

Wiltshire Council

Cabinet

7 May 2024

Subject: Appropriation of Land for Planning Purposes

Cabinet Member: Cllr Tamara Reay: Cabinet Member for Transport and Assets

Key Decision: Key

Executive Summary

The Council owns land at Darcy Close Chippenham and the Former Resource Centre, Cherry Orchard, Marlborough both of which Cabinet has previously authorised the disposal.

In order to ensure that development of those sites is not stymied through covenants over the lands, Cabinet is invited to approve their Appropriation for Planning Purposes. That will mean that any beneficiary of those covenants cannot legally stop development, but will be entitled to compensation for loss, if any.

Proposals

Cabinet appropriates for planning purposes the land at Darcy Close and part of the cycleway on the disused railway line, Chippenham for planning purposes (as shown on the plan in Appendix 1) and the Former Resource Centre, Cherry Orchard, Marlborough (as shown on the plan in Appendix 2) under section 122 of the Local Government Act 1972

Reason for Proposals

To enable development to take place, for which planning permission has been granted, subject to conditions.
The Council will generate capital receipts.

Andy Brown

Deputy Chief Executive & Corporate Director Resources

Wiltshire Council

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Purpose of Report

1. It is proposed Cabinet appropriates for planning purposes the land at Darcy Close and part of the cycleway on the disused railway line, Chippenham for planning purposes (as shown on the plan in Appendix 1) and the Former Resource Centre, Cherry Orchard, Marlborough (as shown on the plan in Appendix 2) under section 122 of the Local Government Act 1972.

Relevance to the Council's Business Plan

2. The appropriation of the land at Darcy Close will provide a link from the proposed Rawlings Green development to the town centre thereby accord with the Business Plan's aspirations for 'Connected Communities'.
3. The Appropriation of the former Marlborough Resource Centre will enable the site to be developed for residential purposes, including policy compliant affordable housing, in accordance with the Business Plan's aspirations for a 'Thriving Economy'.

Background: Darcy Close

4. In October 2021 planning permission was granted for a residential led mixed use development at Rawlings Farm, Chippenham, reference: **15/12351/OUT**. Condition 24(b) states:

a new road link into the site through an alteration and extension of Darcy Close in accordance with WSP drawing no 5609/SK/006/B, and including a junction alteration on Cocklebury Road in accordance with WSP drawing no 5609/SK/005/A.

Condition 25 states

No development shall commence on a phase or sub phase of the site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved by the Local Planning Authority. The carriageway width of the connecting road through the site between Parsonage Way and the east side of the site shall be not less than 7.3 m; the link to Cocklebury Road from this road shall not be less than 6.2m carriageway width, with appropriate widening at bends. Phases of the development shall not be first brought into use or occupied until the estate roads, footways, footpaths, verges, junctions,

street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture have all been constructed and laid out in accordance with the details approved and in accordance with the provisions of the approved site phasing plan.

5. In order for the owner to comply with the above conditions, it needs to acquire the Council owned land at Darcy Close and part of the disused railway line.
6. Authority for such a transaction was ratified at Cabinet in December 2022 when it was resolved:
7. Terms for such a legal agreement have now been substantially agreed. Those terms ensure that a suitable crossing point for the cycleway is provided.

Background: Marlborough Former Resource Centre

8. The site was declared surplus by Cabinet in July 2017, and subsequently Cabinet resolved in July 2019 to transfer the site to Stone Circle, a development company wholly owned by the Council. That transfer will take place in due course.
9. In February 2024, the Eastern Area Planning Committee resolved to grant planning permission for residential development subject to specific conditions and completion of a S106 Agreement.

