Wiltshire Council
Where everybody matters

AGENDA SUPPLEMENT (1)

Meeting: **Cabinet**

Place: **The Kennet Room - County Hall, Trowbridge BA14 8JN**

Date: **Tuesday 30 January 2018**

Time: **9.30 am**

The Agenda for the above meeting was published on 22 January 2018. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Will Oulton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713935 or email william.oulton@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

12 **Appropriation of Land at Rabley Wood Marlborough** *(Pages 3 - 16)*

DATE OF PUBLICATION: 24 January 2018

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Supplementary Report for Cabinet in respect of Marlborough Rabley Wood

Appropriation Advert Responses

This report is supplementary to the main report to be considered by Cabinet on the 30th January 2018.

The Council advertised the proposed appropriation in the local newspaper, The Wiltshire Gazette & Herald, on 30th November and 7th December 2017 as required under The Local Government Act 1972 Sections 123(1) and (2a).

Four letters of objection were received plus one from Marlborough Town Council, copies of each attached for Members' consideration.

Generally the objections concern aspects that have already been dealt with by the Planning Inspector on the appeal of the refusal of planning application 15/01052/OUT (a copy of the appeal decision dated 20th July 2016 is attached).

A summary of the objections and Council officers' comments are as follows:

1. **The land was designated as public open space in perpetuity under the S52 Agreements.** The legal position on this aspect is outlined in the main report. Legal advice from Counsel confirms that the original obligations under the terms of the S52 Agreements are no longer considered to be extant for planning purposes as the site has been laid out and transferred to the Council.
2. The Council can continue to fulfil any underlying planning obligations to ensure the provision of public open space by maintaining it in the alternative site. **Suitability of the replacement public open space (POS) particularly in regard to children's safety and Wiltshire Core Strategy Policy 52 (Green Infrastructure).**
   In his decision on the planning appeal, the Inspector stated in paragraph 19:
   'However, a new equipped play area for younger children would be located more or less in the same position as that existing and it would be directly overlooked from proposed houses, as would the new MUGA immediately behind it. The appellant states that the new casual POS would tend to be used by older children who would not need such looking after and I agree that there is no need for direct overlooking of that area for that reason.'
   He goes on to state in paragraph 21:
   '... the size of the proposed compensatory provision, when taken with the MUGA and play area, exceeds the size of the current open space and recreation area2. The proposal would also deliver a MUGA and provide a new modern equipped play area for younger children, which would considerably enhance the range of facilities offered by the POS and which otherwise would be unlikely to be delivered. Whilst such facilities would clearly benefit the new residents of the development, they would also improve facilities for existing residents at the same location as the current play equipment.'
   In regard to Policy 52 at paragraph 24 the Inspector states:
   '.... I conclude that the replacement POS to be provided would be equivalent to that which exists on the site. Whilst the loss of the current POS may be avoidable the proposal does not

offend the principal requirement of Core Policy 52 to provide green infrastructure equal to or above its current value and quality, which is exactly what the scheme would do.'

3. **Flooding**
   The objectors have raised concerns that the new public open space will be liable to flooding. The Inspector considered this aspect and commented at paragraph 27:
   '... I note that there has been no objection on flooding grounds from the Council's Land Drainage Engineer or Ecologist, nor from the Environment Agency or Thames Water. I am therefore satisfied that the new POS land would not be liable to flood and that it would be suitable as POS.'
4. **Unexploded WW2 Ordnance**
   The objectors have raised concerns regarding the possibility of unexploded WW2. This was considered as part of the planning application process and the planning applicant commissioned an exploratory report in this respect which concluded that:
   ' ... it is deemed that the risk posed by possible encounter with UXO within the first 4 meters below ground level is low.'
   It also recommended some safety precautions which, if Members approve the Appropriation, will be passed on to potential purchasers.
5. **Toxic waste**
   One of the objectors has raised concerns of potentially toxic waste on the site. This has been considered by the Planning Inspector and dealt with by condition 7 on the decision dated 20th July 2016 requiring steps to be carried out to ascertain whether or not any such contamination exists and, if so, to implement a remediation scheme prior to carrying out any development on the site.

Author:

Mark Hunnybun

Strategic Projects and Development Manager

Wiltshire Council

Telephone: 01225 713230

Email: mark.hunnybun@wiltshire.gov.uk

Date:

15th January 2018

→ NHK Derbyshire
Strategic Property

[redacted]

Marlborough,
WILTS,
[redacted]

Dear Mr Gibbons,

I am writing to complain about the proposed sale of land near Rc Meadow in Marlborough. Despite ma objections which seemed perfectly go arguments against it, the proposal was accepted.

