

# **WAVERLEY BOROUGH COUNCIL**

## **EXECUTIVE**

**21 MARCH 2023**

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**Title:**

**Brambleton Hall**  
**Disposal of land**

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**Portfolio Holder:** Cllr Mark Merryweather, Portfolio Holder for Finance

**Head of Service:** Marieke van der Reijden, Executive Head of Assets and Property

**Key decision:** No

**Access:** Public

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

- 1.1 This report seeks approval for disposal, by way of a lease agreement, of a small parcel of public open space on the Weydon Lane former landfill site, as shown in annexe 1, to Brambleton Hall.

### **2. Recommendation**

It is recommended that the Executive:

1. appropriate the area of land marked in Red on the plan marked in Annexe 1 for planning purposes as set out in the report.
2. Under s203 Housing and Planning Act 2016, override the Covenant dated 2 June 1972, not to use the land other than as in accordance with the covenant as set out in the report, in order to facilitate the development in accordance with the planning permission granted.
3. approve disposal, by way of a lease agreement, of land marked in Annexe 1 for a term of 20 years at nil consideration to Brambleton Hall The Parochial Church Council of the Bourne Parish (PCC) subject to them complying to the requirements set out in the planning permission.

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

- 3.1. Brambleton Hall is owned by The Parochial Church Council of the Bourne Parish (PCC) and is managed from the Parish Office at the church of St Thomas-on-The Bourne in Frensham Road. It is a multi-purpose facility for the local community. The building backs onto the Weydon Lane former landfill site which is owned by the Council.
- 3.2. The Weydon Lane closed land fill site comprised a sand and gravel pit between the 1930s and 1970s and was subsequently backfilled with landfill material

(mixed commercial, inert and domestic waste). Since closure as a landfill site in the early 1980s the site has been restored to grassland and has become a public open space. It is now mainly used for recreational purposes, such as walking dogs.

- 3.3. The PCC have put in a request to lease a small section of land directly adjoining the Hall to construct a Children's play Area and site a storage unit which is on the Council owned land known as Weydon Lane Land fill site. (see Annexe 1)
- 3.4. Brambleton Hall has a busy schedule as a multi-purpose facility and is used every day of the week by a variety of community groups:
  - Sundays – morning and afternoon church service
  - Weekdays - building and grounds are used by the Babes and Tots group.
  - Early evenings - Slimming World, Youth Church activities twice a week, and a fortnightly community Bingo night.
  - Weekly sessions for Homestart, to help young families in the community.
  - Community Fridge and Community Warehouse
  - Luncheon provided for local elderly residents.
  - Women's Institute meeting
  - Dance club, Pilates club, concerts and Atomic Boxing Club
- 3.5. In order to facilitate the Hall's activities a planning application was made (WA/2020/1093) on the 23/06/2020, and subsequently 31/08/2022, for the 'Erection of An Extension and Alterations to Provide A Boxing Gym; Provision Of Timber Clad Storage Container; Construction Of A Children's Outside Play Area on Part Of Brambleton Park with New Pedestrian Access And Landscaping'.
- 3.6. Planning permission was granted (subject to conditions) by the Council on 19 July 2021 for a new boxing gym and external play area with associated landscaping. However, due to the ongoing adverse national economic situation and the withdrawal of previous offers of grants, the PCC have realised that they are unlikely to be able to raise sufficient funds to construct the new boxing gym extension to Brambleton Hall as detailed in the original planning. Therefore, a smaller boxing ring only was proposed.
- 3.7. With the new planning permission granted, negotiations have taken place between the PCC and the Council for the lease of the land on a small part of the Weydon Lane closed land fill site to create a children's play area and a storage unit. This is to enable improved facilities for the boxing club within the funds available and also retain adequate space for the other users of Brambleton Hall.
- 3.8. The issues to address on the land to be disposed of for the purpose of a children's play area and storage are, as referenced in the planning applications are:
  - the contamination concerns of the land being adjacent to a disused closed landfill site - the playground and storage unit will comply to recommendations in the Card Geotechnics Limited report to mitigate against residual risks from remaining Made Ground, if present.

