

WILTSHIRE COUNCIL

CABINET

25 September 2018

Subject: Appropriation under the Open Spaces 1906, of land formerly held for purposes under the Education Act 1996 at Poulton Field, Bradford on Avon

Cabinet Member: Cllr Philip Whitehead – Cabinet Member for Finance, Procurement, IT and Operational Assets

Key Decision: Yes

Executive Summary

Poulton Field is a 10.6 acre recreation field traversed by public footpaths, formerly held as Education land.

Until recently the field was used by the adjacent Fitzmaurice Primary School for recreation. By a letter dated 2 May 2017 the School's Chair of Governors informed the Council's School Place Commissioning Team that the School no longer required the land because of its very limited use by the School arising from the land being detached from its main boundary and from concerns about subsidence and the anti-social use of the land.

As the field was used as a playing field by a non-academy school the appropriation to another purpose requires the consent of the Secretary of State under Section 77 of the Schools Standards and Framework Act 1998 and this was obtained from the Education and Skills Funding Agency on 28 February 2018.

Therefore it is necessary for the Council to appropriate the field from education to another purpose and the authority for this is contained in section 122(1) of the Local Government Act 1972 as follows:

“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 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”.

Under the Council's Constitution the appropriation requires Cabinet approval.

Proposal

It is proposed that Cabinet approves the appropriation of the land at Poulton Field, Bradford on Avon (as shown on the plan in Appendix 1 of the report)

from education purposes to open space to be held under the Open Spaces Act 1906.

Reason for Proposal

Following the decision of Fitzmaurice Primary School that they no longer require use of the land the appropriation is required to appropriate the field from education purposes to open space to be held by the Council as a corporate asset under the Open Spaces Act 1906.

Alistair Cunningham, Corporate Director, Growth, Investment and Place,
Corporate Leadership Team

Subject: Appropriation under the Open Spaces 1906, of land formerly held for purposes under the Education Act 1996 at Poulton Field, Bradford on Avon

Cabinet Member: Cllr Philip Whitehead - Cabinet Member for Finance, Procurement, IT and Operational Assets

Key Decision: Yes

Purpose of Report

1. To request the approval of Cabinet to appropriate the land identified in this report from education purposes to public open space to be held as a corporate asset under the Open Spaces Act 1906.

Relevance to the Council's Business Plan

2. The appropriation of Poulton Field under the Open Spaces Act 1906 would support the Council's Business Plan objective for Strong Communities.
3. In particular, the appropriation as Open Space is in line with Objective 3, of the Business Plan - Personal Wellbeing; enabling the continued benefits of good countryside access and walking opportunities which support a healthier population.

Background

4. Poulton Field is an informal recreation field classified as education land. It lies adjacent to Fitzmaurice Primary School (Appendix 1) and has been used by the School for sports and recreational activities. The land has also been used by the public because there are public footpaths over the site.
5. By a letter dated 2nd May 2017 (Appendix 2), the School's Chair of Governors informed the Council's School Place Commissioning Team that the School no longer required the land.
6. The Governors' decision was based partly on the presence of a disused stone mine underneath the land. Geotechnical surveys have revealed that the land has only limited use because of the risk of subsidence which could present a potential danger to those using maintenance machinery.
7. The School has also highlighted that there has been regular anti-social behaviour on the land arising from the use of the public footpaths which cross the land, which has presented safe-guarding issues, preventing the safe and effective use of the land by the School.
8. The School's playing-field is larger than the minimum recommended area for use as a playing-field, and the availability of Poulton Field exceeds the School's requirements.

9. By a letter dated 28th February 2018 (Appendix 3), the Council obtained the consent of the Secretary of State under section 77 of the School Standards and Framework Act, 1998 to take the land out of education use, conditional on a restriction being placed on the Council's title that no disposal of the land be made without the approval of the Secretary of State, thereby enabling the land to be appropriated to the Council's corporate estate as public open space.