The new water meadow land is not suitable as a play area, as it is continually waterlogged. And the river running through it must be a hazard for young children who might wander off. The new houses will increase the number of cars trying

Transcript follows on next page

to get onto the main road by the corner.

The current play park is accessible & was supposed to be "in perpetuity" when the last houses were built. Does that mean anything? Future builders can ignore anything can they?

I hope you will re-iterate these concerns before the land is sold.

Yours sincerely

[redacted]

Transcript of letter from Malborough resident:

Dear Mr Gibbons

I am writing to complain about the proposed sale of land near Rogers Meadow in Malborough. Despite my objections which seemed perfectly good arguments against it, the proposal was accepted.

The new water meadow land is not suitable as a play area, as it is continually waterlogged. And the river running through it must be a hazard for young children who might wander off. The new house will increase the number of cars trying to get onto the main road by the common.

The current play park is accessible and was supposed to be 'in perpetuity' when the last houses were built. Doesn't this mean anything? Future builders can ignore anything can they?

I hope you will re-iterate these concerns before the land is sold.

Yours Sincerely

(Name and signature redacted)

[redacted]
Marlborough
Wiltshire
[redacted]

Ian Richard Gibbons
Solicitor to the Council
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

6TH Dec 2017

Dear Mr. Gibbons

REF: 20194
Intention to dispose of land which forms open space and amenity areas at Rabley Wood, Marlborough, Wiltshire

We are writing in response to the notice published in the Wiltshire Gazette and Herald on Thursday 30th November 2017 regarding the above proposed sale of land.

The amenity area/open land at Rabley Wood which Wiltshire Council wish to dispose of has been the subject of two planning applications since March 2014 to allow houses to be built on the field with a suggestion that a replacement amenity area could somehow be provided in a water meadow which runs alongside the River Og.

We wish to register our very strong objections to the proposed disposal of this facility for the following reasons.

SAFEGUARDING CHILDREN

Wiltshire Council could be accused of dereliction in their duty of care towards safeguarding children if they allow this sale to proceed. A very well used and safe amenity area for local children will be replaced with a totally unsuitable area which is liable to regular flooding and is close to open water hazards (the River Og and the planned SUDs Pond). The current open space/play area has excellent natural oversight from surrounding housing on three sides. The proposed new open space area will have no clear oversight from any nearby housing (either new or existing) and no vehicular access for emergency vehicles is available if an accident should occur. There are still questions to be answered about the contamination of the land being suggested as a replacement play area from medical waste dumped at the end of the WWII and a history of unexploded ordinance found there which compounds the dangerous nature of the replacement site. Surely Wiltshire Council must consider the safety

of children as being paramount over all other considerations when deciding on the proposal to dispose of the current safe and secure amenity area. If the disposal is agreed then our children will be forced to use an unsafe, hazardous area which will just be an accident waiting to happen.

FAILURE TO ADHERE TO PREVIOUS PLANNING CONDITIONS

When Kennet Council (now subsumed by Wiltshire Council) approved the planning application for the building of the houses in the Rabley Wood View area (Sept. 1990 ref: K/16218) they placed a condition on that agreement stating:-

*"Condition 4. The areas defined on the approved plans for public open space, amenity land, and play areas, shall be retained **in perpetuity** for those uses and not incorporated into private garden land or other uses.*
*Reason: To ensure that these areas **are not fragmented** and remain to fulfil their original functions"*

The legal definition of **"In Perpetuity"** is:- *Of endless duration; not subject to termination.*

The Wiltshire Council Planning Officer's prepared a report for the Eastern Area Planning Committee meeting on 17th September 2016 when Planning Application 15/01052/OUT was discussed. That report admits that the site is covered with an existing legal agreement to *".....ensure that adequate and suitable provision was made **in perpetuity** for open space".*
The report then continues on, stating that :-
"In essence, it is therefore for Members to decide whether to permit housing on this site and in doing so whether the release of this land from the agreements in favour of accepting the proposed compensatory open space on offer".

The decision of the Eastern Area Planning Committee on 17th September 2016 was to **REFUSE** the planning application 15/01052/OUT. It is therefore obvious that the committee members wished to retain the amenity area as it is and not build houses on it. However, their decision was overturned on appeal but the inspector made no reference at all to the fact that this land should be protected **in perpetuity** for amenity use by local residents.

