

## **WAVERLEY BOROUGH COUNCIL**

### **EXECUTIVE – 12 JULY 2016**

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#### **Title:**

#### **INTENTION TO APPROPRIATE LAND AT BOURNE RECREATION GROUND**

**[Portfolio Holder: Cllr Jim Edwards]**

**[Ward Affected: Farnham Bourne]**

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#### **Summary and purpose:**

The purpose of this report is for the Council to resolve its intention to appropriate land at Bourne Recreation Ground. Officers consider that appropriation of the land is necessary to enable the existing Bourne Recreation Pavilion to be redeveloped, which will significantly improve the leisure facilities for the local residents.

The Council owns the freehold site at Bourne Recreation Ground and a local benefactor is wishing to donate a significant sum of money to enable the redevelopment of the pavilion and leisure facilities. A local community group has been set up, Bourne Asset Community Group Community Interest Company (“the Community Group”), to provide the new pavilion and leisure facilities. The Community Group will take responsibility for the redevelopment of the pavilion. The current pavilion is in a fairly poor state of repair and would require considerable funds to bring up to a reasonable standard.

The Council has received external legal advice on the most appropriate and legally robust way of proceeding in order to enable the redevelopment of the pavilion which is to “appropriate land” at Bourne Recreation Ground, due to its village green status.

Planning permission was granted on 5 February 2016 for the demolition and building of the new pavilion. The Council intends to grant the Community Group a long lease in order for the Group to undertake the works and manage the pavilion, which will be dealt with in a later Executive Report. The granting of a long lease would require Secretary of State approval.

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#### **How this report relates to the Council’s Corporate Priorities:**

This report relates to the Council’s “Community Wellbeing” and “Environment” priorities, and the aim to encourage residents to use the Borough’s open spaces and countryside as an important recreational resource, and to work with local residents and park users to provide excellent leisure facilities. This report also relates to the Council’s “Value for Money” priority as the aim is to provide enhanced leisure facilities, whilst saving money for the Council in the long-term with regard to repairs and maintenance costs of the existing pavilion.

#### **Financial Implications:**

There are potentially financial implications for the Council in the “appropriation of land” and external legal advice and support may be required at a later stage. The initial costs (e.g. advertising of intention to appropriate land) will be met from the existing Parks and Open Spaces budget. Legal Services intend to deal with the

“appropriation of land” process internally. If external legal advice is required at a later stage in relation to the appropriation of land, a supplementary budget may be requested.

### **Legal Implications:**

A local authority is able to “appropriate” land using its powers under the Town and Country Planning Act 1990 and the Local Government Act 1972. The Council will need to appropriate the land at Bourne Recreation Ground prior to any works being carried out in relation to the new pavilion, due to its village green status.

There is a legal framework which restricts the use and development of village greens. The Council will not need to seek Secretary of State approval at this stage for the appropriation of land. The Council would however need to seek the approval of the Secretary of State prior to any disposal of land by long lease to the Community Group, due to the village green legislation.

### **Equality and Diversity Implications:**

There are equality and diversity implications. The proposed new pavilion will provide enhanced community facilities and better access for community users, including improved wheelchair access and toilets. Under the proposed lease arrangements to the Community Group, there would be controls to ensure that the pavilion would be available for general community use, along with leisure groups and sports clubs.

### **Risks**

Potential risks to the project are a) that the Council is not able to appropriate the land for some reason after advertising its intention to appropriate and considering any objections and b) the Council does not achieve Secretary of State approval at a later date to grant a long lease to the Community Group. These risks are minimised by the external legal advice received regarding the proposed appropriation of land.

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### **Background**

1. The Bourne Recreation pavilion site falls within land registered as village green. A local benefactor would like to donate a significant sum of money to demolish and re-build the Bourne Recreation pavilion and therefore provide enhanced leisure facilities to the local community. The Bourne Asset Community Interest Group would be responsible for the building works to the pavilion and would appoint a contractor to carry out the works.
2. Both the Council and the Community Group agree that the most appropriate mechanism to enable the redevelopment of the pavilion is for Waverley Borough Council to first “appropriate” the pavilion land and then dispose of the land to the Community Group via a long lease to allow the development of the new sports pavilion. The lease arrangements are likely to require the consent of the Secretary of State.

3. The Council must firstly resolve its intention as to “appropriate” the pavilion land and then advertise its intention in a local newspaper for 2 consecutive weeks and consider any objections received.

### **Relevant Facts**

4. The Bourne Recreation Ground site is an area of approximately 2.428 hectares of predominantly open land adjoining Old Frensham Road, Lower Bourne, Farnham, Surrey, in the Council’s area. There is a pavilion on part of the site and a gas governor on another part of the site. The existing pavilion is some 130 to 140 square metres in extent.
5. The freehold of the site is owned by the Council. There is an agreement (of indeterminate legal status) dated 11 January 1974 between the Council’s statutory predecessor, Farnham Urban District Council, and a body known as the Bourne Recreation Ground Committee (“the Committee”) which allows the Committee to use the pavilion building until that arrangement is determined.
6. The site is a registered village green under the Commons Registration Act 1965 (VG14). The site was added to the register on 4 January 1968 and the registration became final on 1 October 1970.
7. A local benefactor wishes to donate money to allow the pavilion to be rebuilt (in a larger form) and then used as a community pavilion. It is envisaged that community groups, leisure groups and sports clubs would be able to book the new pavilion for their activities. The Community Group would prefer to be granted a 299 year lease of the area of land occupied by the new pavilion rather than simply continue the existing arrangement under the 1974 agreement.
8. The proposed pavilion is two storeys in height and would be sited circa 10 metres north of its existing position. The main entrance would be positioned on the northern side and a footpath would link the pavilion to the adjacent existing car park.
9. The Community Group would manage and maintain the new pavilion. The existing pavilion is in a fairly poor state of repair with considerable maintenance costs predicted in the future. A new pavilion which is managed and maintained by the Community Group would therefore represent a cost-saving to the Council.