Main Considerations for the Council

10. 'Appropriation' is a term given in local government legislation to an internal process of a council designed to allow councils flexibility in its use of land. It allows a council to use land that has been acquired for one purpose in suitable circumstances to be used for a different purpose.
11. Under section 122 of the Local Government Act 1972, the Council can "*appropriate for any purpose for which the council is authorised ...to acquire land... any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation*". The Council is authorised to acquire land for planning purposes. Once land is appropriated for planning purposes, section 241 of the Town and Country Planning Act 1990 provides that it can be used or developed in any manner permitted by grant of planning permission.
12. In both these cases, it is considered that the sites are no longer required for the purpose for which they were originally held and appropriation will facilitate development, redevelopment or improvement of the land.
13. Where land is appropriated for planning purposes, it will then be held by the Council under the statutory provisions within Part 9 of the Town and Country Planning Act 1990. The practical consequence of this (by virtue of Section 203 of the Housing and Planning Act 2016) is that the erection, construction or carrying out of any maintenance of any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are done in accordance with that planning permission.

14. The purpose of Section 203 of the Housing and Planning Act 2016 is to ensure that where land has been appropriated for planning purposes, then existing rights, which could prevent the development of that land from proceeding in accordance with the planning permission, can be overridden. The rights will be overridden whether the Council or a party deriving title from the Council undertakes the development.
15. The power contained in Section 203 of the Housing and Planning Act 2016 does not remove the legitimate rights of parties to compensation, which may arise from the interference with their rights, but it does remove the potential for excessive claims, and it also removes the potential for such parties to frustrate the development by obtaining an injunction to prevent the interference with their rights.
16. As the decision to appropriate is considered a key decision (as a matter which is commercially, politically or strategically sensitive) it falls to Cabinet to consider this.
17. Any decision of the Council can be judicially reviewed. Any judicial review must be lodged as soon as possible after the decision is made and, in any event, not later than three months after the date of the decision. The anticipated earliest date for disposing of the sites will therefore be three months after this decision to appropriate them.
18. Whilst it is unlikely that an application would be submitted in the respect of the subject sites, following the decision in *BDW Trading Ltd v Spooner* case in 2011, the court held that such an appropriation would override Village Green status.

Safeguarding Implications

19. There are no safeguarding implications arising from this report.

Public Health Implications

20. The appropriation does not have any direct public health implications. However, when the sites are developed it is considered that this will enhance public health standards.

Procurement Implications

21. There are no procurement implications arising from this report.

Equalities Impact of the Proposal

22. There are no equalities implications arising from this report.

Environmental and Climate Change Considerations

23. These have been considered as part of the application for planning permission, and there are no known environmental impacts of the proposal to appropriate.

Workforce Implications

24. There are no workforce implications arising from this report.

Risks that may arise if the proposed decision and related work is not taken

25. It is possible that a third-party claim may arise that could thwart the implementation of the planning permissions.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

26. A claim for compensation may be submitted but it is considered that the overriding of any covenants would not have a significant impact on the land benefiting from them.

Financial Implications

27. It is possible that a claim for compensation will be received, but it is considered that the loss in value to the land benefiting from any covenants would be nominal.
28. The proposed transactions will provide the Council with capital receipts which will offset any potential costs as above. The appropriation will enhance the prospects of sites proceeding to completion and finalising the Council's aims of facilitating access from the development to the town centre at Darcy Close and provision of residential housing including social housing in Marlborough.

Legal Implications

29. See paragraphs 10 to 18 above.

Overview and Scrutiny Engagement

30. The report has not been referred to the Overview and Scrutiny Committee, as it is a procedural matter.

Options Considered

31. The Council could decide not to appropriate the land for planning purposes. In such a situation if a valid third-party claim was submitted, then the provision of the developments might not occur.
32. Compensation will be paid to any individual or organisation that has a valid claim, but they would not be able to prevent the developments being constructed.

Conclusions

33. Taking all of the above into account, it is considered that Appropriating For Planning Purposes the sites identified will ensure that the developments, which having planning permission, can take place thereby meeting some of the aspirations of the Council's Business Plan.

Andy Brown: Deputy Chief Executive & Corporate Director Resources

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Appendices

Appendix 1 – Land plan Darcy Close, Chippenham

Appendix 2 – Former Resource Centre, Cherry Orchard, Marlborough

Background Papers

None

Appendix 1 - Land plan Darcy Close, Chippenham



Appendix 2 - Former Resource Centre, Cherry Orchard, Marlborough