- Restricted covenant from 1972 registered against the title prohibiting disposals unless for public recreation and open space for which a procedure needs to be followed.
- 3.9. Card Geotechnics Limited (CGL) was commissioned by the Bourne Parish Council to undertake a geotechnical and geoenvironmental site investigation at Brambleton Hall and their recommendations are part of the planning application and must be concurred with as part of the permission. Waverley's environmental officers have also made comment which is part of the planning application.
  - 3.10. The value of the land is considered to be low and, therefore, the recommendation is that the council is willing to agree the lease for a term of 20 years at a nil consideration to reflect the social value rather as there is only a small potential for a modest income.
  - 3.11. The proposed Weydon Lane site would not be easily accessible for any other user and will not have an impact on any future projects for the site. The social value of agreeing the terms with the PCC to utilise the land in a safe way as a community use, as a special purchaser is in line with the spirit of the use of a public open space. No detriment will be suffered to the existing users of the Weydon Lane site.
  - 3.12. The protection of the roots of the established oak tree has been considered and is also part of the planning considerations and requirements. The pedestrian access way which runs from the public open space to the Brambleton Hall Car park and Talbot Road will not be affected.
  - 3.13. By way of a transfer to Farnham Urban District Council on the 2<sup>nd</sup> June 1972 a covenant was entered into which binds the land the covenant provides:  
"IN consideration of the foregoing the Purchaser hereby covenants with the Vendor for the benefit and protection of the land owned by the Vendor in the surrounding district and every part thereof that the Purchaser shall not use or permit or suffer to be used the land first before described for any purpose other than that of a public recreation ground or public open space which permitted user shall include the right to erect ancillary buildings thereon connection with such use together with car parking facilities for the user thereof and in addition public conveniences."
  - 3.14. Whilst the use by the PCC will be broadly in accordance with this covenant in that it promotes public recreation it is not directly covered. Therefore, there is a need to disapply the covenant. Under the terms of s203 Housing and Planning Act 2016 the Council can disapply the covenant for the area of land concerned.
  - 3.15. In order to do this the following test must be considered, namely that the land is owned by the Council, that there is an appropriate planning permission in place, and that the permission cannot be implemented due to the covenant.
  - 3.16. In the present case there is a planning permission for the proposed use (as set out above which cannot be implemented without disapplying the covenant. The test in principle is therefore satisfied.

- 3.17. In disapplying the covenant the Council has to consider the benefit of the covenant in securing public accessibility to this section of the site, however as noted above the interference with the site is very limited in respect of the wider area and it should be noted that during the public consultation process there were no comments received.
- 3.18. The owners of the Covenant have not been identified, however in theory they are entitled to compensation for the loss of the benefit of the covenant in line with the Housing and Planning Act 2016. The level of compensation is that as ascribed under compulsory purchase. In this case the valuation is limited to the area appropriated and the covenant value. The estimate of the value of this is less than £2,000 based on open storage comparables ranging from £0.80 psf to £1.00 psf. Should an approach be made to the Council by a party arguing that they benefit from the Covenant normal processes will be undertaken to establish the accuracy of the claim.

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

- 41 This supports the Council's priority to improve the health and wellbeing of residents and communities through enabling Brambleton Hall to open up their facilities to a larger number of users and grow the activities on offer.

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

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

**Drafted by: Vicki Basley, Corporate Asset Manager**

Brambleton Hall have given an undertaking to meet the cost of the public consultation process.

The Council will insist on indemnity insurance and public liability insurance.

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

Public consultation was undertaken as required for the appropriation and disposal of public open space and to mitigate the risk of public objection.

A lease will be put in place to protect the land for the period of the lease.

##### **5.3 Legal**

**Drafted by: Ian Hunt, Interim Deputy Borough Solicitor**

The legal implications are contained within the body of the report.

##### **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 contamination concerns of the land being adjacent to a disused land fill site have been addressed as part of the planning application requirements and advice sought from a specialist environmental team for construction and monitoring.

This will include the use of permeable paving and vents to prevent the build-up of any ground gases as a result of the ground conditions.

## **6. Consultation and engagement**

- 6.1. The disposal of land described as which is categorized as public open space into private ownership, albeit possibly for some social value, requires the council to openly notify and give members of the public any opportunity to make representations through a public consultation process.
- 6.2. This public consultation process informing the intentions for this appropriation of public open space for the delivering and effecting the planning permission secured by Brambleton Hall have been advertised in the local paper for two consecutive weeks commencing from 30<sup>th</sup> December 2022 and the council have received no responses or objections from any member of the public.
- 6.3. Following the public consultation period the Executive is to decide whether or not to appropriate the land for the purposes of carrying out the planning permission and dispose of the land under a lease, considering the terms, and the acceptance of the nil consideration.

## **7. Other options considered**

- 7.1 Granting of this lease will not impact on any future projects for the site.

## **8. Governance journey**

- 8.1 Executive – 21 March 2023

### **Annexes:**

Annexe 1 – Site plan of land for disposal

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### **Background Papers**

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

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### **CONTACT OFFICER:**

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Agreed and signed off by:

Legal Services: Ian Hunt, Interim Deputy Borough Solicitor, 13/03/2023

Head of Finance: Name, Post, date

Strategic Director: Name, Post, date

Portfolio Holder: Name, Post, date