

**WAVERLEY BOROUGH COUNCIL**

**EXECUTIVE – 27 SEPTEMBER 2016**

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**Title:**

**APPROPRIATION OF LAND AT BOURNE RECREATION GROUND**

**[Portfolio Holder: Cllr Tom Martin]  
[Wards Affected: Farnham Bourne]**

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**Summary and purpose:**

On 19 July 2016, the Council formally resolved its “intention to appropriate” the relevant village green land at Bourne Recreation Ground and advertised its intention to appropriate in a local newspaper for 2 consecutive weeks. This is the 2nd stage of the appropriation process. In order to support Members and ensure Members are fully informed, the “Overview” and “Relevant Facts” sections from the Executive meeting report dated 12 July 2016 are repeated.

The purpose of this report is to consider any objections to the appropriation of open space and village green land at Bourne Recreation Ground, Farnham, and in light of any objections, to determine whether to approve the appropriation for planning purposes in order to enable the existing pavilion to be redeveloped, which will significantly improve the leisure facilities for local residents.

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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 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.

**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.

**Financial Implications:**

There are potentially financial implications for the Council in the “appropriation of land”. 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:**

On 12 July 2016, the report to the Executive confirmed that to enable the redevelopment of the pavilion at Bourne Recreation Ground it would be necessary to appropriate the pavilion land, due to its village green status, to planning purposes pursuant to section 122 of the Local Government Act 1972 (“LGA 1972”) and section 241 Town and County Planning Act 1990. Appropriation is the statutory process which allows the Council to transfer property within its ownership from one use to another.

On 19 July 2016, the Council formally resolved its intention to “appropriate” the pavilion land and has advertised its intention to do so in a local newspaper for two consecutive weeks as required to do so by legislation.

The Council will not need to seek Secretary of State approval for the appropriation of land. The Council will however need to seek the approval of the Secretary of State prior to any disposal of land by long lease to “Bourne Asset Community Group Community Interest Company” (“the Community Group”) due to the village green status.

The disposal of land by long lease to the Community Group will be dealt with in a later Executive Report following the proposed appropriation of land.

### **Risks**

A potential risk to the redevelopment project is that the Council does not achieve Secretary of State approval at a later date to grant a long lease of the pavilion land to the Community Group. This risk has been minimised by seeking external legal advice.

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### **Overview**

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 Group Community Interest Group, company number: 09549039, (“the Community 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 for planning purposes 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 for Communities and

Local Government (“the Secretary of State”).<sup>1</sup> The proposed pavilion land for appropriation at Bourne Recreation Ground is outlined in red on Plan A (“the pavilion land”).

3. On 19 July 2016, the Council resolved its intention as to “appropriate” the pavilion land and has since advertised its intention in a local newspaper for 2 consecutive weeks. The Council must consider any objections before formally “appropriating” the pavilion land. No objections were received from the public in relation to the proposed appropriation of land.

### **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.

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<sup>1</sup> Section 233 TCPA 1990

## **Village Green and Statutory 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 (“LGA 1972”) authorises councils to appropriate land 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 250 square yards, which equates to about 209 square metres) and s. 241 Town and County Planning Act 1990 (“TCPA 1990”).<sup>2</sup>
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**

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

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<sup>2</sup> This outcome was confirmed by the decision in BDW Trading Ltd v Spooner [2001] EWHC 1486 (QB)

therefore been satisfied. Please see Plan B for the lay-out of both the new pavilion and the existing pavilion.

b. Development, Re-Development or Improvement of the Land

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. The new pavilion is expected to increase the number of local inhabitants using the Bourne Recreation Ground for community and social purposes and also provide better changing and toilet facilities within the pavilion for the use of the community.

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

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>3</sup>

The Council in considering this question can also have regard to how the land to be lost to “open space” use will be used.<sup>4</sup> In practice, the site for appropriation has the existing pavilion sited on it and therefore the new facilities will be significantly better than that which is currently provided for the local community.

16. 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. There must also be public notices notifying the public of its intention to appropriate land for 2 consecutive weeks in accordance with s. 122 (2) (b) LGA 1972.
17. Before making any appropriation of land, the Council needs to be satisfied that there is a reasonable prospect the the development can be achieved and that it is desirable that it should be carried out.
18. If the appropriation is made and the Council then holds the relevant land for planning purposes, it will fall within the scope of s. 241 TCPA 1990. This allows the land to be used for any purpose authorised by a planning permission, notwithstanding the prohibitions in s. 12 Inclosure Act 1857 and s. 29 Commons Act 1876. This will continue to be the case even if the Council subsequently disposes of the land or of an interest in the land.<sup>5</sup>

**Open Space Requirements**

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<sup>3</sup> Section 122 (1) Local Government Act 1972

<sup>4</sup> R (Maries) v London Borough of Merton [2014] EWHC 2689 (Admin)

<sup>5</sup> As per BDW Trading Ltd v Spooner [2001] EWHC 1486 (QB)

19. 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. The Council advertised its intention to appropriate open space and village green land in the Farnham Herald on 5 and 12 August 2016, with any written objections to be received by 5 pm on Friday 26 August 2016.

### **Provision of land in exchange**

20. Section 122 LGA 1972 does not require the provision of land in exchange so long as the area of land that the Council appropriates measures under 250 square yards (about 209 square metres). Officers have considered whether there is any alternative land in exchange and there is no land suitable adjacent or next to the village green site.

### **Objections to the Appropriation of Land by Public**

21. No written objections were received by the Council in relation to the appropriation of land at Bourne Recreation Ground.

### **Disposal of the land once appropriated**

22. If the Council appropriates the pavilion land, the Council would be authorised by Section 233 (1) TCPA 1990 to dispose of the relevant land (including a disposal by way of a long lease) to the Community Group, provided that the Council is satisfied that the disposal would secure the best use of a building erected or to be erected on the land. This is a matter which would be addressed in a later Executive report seeking authority for disposal of land.
23. The Council would also need to carry out a further publicity process by local newspaper advertisement prior to the disposal of land which forms part of an open space.<sup>6</sup>

### **Secretary of State Approval**

24. The Council does not need to seek consent from the Secretary of State for the appropriation of land<sup>7</sup>, however if the Council later disposes of land to the Community Group by way of a long lease, then approval will need to be obtained from the Secretary of State.<sup>8</sup>

### **Conclusion**

25. A local benefactor wishes to donate money to allow the existing pavilion to be demolished and rebuilt (in a larger form) and then used as a community

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<sup>6</sup> Section 233 TCPA 1990

<sup>7</sup> Section 122 (1) Local Government Act 1972

<sup>8</sup> Section 233 (2) TCPA 1990

pavilion. The existing pavilion is sited on Bourne Recreation Ground which is a village green site (VG14).

26. 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.

### **Recommendation**

That the Executive recommends to the Council that:

1. consideration be given to the points raised in this report with regard to appropriation of land at Bourne Recreation Ground as outlined above; and
2. pursuant to Section 122 of the Local Government Act 1972 and Section 241 Town and Country Planning Act 1990, land be appropriated at Bourne Recreation Ground for planning purposes, as outlined in red (and measuring under 209 square metres) on Plan A to enable the development of the new pavilion and the Executive Director be authorised to execute a memorandum confirming this appropriation.

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### **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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