We are amazed and distraught to discover it appears that any condition placed on a planning consent by Wiltshire Council can be totally ignored and overruled at a later date if it suits the council's purposes, even if this goes against the wishes of our elected representatives on the council.

If the sale of this land proceeds by ignoring the previous planning conditions the council will surely be setting a precedent which will allow all conditions placed on all planning consents in the future to be ignored and overwritten at will, thereby making a total mockery of the planning process.

Wiltshire Council "Where Everybody Matters" talks a great deal about how they are interested in what their constituents need and want, how important localism is to them to ensure communities get what they need and how much the council wants to hear the opinions of residents on all issues happening in the area.

We have joined in with all the consultations and meetings available, Marlborough Town Council voted against this planning proposal, Wiltshire Council's own Eastern Area Planning Committee refused the planning application twice and yet we now find that after the "local people" have spoken they are being totally ignored just because there is a good deal of money to be made by this proposition.

Wiltshire Council has a responsibility to make best use of the assets they own for the benefit of their constituents.
The best use for this land is not to sell it for housing but to leave it as a well loved and appreciated area for open space recreation within the local community, just as it has been for many years, and just as it was intended to stay in perpetuity.

Regards

Ian Richard Gibbons
Solicitor to the Council
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
BA14 8JN

[redacted]
Marlborough
Wiltshire
[redacted]

8 December 2017

Dear Mr Gibbons

Reference: 20194
Open Space at Rabley Wood, Marlborough, Wiltshire

We respectfully wish to object to the intended disposal of the land which forms open space and amenity areas at Rabley Wood, Marlborough Wiltshire, for the following reasons:

Safety
The proposed compensatory play space provides a significant safety risk for children. Thames Water has ceased pumping water from the River Kennet, of which the River Og is a tributary, and therefore, the water levels are already increasing towards the 1940s level when no water was drawn. Thames Water indicated additional volumes of between 160,000 litres per month in the summer period to 480,000 litres per month in the winter period: reference 'Thames Water plans £25m pipeline to protect chalk stream' in *Utility Week*, 24/11/2014.

Safeguarding
The proposed sustainable urban drainage systems pond in the submitted plans, reference 15/01052/OUT, adds a very significant safeguarding risk to children. The proposed compensatory play-site is not within view of any housing, including the planned estate. There is no road access to the proposed compensatory play space and no provision for access by emergency vehicles.

Pollution
The Land Registry map of June 1963 refers to the level of pollution when water was still being extracted. However, since Thames Water has ceased extraction, and the water levels are recovering to pre-1940s levels, polluted water is able to flow downstream from the area of pollution marked on the Land Registry map (Appendix 1 attached to this letter).

Yours sincerely

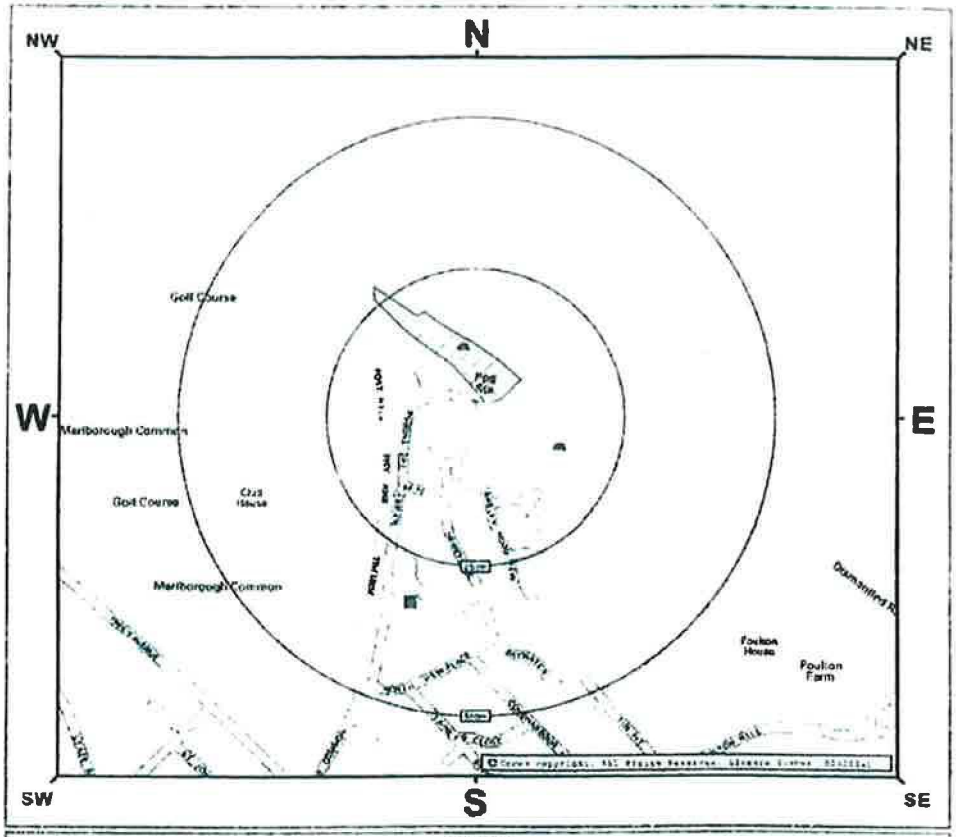
[redacted]

