

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 29 NOVEMBER 2016

Title:

**DISPOSAL OF LAND AT BOURNE RECREATION GROUND AND
PROPOSED COMMUNITY ASSET TRANSFER**

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

Summary and purpose:

On 18 October 2016, the Council formally resolved to appropriate the relevant village green land at Bourne Recreation Ground.

The purpose of this report is to consider any objections to the proposed disposal of open space and village green land at Bourne Recreation Ground, Farnham, and to determine whether to approve the disposal of land by long lease in order to enable the existing pavilion to be redeveloped. The proposed pavilion will significantly improve the leisure facilities for local residents. Any disposal of land must be in accordance with Waverley's Community Asset Transfer Policy.

How this report relates to the Council's Corporate Priorities:

This report relates to the Council's "Community Wellbeing" and "Environment" priorities: to encourage residents to use the Borough's open spaces and countryside as an important recreational resource; and to provide local residents with excellent leisure facilities. This report also relates to the Council's "Value for Money" priority to save 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 will be controls to ensure that the pavilion is available for general community use, along with leisure groups and sports clubs.

Financial Implications:

There are significant financial implications relating to the disposal of land and building of the new pavilion to the Community Group. The new pavilion will save the Council a considerable amount of money in terms of future repair and maintenance. Wider matters such as the question of State Aid, procurement issues and disposing of an asset at an undervalue must also be considered. In accordance with Waverley's Community Asset Transfer Policy, the Council must ensure that the Community Group has the financial capacity and a robust business plan to manage the asset and both parties have minimised any associated risks relating to the new pavilion.

Legal Implications:

There are wide legal implications. The Council must 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 and as the disposal will be at an undervalue.

Risks

A potential risk to the redevelopment project is that the Council does not achieve the approval of the Secretary of State approval to grant a long lease of the pavilion land to the Community Group. This risk has been minimised by seeking external legal advice. The disposal of land must be in accordance with Waverley’s Community Asset Transfer Policy in order to safeguard the Council’s financial position.

Overview

1. The Bourne Recreation pavilion site falls within land registered as village green.
2. 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.
3. The most legally robust 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. Planning permission was granted on 5 February 2016 (WA/2015/2045) for the demolition and building of the new pavilion.
4. The lease arrangements require the consent of the Secretary of State for Communities and Local Government (“the Secretary of State”).¹ The appropriated land at Bourne Recreation Ground is outlined in red on Plan A (“the pavilion land”) and the proposed ancillary land for disposal is outlined in red on Plan B (“the ancillary land”).

Relevant Facts

5. 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. The existing pavilion is some 130 to 140 square metres in extent.
6. 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

¹ Section 233 TCPA 1990

statutory predecessor, Farnham Urban District Council, and the Bourne Recreation Ground Committee (“the Committee”) which allows the Committee to use the pavilion building until that arrangement is determined.

7. 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.
8. 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. Under the proposed heads of term, community groups, leisure groups and sports clubs will 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.
9. The proposed pavilion is two storeys in height and would be sited circa 10 metres north of its existing position.
10. The Community Group will 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 represent a significant cost-saving to the Council.

Village Green and Statutory Prohibition of Building Works

11. 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.
12. 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.”

Intention to Dispose of Open Space and Village Green Land

13. On 3 November 2016 and 10 November 2016, the Council advertised its intention to dispose of open space and village green land at Bourne Recreation Ground in the local newspaper, The Farnham Herald, with any written responses to be received by 5 pm on Friday 18 November 2016. The Council must consider any objections before disposing of the pavilion land. The Council is also consulting with the Surrey Countryside Access Forum, as required by statute, prior to any disposal.
14. As at 17 November 2016, one written objection has been received by the Council in relation to the appropriation of land at Bourne Recreation Ground. The objection from a local resident relates to a) the original ownership of the village green land and how the Council has the right to dispose of any or all of

this land at an undervalue and b) the extent of land to be disposed. In response to point a), the Council has taken external legal advice to ensure that the proposed disposal is in accordance with the strict village green legislation and in response to point b) the ancillary land on Plan B is to enable the new pavilion to be built, as per the planning permission granted (WA/2015/2045), but is not being transferred for any other purpose.

