

POLICY AND RESOURCES COMMITTEE

7 NOVEMBER 2017

PART I – NOT DELEGATED

8. THE CENTRE – LEISURE MANAGEMENT CONTRACT (DCES)

1. Summary

1.1 This report seeks authority to the appropriation of the land at the Leisure Centre and open space, Gosforth Lane, South Oxhey.

2. Details

2.1 At present the Site comprises the leisure centre building and a grassed area (Open Space) to the west of the building. The leisure centre has reached the end of its occupational life. The Site has been identified in the site allocations Local Development Document adopted November 2014 for a leisure centre with potential swimming pool. The proposal for redevelopment will include new sports and swimming facilities together with an onsite car park which is to be located substantially on the Open Space.

2.2 The Council is proposing to enter into a contract with a preferred bidder to design, build, operate and maintain the leisure centre and car park. The Committee will have seen a separate report reporting on the progress of the procurement process.

2.3 A planning application will be made by the preferred developer after due appointment.

2.4 The attached report at appendix A has been prepared by the Council's external Solicitors, Bond Dickinson.

2.5 A site plan defining the land in question is shown in appendix B.

3. Reasons for Recommendation

3.1 It is necessary that Council agrees to the appropriation so that it is in a position to allow the works to proceed following appointment of the preferred operator, subject to planning approval. As part of the site to be developed is open space, notice has to be given to the public of the proposed disposal. Any representations received in respect of the proposed disposal and appropriation will be considered by the Council prior to any disposal.

4. Policy/Budget Reference and Implications

4.1 The recommendations in this report are within the Council's agreed policy and budgets.

5. Financial Implications

5.1 None specific, the costs are included within the SOI budget.

6. **Legal**

6.1 Legal implications are contained within the Solicitors' report at Appendix A.

6.2 Full Council must agree to the appropriation of the land, it is not a delegated decision.

7. **Equal Opportunities, Staffing, Environmental, Community Safety, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications**

7.1 None specific.

8. **Recommendation**

That this Committee recommends to Council that:-

8.1 It resolves to authorise the appropriation of the land at the Leisure Centre and open space (as shown on the plan at Appendix B which is owned freehold by the Council) having first considered any objections received to the same under the provisions of Section 122 of the Local Government Act 1972 to enable the Council to override third party rights and easements pursuant to Section 203 of the Housing and Planning Act 2016;

8.2 It authorises the disposal of the Site as public open space pursuant to s.233 of the Town and Country Planning Act 1990 by virtue of a lease for 20 years to the appointed operator having first considered any objections received to the same;

8.3 That the consideration of any objections be delegated to the Director of Community and Environmental Services in consultation with the Lead Member for Resources and Shared Services; and

8.4 That in doing so the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 contained in paragraph 4 of this report so far as they might be applicable in deciding whether or not to authorise the appropriation and resolves the following With regard to Article 1 of Protocol 1 it is considered that in balancing the rights of the individuals who are affected by the appropriation against the benefit to the community of proceeding with the appropriation, the appropriation resulting in the interference with the individuals rights is justified in the interests of providing an essential community use for an enhanced Leisure facility.

Appendices – A - Report by Bond Dickinson
B - Site Plan

Report prepared by: Alan Head, Head of Major Projects

THREE RIVERS DISTRICT COUNCIL

APPROPRIATION AND DISPOSAL REPORT

1. RESOLUTIONS

1.1 To recommend that the Council resolves:

- 1.1.1 To authorise the appropriation of the land at the Leisure Centre and Open Space, Gosforth Lane, South Oxhey (the **Site**) for planning purposes (as shown edged red on the plan at **Appendix A** which is owned freehold by the Council) having first considered any objections received to the same under the provisions of Section 122 of the Local Government Act 1972 to enable the Council to override third party rights and easements pursuant to Section 203 of the Housing and Planning Act 2016;
- 1.1.2 To authorise the disposal of the public open space (**Open Space**) edged green as shown on the plan at Appendix A within the Site pursuant to s.233 of the Town and Country Planning Act 1990 by virtue of entering into a contract with the preferred bidder having first considered any objections received to the same; and
- 1.1.3 That the consideration of any objections be delegated to the Director of Community and Environmental Services in consultation with the Lead Member for Resources and Shared Services.
- 1.1.4 That in doing so the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 contained in paragraph 4 of this report so far as they might be applicable in deciding whether or not to authorise the appropriation and resolves the following With regard to Article 1 of Protocol 1 it is considered that in balancing the rights of the individuals who are affected by the appropriation against the benefit to the community of proceeding with the appropriation, the appropriation resulting in the interference with the individuals rights is justified in the interests of providing for the redevelopment of an essential community use for a leisure centre and car park.