### **Village Green and Prohibition of Building Works**

10. Once land is registered as a village green under the Commons Registration Act 1965 it is subject to the protections given by s. 12 Inclosure Act 1857 and by s. 29 Commons Act 1876.
11. The Inclosure Act 1857, s 12, makes it a criminal offence to undertake any act which damages the green or interrupts the use or enjoyment of a green as a place of exercise and recreation. Under s. 29 Commons Act 1876, it is a criminal offence to enclose a village green or erect any structure on the green unless this is done “with a view to the better enjoyment of such town or village

green.”

### **Appropriation of Land**

12. Section 122 of the Local Government Act 1972 authorises councils to appropriate land which they hold under a particular power to any other purpose.
13. There is no mechanism for consent to be given by the Secretary of State for building works to a pavilion on a village green, which potentially contravene the Inclosure Act 1857 or the Commons Act 1876.
14. It is possible however to overcome the effects of the prohibition of works by the use of the Council’s powers of appropriation. This will involve the use of s. 122 Local Government Act 1972 (provided the area concerned does not exceed 205 square yards, which equates to about 209 square metres) and s. 241 Town and County Planning Act 1990. The Council must give advance notice of its intentions and consider any objections received.
15. Appropriation of land for planning purposes requires the consideration of the following factors:
  - a. Whether planning permission is in force;
  - b. That the appropriation will facilitate the carrying out of development, redevelopment or improvements on or in relation to the land, or is required for a purpose which is necessary to achieve the interests of the proper planning of an area in which the land is situated, or it will contribute to the promotion of the economic, social and/or environmental well-being of the area; and
  - c. That the land is no longer required for the purposes it was held for immediately prior to the appropriation.

#### **a. Planning permission**

In relation to a) above, planning permission was granted for “the demolition of the existing pavilion and erection of a new sports pavilion” at Bourne Recreation Ground on 5 February 2016, (Planning Reference: WA/2015/2045), and the first test has therefore been satisfied. Please see Plan B for the lay-out of both the new pavilion and the existing pavilion.

#### **b. Development, Re-Development of Improvement of the Land**

In relation to b) above, the Council needs to be satisfied that such re-development of the Bourne Recreation pavilion site is likely to contribute to the improvement of the economic, social or environmental well-being of its area.

c. Land no longer required for the purposes it was held for immediately prior to appropriation

In relation to c) above, the site for appropriation currently has the existing pavilion built on it. The Council needs to ensure that releasing the land from the protection given by the Inclosure Act 1857 and the Commons Act 1876 together with the new arrangements that will be put in place to allow the local community to use the new facilities, provides the local community with access to recreational provision that is at least as good as the provision currently enjoyed.<sup>1</sup>

16. Please note section 122 (1) Local Government Act 1972 does not require the provision of land in exchange as the land which the Council intends to appropriate measures under 209 square metres.

**Secretary of State Approval**

17. The Council would not need to seek consent from the Secretary of State for the appropriation of land at this stage, however if the Council later disposes of land to the Community Group by way of a long lease, then approval would need to be obtained from the Secretary of State.

**Open Space Requirements**

18. Under s 122 of the Local Government Act 1972, the Council may not appropriate land consisting or forming part of an “open space” unless they first notify their intention to do so, specifying the land in question, to be advertised for 2 consecutive weeks in a newspaper circulating in the area which the land is situated and consider any objections to the proposed appropriation.

**Conclusion**

19. A local benefactor wishes to donate money to make substantial improvements and re-build the current pavilion at Bourne Recreation Ground. Bourne Community Interest Group Community Interest Company has been set up to build and maintain the proposed new pavilion. Planning permission has already been granted for the building of the new pavilion. In order to enable the redevelopment of the Bourne Recreation pavilion, officers consider that the Council should resolve its “intention to appropriate land” at Bourne Recreation Ground.
20. The Council must advertise its intention to “appropriate land” which forms part of an “open space” in a local newspaper for 2 consecutive weeks and consider any objections from the public. Subject to any objections received, a more detailed Executive Report will follow regarding the “Appropriation of Land at Bourne Recreation Ground” and proposed long lease to the Community Group. Due to the village green status, any disposal of land by long lease would need to be approved by the Secretary of State.

**Recommendation**

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<sup>1</sup> Section 122 (1) Local Government Act 1972

It is recommended that the Executive recommends to the Council:

1. to formally resolve its “intention to appropriate” the relevant village green land at Bourne Recreation Ground (measuring under 209 square metres) as outlined on the accompanying Plan A to enable redevelopment of the Bourne Recreation pavilion; and
2. to advertise its intention to appropriate land as required by law in a local newspaper for 2 consecutive weeks and consider any objections received in relation to the proposed appropriation of land.

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Background Papers:

Plan A – Site which the Council intends to appropriate outlined in red (measuring under 209 square metres).

Plan B – Site of Existing Pavilion with Over-lay Plan of New Pavilion.

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