Enclosure: Appendix 1, Land Registry map

APPENDIX 1

Envirosearch

Information Map



KEY

General

- Centre of Search — Q1.2
- Search Radii — Q1.2

Part 1

Q1.1a	Potential Landfill Buffer	Q1.3b	Radioactive Substance	Q2.3
Q1.1a	Registered Landfill Site	Q1.3c	Industrial Process	Q2.3
Q1.1b	BGS Recorded Landfill Site	Q1.4	Regulated Air Pollution	Q2.3
Q1.1b	Point Location of BGS Recorded Landfill Site	Q1.5	Storage of Hazardous Substance	
Q1.1c	Licensed Waste Management Facilities (Landfill)	Q1.6	Enforcement, Prohibition or Prosecution	Q4.3
Q1.1d	Local Authority Recorded Landfill Site	Q1.7	Contaminated Land Register Entry or Notice	
Q1.1d	Point Location of Local Authority Recorded Landfill Site	Q1.7	Point Location of Contaminated Land Register Entry or Notice	
		Q1.2	Waste, Transfer Treatment or Disposal Site	Q2.2
		Q1.2	Point Location of Waste Transfer, Treatment or Disposal Site	Q2.2
		Q1.3a	Discharge Consent	Q2.2

Part 2

- Potentially Contaminative Use (Point Feature)
- Potentially Contaminative Use (Line Feature)
- Potentially Contaminative Use (Area Feature)
- Potentially Infilled Land (Point Feature)
- Potentially Infilled Land (Line Feature)
- Potentially Infilled Land (Area Feature)

Part 4

- Mast or Pylon/Overhead Transmission Line

(Please refer to the Useful Information section)

0 8 DEC 2017

[redacted]
Marlborough
Wiltshire
[redacted]

Ian Richard Gibbons
Solicitor to the Council
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
BA14 8JN

5th December 2017

Dear Mr Gibbons

Open Space at Rabley Wood, Marlborough Ref 20194

I am writing to express my ongoing concern at the proposed 'disposal' of the land which forms open space and amenity areas at Rabley Wood, Rogers Meadow and The Thorns in Marlborough. There is no local support at all for the proposed development and the concerns of the residents have still not been taken into consideration.

1. Is this land really 'disposable?' – when Rogers Meadow was built, over thirty years ago, the planning permission stated that the land the council is intending to 'dispose' of should be left **IN PERPITUITY** for the residents of the estates to use for recreation. We now know this was a nonsense and you can change the conditions if it suits you at Wiltshire Council, but what precedent are you setting? What is the point of planning permission? Surely the residents whose homes were built under the planning permission should have been notified and compensated?

2. The residents of the area, local councillors and your own planning committee all agree that the replacement area -the water meadow – is not a suitable replacement. Surely you at Wiltshire Council have a duty of care, to safeguard the users of the recreation area? From children to dog walkers, how can an area screened from houses by trees and hedges (despite the attempts of Manton Estates to remove sections of it... all grown back now!) ever be safe? It will be dangerous for dog walkers to use the area in the dark so far from houses. At present we would hear any shouts from the field. We look out for each other. In whose reality is it safe for unaccompanied children to play so close to a river and a deep pond – as is proposed. There is another reason why children don't play in the water meadow. It is wet and boggy most of the year. Even draining – when is draining a water meadow ever

wise? – will not guarantee 365 days' use of the new area. Our field now is well drained due to the slope. Who will be responsible? Why is there going to be no vehicular access? We need to know. You have safeguarding responsibilities.