Disposal of the land by long lease

15. As the pavilion land is now appropriated, the Council is authorised by section 233 (1) T CPA 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.
16. The Council also wishes to dispose of the ancillary land at the pavilion (on Plan B) pursuant to section 123 of the Local Government Act 1972, for the improvement of footpaths and surrounding areas of the pavilion.
17. The disposal must be in accordance with Waverley's Community Asset Transfer Policy. The Community Asset Transfer Policy sets a transparent and consistent framework to enable asset transfer from the Council to community organisations. Before any transfer of property asset, the Council must consider the following: the nature and capacity of the applicant; the contribution to the corporate objectives, the assessment of risks and ensuring there is a sustainable business case.
18. The disposal is subject to obtaining Secretary of State approval as outlined below.

Proposed Heads of Term

19. The proposed heads of term are set out at Annex B. The pavilion will only be used for purposes and by persons that are generally compatible with the continued use of the rest of the site as a village green.
20. The new pavilion will provide an enhanced clubhouse area, storage and changing facilities for the local community. The pavilion will be available to local inhabitants and will allow for other clubs and organisations active in the local community to use the new pavilion.

Disposal of an Asset at an Undervalue

21. In accordance with Waverley's Community Asset Transfer Policy, if any disposal of land is at less than best consideration then it must be accompanied by a legally-binding Service Level Agreement (SLA) or other appropriate legal agreement identifying the benefits and how these will be monitored and measured, together with the remedies available to both parties if the SLA or other mechanism is not met.
22. When a local authority disposes of land assets they have a fiduciary duty under the provisions set out in section 123 of the Local Government Act 1972.

This provides that, subject to certain exceptions, a local authority may dispose of land held by them in any manner they wish but, except with the consent of the Secretary of State, they may not dispose of land (unless the disposal is by way of a lease for less than 7 years) for a consideration less than the best that can be reasonably obtained.

23. There is a general consent set out in Circular 06/2003 which relates to disposals under section 123 of the Local Government Act 1972 where the difference in value between the disposal price and the open market value is £2 million or less and the disposal is likely to contribute to promoting or improving the economic, social, or environmental well-being of some or all of the residents of the Council's area. Given the social role of the pavilion and the improved facilities it will provide, together with significant external funding, officers consider that this test can be met. The proposed disposal of land at Bourne Recreation Ground is to a community organisation and the lease will not allow for the commercial use of the site. The value of the land for the pavilion and surrounding area therefore reflects this limited market.

Secretary of State Approval

24. The Council will need to seek consent from the Secretary of State prior to any disposal of land at Bourne Recreation Ground.²
25. Consent is also required from the Secretary of State where the disposal is to be for a consideration less than the best that can be reasonably obtained and the disposal is for more than a seven year lease.³

Conclusion

26. 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 pavilion. On 18 October 2016, the Council formally resolved to appropriate land at Bourne Recreation Ground for planning purposes.
27. The Council wishes to dispose of the Bourne Recreation land outlined on Plan A and Plan B via a long lease to enable the demolition of the existing pavilion and building of the new pavilion.
28. Provided no significant objections are received and Secretary of State approval of the disposal is achieved, the Bourne Recreation new pavilion project can proceed.

Recommendation

It is recommended that the Executive:

1. delegates authority to officers to seek approval from the Secretary of State in relation to the disposal of village green land at Bourne Recreation Ground;

² Section 233 (2) TCPA 1900

³ Section 223 (3) TCPA 1990

2. pursuant to section 233 Town and Country Planning Act 1990, resolves to dispose the land 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;
3. pursuant to section 123 of the Local Government Act 1972, resolves to dispose of the ancillary land at Bourne Recreation Ground as outlined in red on Plan B (and measuring approximately 1, 140 square metres excluding the building on Plan A) for improvement of footpaths and the surrounding areas of the pavilion;
4. delegates authority to the Director of Finance, in consultation with the Finance Portfolio Holder, to carry out a detailed business case and risk assessment to ensure that the proposed disposal of land at Bourne Recreation Ground to the Bourne Asset Community Group Community Interest Group, is in accordance with Waverley's Community Asset Transfer Policy;
5. subject to obtaining Secretary of State approval, delegates authority to officers to complete the lease and necessary legal agreement(s) with the Community Group, in accordance with Waverley's Community Asset Transfer Policy, such terms and conditions to be agreed by the Director of Finance and Head of Customer and Corporate Services, in consultation with the relevant Portfolio Holder(s).

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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