

# **WAVERLEY BOROUGH COUNCIL**

## **EXECUTIVE**

**2 MARCH 2021**

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**Title:**

**Property Matter - Land at Loxwood Road, Alfold**  
**Access Rights**

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**Portfolio Holder:** Cllr Mark Merryweather, Portfolio Holder Finance, Assets and Commercial Services

**Head of Service:** Peter Vickers, Head of Finance and Property

**Key decision:** Yes

**Access:** Part Exempt

### **Note pursuant to Section 100B(5) of the Local Government Act 1972**

This report and Annexe 3 and 4 to this report contains exempt information by virtue of which the public is likely to be excluded during the item to which the report relates, as specified in Paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972, namely:

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

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#### **1. Purpose and summary**

- 1.1 Catesby Estates plc is seeking the Council's agreement for a pedestrian/cycle link across Council land at Chilton Close, Alfold in order to comply with a planning requirement that the second phase of a residential development site is sustainable and reasonably linked to the settlement of Alfold.

#### **2. Recommendation**

It is recommended that the pedestrian/cycle link into Chilton Close be agreed and authority be delegated to the Strategic Director to approve the terms of the agreement.

#### **3. Reason for the recommendation**

- 3.1. On the 3 February 2015 Executive granted access rights over a strip of Common land at Loxwood Road, Alfold to Catesby Estates plc (Catesby) to permit access to a residential development of the adjoining land. The Council used an external advisor to secure the agreement which was by way of an option agreement, dated 21 December 2017, between the Council, Catesby and the underlying land owners. In 2018 phase 1 development of the site brought a substantial receipt to the Council. The agreement secured further payments if other land was

developed requiring the same access rights within a timeframe of five years.

- 3.2. In May 2019 Catesby submitted a further planning application as a phase 2 development. This application was approved at Appeal in March 2020 subject to a schedule of conditions. The Appeal states '*The proposed pedestrian/cycle route through Chilton Close and footway improvement works along Horsham Road are part of the proposed package of measures to encourage sustainable movements. As such, it is necessary that these be secured by condition*'.
- 3.3. Catesby have selected a house builder for the phase 2 development and are, now seeking the Council's agreement to the pedestrian/cycle link through to Chilton Close. The plan showing where the pedestrian/cycle link from Chilton Close will join the phase 2 development plan is shaded brown in Annexe 1. A map of the link in the context of the overall development site is shown in Annexe 2.
- 3.4. Officers have engaged the external advisor used previously once more to advise on the terms of the agreement and the receipt that would be generated for the Council for access rights i) over the strip of Common land at Loxwood Road for the phase 2 development and ii) for pedestrian/cyclist link through to Chilton Close. A briefing note from the external advisor is attached at exempt Annexe 3.
- 3.5. The calculation of the estimated proceeds to the Council is shown in exempt Annexe 4.
- 3.6. The agreement will be for this phase 2 development by Catesby only.

#### **4. Relationship to the Corporate Strategy and Service Plan**

- 4.1 This will bring in a capital receipt which can be used to support project delivery in support of the Corporate Strategy and Service Plans. The housing development itself supports the objective of maximising the availability of housing.

#### **5. Implications of decision**

##### **5.1 Resource (Finance, procurement, staffing, IT)**

The Council will receive a substantial sum. The fees for the external advice will be met by Catesby.

##### **5.2 Risk management**

The Council works with external advisors in undertaking these transactions to ensure best consideration is achieved for the use of Council assets and to draw up agreements to safeguard the position of the Council and its assets going forward.

##### **5.3 Legal**

**Common land:** The existing access rights from Loxwood Road across the Common land owned by the Council should be sufficient to accommodate phase 2 development.

The existing access from Loxwood Road to Chilton Close is also across Common

land owned by the Council. The access should be sufficient to accommodate pedestrians and cyclists from the phase 2 development.

However, any increase in the dimensions of either access across Common land will have to comply with the provisions of the Commons Act 2006 and may require the approval of the Planning Inspectorate on behalf of the Secretary of State.

In addition, given its value to the community before disposing of open space land it owns such as Common land, the Council is legally required to advertise its intention in a local newspaper for two consecutive weeks and to consider objections. If it fails to follow this procedure the Council can be challenged in the High Court.

**External Advice:** Legal Services will appoint external solicitors approved within the Framework Agreement to examine the Council's title to Chilton Close and to draft and negotiate the necessary documentation to grant a pedestrian/cycle right of way through Chilton Close to Loxwood Road for the benefit of phase 2 development.

The external solicitors will also be instructed to consider whether the grant of a right of way through Chilton Close will be a disposal of Council open space land and therefore whether the Council is legally required to advertise its intention in a local newspaper for two consecutive weeks and to consider objections.

#### **5.4 Equality, diversity and inclusion**

There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

#### **5.5 Climate emergency declaration**

The granting of the access way through Chilton Close is part of the proposed package of measures to encourage sustainable movement.

### **6. Consultation and engagement**

6.1 The Ward councillor, Cllr Kevin Deanus, has been briefed on the proposals.

### **7. Other options considered**

7.1 The planning appeal was successful and planning permission granted subject to conditions of which agreement to the footpath link is one.

### **8. Governance journey**

8.1 The Scheme of Delegation requires interests in land or property to be brought to the Executive where the value is in excess of the delegated authority.

### **Annexes:**

Annexe 1 – map of proposed footpath/cycle link

Annexe 2 – map of development site  
Annexe 3 – External advisor briefing note (exempt)  
Annexe 4 – calculation of estimated proceeds (exempt)

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### **Background Papers**

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

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Agreed and signed off by:  
Legal Services: 14/12/2020  
Head of Finance: 03/12/2020  
Strategic Director: 03/12/2020  
Portfolio Holder: date