3. At no point in the last few years has anyone at Wiltshire Council really addressed the well documented and real issue of the buried Unexploded WW2 Ordnance, along with the toxic waste that is buried on the site. The Coopers of The Thorns have thoroughly documented the facts. When will anyone properly take notice of the risk?

Quite simply, this is only about money. Wiltshire Council and whoever your 'partners' in this sale are, have showed no consideration for the safeguarding of the local residents. The replacement area is wholly unsuitable and unsafe. You are putting money over safety. Please reconsider the 'disposal' of our much loved and well used recreation area, an area that Wiltshire Council itself said was to be left for recreation **IN PERPITUITY.**

Yours sincerely

Marlborough Town Council

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15h December 2017

Mr M Hunnybun
Strategic Projects and Development Manager
Strategic Asset and Facilities Management
Wiltshire Council
Bythesea Road
Trowbridge
BA14 8JN

Dear Mr Hunnybun

Reference – 20194: Objection to disposal of land forming open space and amenity areas at Rabley Wood, Marlborough, Wiltshire
At their Full Council meeting of 11 December, our Councillors resolved to raise objections in the strongest terms to the disposal of land at Rabley Wood on the following grounds:

Unsuitability of compensatory recreation land
Even though it exceeds size requirements, the compensatory land to replace the current recreational open space proposed for development is unsuitable. As meadow land, it floods regularly and with the discontinuation by Thames Water of abstraction then the water table will be higher over the coming years.

Contravention of Wiltshire Core Strategy
Core Policy 52 (Green Infrastructure) clearly states that:
If damage or loss of existing green infrastructure is unavoidable, the creation of new or replacement green infrastructure equal to or above its current value and quality, that maintains the integrity and functionality of the green infrastructure network, will be required.

Also, where development is permitted, developers will be required to:
Make provision for accessible open spaces in accordance with the requirements of the adopted Wiltshire Open Space Standards.

The Wiltshire Open Spaces Study (Part 1) sets out these standards on quality and the compensatory land proposals do not meet them. The Study also confirms that Marlborough is deficient in recreational land. In the associated Marlborough Area Profile, Rabley Wood View is described as 'a large park and recreation ground in a nice setting.' It seems odd that the development proposal can go ahead when it is in conflict with Wiltshire's open space standards and priority action plans (one recommendation was that existing parks and recreational facilities in Marlborough should be protected).

Furthermore, at the planning application stage, Sports England, objected to the development proposals as they conflicted with para.74 of the National Planning Policy Framework (NPPF) which states that existing open space, sports and recreational buildings and land should not be built on but, gives 3 reasons when there may be exceptions. One of these is that any losses should be replaced by equivalent or better

provision in terms of quantity and quality. A replacement recreation area in a water meadow does not meet this.

It follows that the sale of this recreational land is in breach of the Wiltshire Core Strategy.

Protection of Historic Water Meadows
Historic England has highlighted that water meadows are threatened and endangered habitats, requiring careful conservation and active preservation. Their use as an amenity or recreation space ignores the meadow's role in flood mitigation and will accelerate the decline of historic meadows in this area. Work has been done along this stretch of the River Og to improve habitat (part funded by DEFRA) and Thames Water has made a significant investment in the local environment by reducing abstraction. Draining part of the meadow to create a suitable recreation space will threaten the work already done and future of the meadow itself.

Reneging on a Legal Agreement
When neighbouring developments were built in the 1980s, two legal agreements were put in place to ensure that adequate and suitable provision was made in perpetuity for open space, a type of planning gain. One was later varied to exclude part of the site. (These were known then as Section 52 agreements. Since the Town and Planning Act of 1990 these have been replaced by Section 106 agreements). The relevant local authority, in this case, Wiltshire Council, is able to decide whether that obligation should continue, whether it can be discharged or can be modified or varied. A decision will have to be made on this before the land sale is agreed.

Marlborough recently watched a S106 agreement for an off-site affordable housing contribution by a large developer of more than £300,000 completely nullified. It would be enormously disappointing if our Unitary Authority were to allow a second legal agreement to be scrapped when it is clearly the wish of the local community and their elected representatives that it should remain in place.

Finally, the Town Council has made clear that Marlborough needs more housing especially affordable housing, but in the right place. Rabley Wood View is not that place.

Yours sincerely

Mrs S A Parker, MILCM
Town Clerk