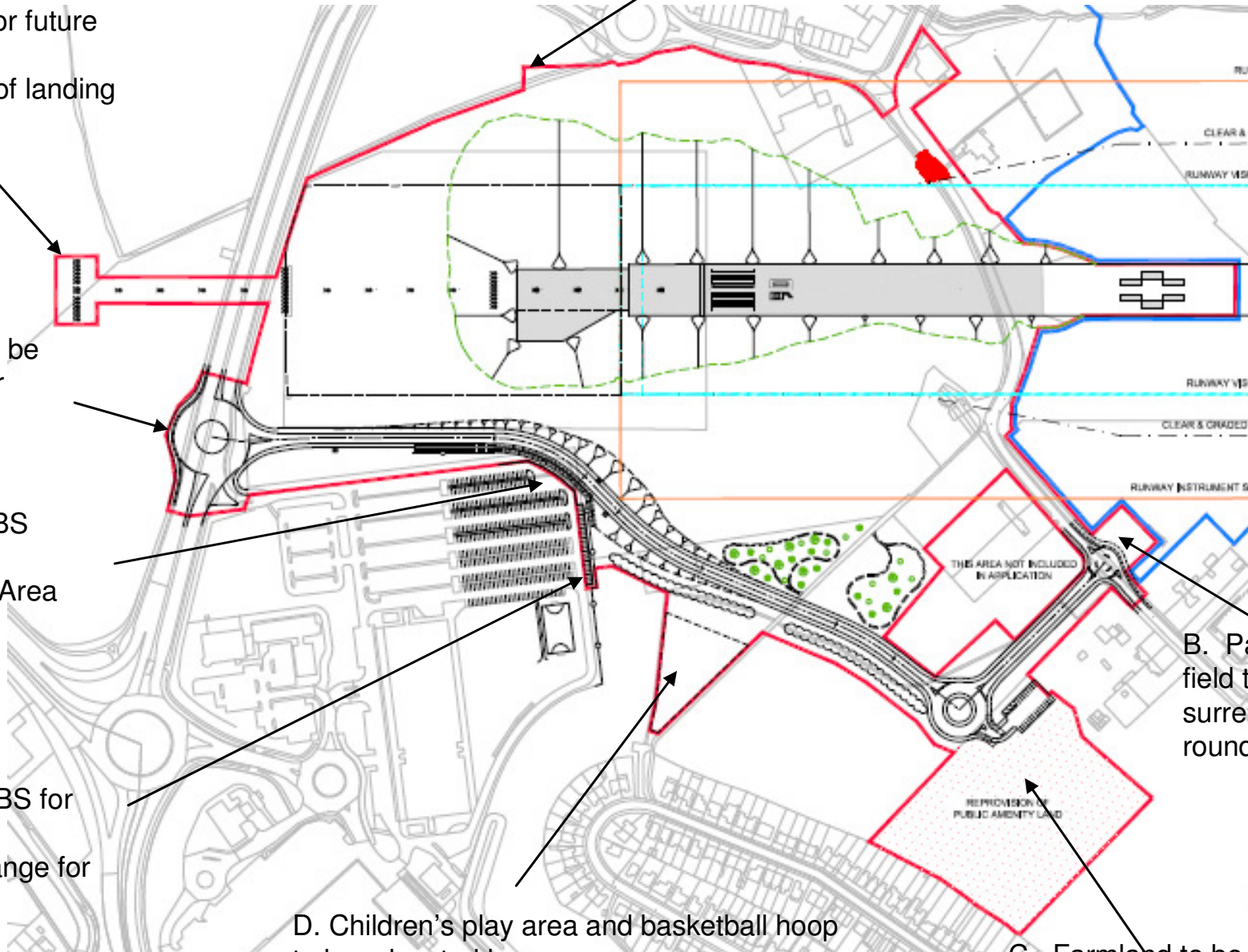
G. Farmland to be surrendered for roundabout

F. Corner of RBS Car Park to be exchanged for Area E.

E. Land to be transferred to RBS for replacement car parking in exchange for Area F.

D. Children's play area and basketball hoop to be relocated here.

C. Farmland to be surrendered, and appropriated for public open space



Appendix 2