2. BACKGROUND AND PURPOSE OF REPORT

2.1 At present the Site comprises the leisure centre building and a grassed area (Open Space) to the west of the building. The leisure centre has reached the end of its occupational life. The Site has been identified in the site allocations Local Development Document adopted November 2014 for a leisure centre with potential swimming pool. The Council is considering a number of applications from bidders and has yet to appoint a preferred bidder to redevelop the Site. The proposal for redevelopment will include new sports and swimming facilities together with an onsite car park which is to be located substantially on the Open Space.

- 2.2 The Site is close to the area known as the "South Oxhey Initiative" site and is considered part of the regeneration of the area together with the regeneration presently taking place in respect of land acquired by compulsory purchase order by the Three Rivers District Council (Land at Henbury Way, Oxhey Drive, Bridlington Road, St Andrews Road, The Parade, Prestwick Road, Fairfield Avenue and Station Approach, South Oxhey) Compulsory Purchase Order 2016.
- 2.3 The Council is proposing to enter into a contract with a preferred bidder to design, build, operate and maintain the leisure centre and car park. A planning application will be made by the preferred developer after due appointment.
- 2.4 The Site is subject to certain rights, one of which is a restrictive covenant in favour of what was the London County Council. The covenant was to restrict the use of the site other than for housing public buildings or public open space. A Deed of Variation indicates that the Council is the successor in title to the London County Council and covenants may therefore be extinguished by unity of ownership. In addition, the site may be subject to rights of access granted by way of a portfolio transfer dated 19 March 2008 between the Council and Thrive Homes Limited. In order to protect the Council against any other known or unknown third party rights, it is proposed to appropriate the Site for planning purposes to facilitate the development of the proposed leisure centre and car park.
- 2.5 In addition to the contractual restriction the fact that part of the Site is held as Open Space on a statutory basis means that the Council cannot appropriate or dispose of the Open Space without following a statutory process.
- 2.6 The purpose of this report is to seek authority to firstly appropriate the Site for planning purposes and also to authorise the disposal of the Open Space.

3. APPROPRIATION

- 3.1 The Council can appropriate land for any purpose for which it is authorised to acquire land by agreement. The appropriation process is set out in the Local Government Act 1972 (**1972 Act**). Section 122(1) of the 1972 Act provides:
4. *Subject to the following provisions of this section, a principal council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned.*
- 3.2 The Council is a principal council and so must follow the process set out in Section 122 of the 1972 Act. The P&RC should only resolve and recommend that the Council appropriate land for another purpose if it is satisfied that the Site is no longer required for the purpose for which it is

held. Whilst the Council currently holds part of the Site as Open Space, the Site is required for a replacement leisure centre and car park. It should therefore be appropriated for planning purposes prior to its disposal to the preferred bidder.

- 3.3 The Council will advertise its proposed appropriation of the Site for planning purposes in accordance with s.122 of the 1972 Act. That advertisement will be published in the press during December 2017 together with erection of the necessary site notice.
- 3.4 Objections are to be in writing addressed to the Director of Community and Environmental Services.
- 3.5 There may be private rights of way and possibly other easements over the Site. Where land is appropriated for planning purposes, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. This has been in force since July 2016 and has replaced what was section 237 of The Town & Country Planning Act 1990. The Council has this statutory power to override easements, rights of way and restrictive covenants affecting land. Section 203 authorises the overriding of any private rights (such as restrictive covenants and including rights of light) affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person deriving title from it. That being so, statutory undertakers are exempt from the provisions of Section 203 such that their rights cannot be overridden.
- 3.6 The ability to interfere with these rights is important in the context of enabling the development to proceed. Whilst the power exists to override such rights it does not prevent such rights being compensated. Section 203 of the Housing and Planning Act 2016 provides that compensation will be payable to those parties whose interests have been affected by the appropriation. The Council does not anticipate any claims. If any were to be received, the likely compensation is expected to be minimal.

4. DISPOSAL OF THE LEISURE CENTRE AND OPEN SPACE LAND

- 4.1 As already noted, the Site is held by the Council for community use and as Open Space.
- 4.2 Where land which is held as Open Space but has been appropriated for planning purposes there is a similar restriction on its disposal. That disposal needs to be advertised prior to disposal. It will be advertised and site notices erected in the same manner as the proposed appropriation.
- 4.3 Objections will be considered by the Director of Community and Environmental Services in consultation with the Lead Member for Resources and Shared Services.

5. HUMAN RIGHTS AND EQUALITIES

5.1 The Human Rights Act 1998 (**HRA**) came into force on 2 October 2000.

5.2 Provisions of the HRA which are relevant in relation to the proposed appropriation are:

5.2.1 The European Convention on Human Rights (the **Convention**) is an international treaty signed under the auspices of the Council of Europe. Whilst the United Kingdom was instrumental in drafting the Convention it was never incorporated into United Kingdom law.

5.2.2 The HRA still does not incorporate the Convention into United Kingdom law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.

5.2.3 The main article of the Convention which are of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.

5.2.4 In appropriating land an authority must show that the appropriation is justified in the public interest.

5.3 Article 1 of Protocol 1 provides that:

5.3.1 Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

5.3.2 No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.

5.3.3 However, the above rules shall not prevent a State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest.

5.3.4 The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is an important factor in considering the balance between the two.

5.3.5 With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.

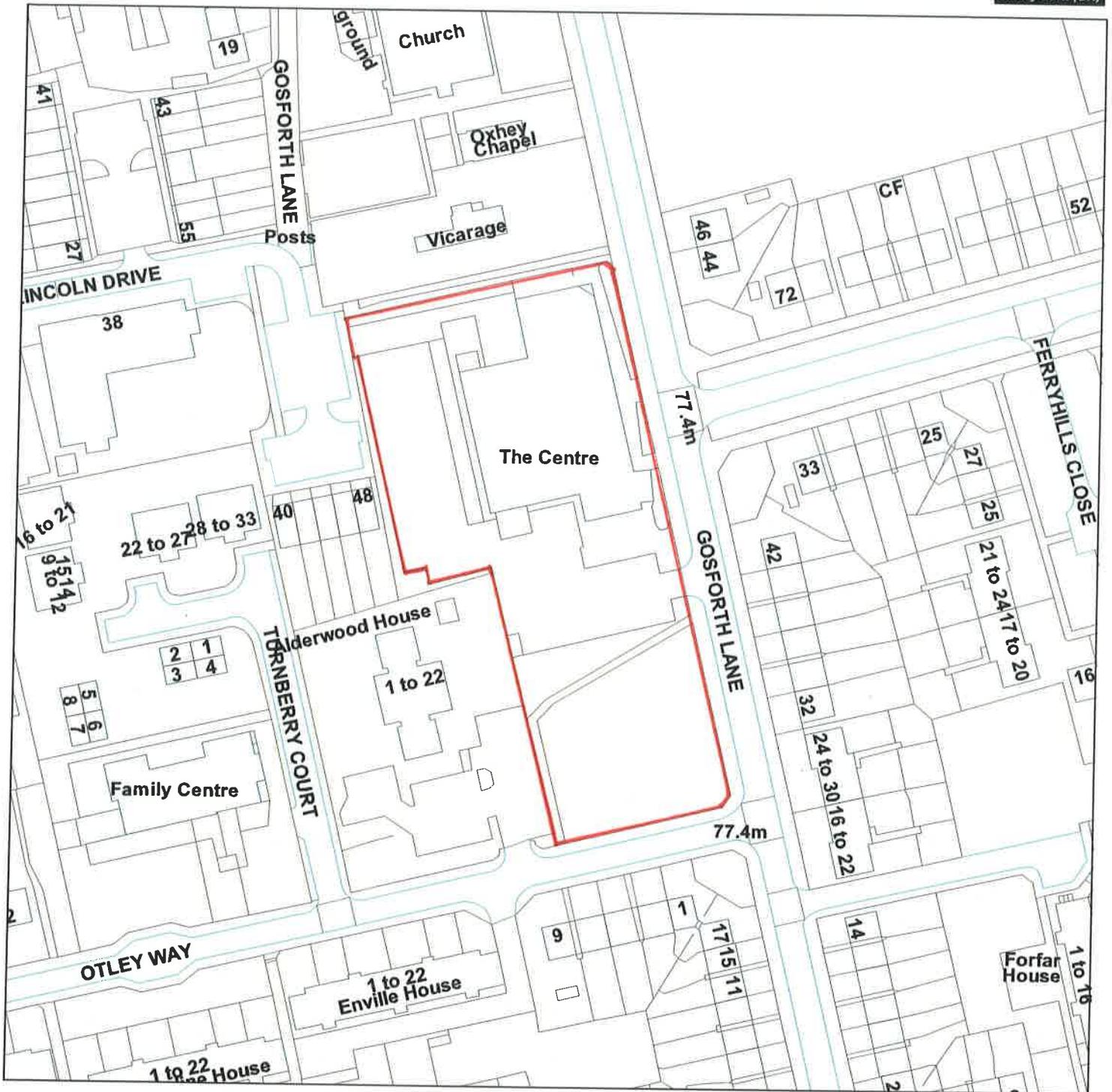
5.4 In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

- 5.4.1 Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - 5.4.2 Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - 5.4.3 Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.5 The Council carried out an equality impact analysis on 9 October 2017. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the proposed development would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

October 2017

The Centre

Gosforth Lane, South Oxhey



Scale : 1:1250

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