Main Considerations for the Council

Site specific issues

10. The land is no longer required by the School for the reasons given above.
11. Whilst the land has been held for education purposes, public access has not been restricted because of the public footpaths crossing the site.
12. The presence of a disused mine requires the surface of the land to be monitored periodically and for appropriate measures to be implemented to prevent access by the public, or the use of machinery in areas where there is a risk of subsidence
13. A Section 106 Agreement dated 2nd April 2014 and made between (1) Wainhomes (South West) Holdings Limited (2) HSBC Bank PLC and (3) the Council (as varied by a Deed of Variation) dated 27th May 2016) requires Wainhomes to implement an Ecological Management Plan (EMP) in respect of the land. A Licence dated 22nd September 2017 made between the Council and Wainhomes contains obligations relating to the implementation of the EMP, including the monitoring of the surface of the land. This arrangement is an Offsetting Scheme connected to a development by Wainhomes in Royal Wootton Bassett. Initial works in connection with the Offsetting Scheme have been implemented and the Council will periodically monitor future works undertaken by Wainhomes.
14. The management and maintenance of the land as a public open space, on appropriation, would become the responsibility of the Open Spaces Team, although some aspects may be subsidised by the arrangement in paragraph 11 (above) subject to the satisfactory implementation of the Offsetting Scheme.

Legal Powers

15. "Appropriation" is the term in local government legislation for the internal process which allows a council flexibility in the use of its land so that land which has been used for one purpose and is no longer needed or suitable for that purpose, may in certain circumstances, be transferred to another purpose.

16. In this case, the land is no longer required for the education purposes and appropriation as public open space would enable the ongoing use of the land for public recreation, and would benefit wildlife.
17. The land would be held by the Council under the provisions of the Open Spaces Act 1906. The holding of land by a council under specific statutory powers is prudent because, in accordance with current case-law, protection may be provided against a Town or Village Green Application where it can be shown that land is held under a specific statutory power. In the case of a public open space, this protection can be reinforced by the making of bye-laws and the putting up of signs on the site referring to the land being held under the Act.
18. Any decision of the Council may be the subject of a judicial review, an application for which must be made within six weeks from the date of the decision.

Overview and Scrutiny Engagement

19. The Chairman of the Children's Select Committee received a briefing on the appropriation on 12th July. Background information was provided on the land appropriation and reassurance was given that the land would be protected from development (except under exceptional circumstances) through the Local Green Space planning designation within the Bradford on Avon Neighbourhood Plan.

An extra tier of scrutiny is provided as a result of consent from the Education and Skills Funding Agency (ESFA) which was provided under S77 of the Schools Standards and Framework Act, required to remove the field from educational use. Consent to take the land out of educational use has been granted by the ESFA on the condition that the Council enter a restriction on Title preventing any disposal without consent from the Secretary of State for Education and the Council's Legal Unit will be instructed to register the restriction in due course.

A further tier of scrutiny and public engagement is also provided from Sections 123 (1) and (2a) of the Local Government Act 1972 which require the Council to place a notice of their intention before disposing of any land consisting or forming part of an open space in a local newspaper and to consider any objections to the proposed disposal which may be made to them.

It was also noted that Wiltshire Council had no plans to begin any developments on the land.

Safeguarding Implications

20. As the land would cease to be used by the School, any safeguarding implications from that use would no longer arise.

Public Health Implications

21. The appropriation has no public health implications other than the accepted benefits of providing open space for recreation and leisure purposes.

Procurement Implications

22. The management and maintenance costs for Poulton Field, once appropriated, would be with the Open Spaces Team but some of the costs may be borne by the Offsetting Scheme referred to in paragraph 11 in the short to medium term.

Environmental Impact of the Proposal

23. There are no known environmental impacts of the proposal to appropriate because in practice the land will continue to be used for recreation purposes, and with benefits for wildlife.

Equalities Impact of the Proposal

24. There are no significant equalities impacts of the proposal.

Risks if the decision is taken

25. As mentioned in paragraph 4, the land is situated above a disused mine and some risks have been identified by the Council's consulting geologist in a geo-technical survey. The survey recommends that potential areas of subsidence be fenced off from the public and from the use of maintenance machinery. The Council has acted on the recommendations and will periodically monitor the future condition of the surface of the land although some monitoring may be carried out under the arrangement in paragraph 11 (above) subject to the satisfactory implementation of the Offsetting Scheme.

Risks if the decision is not taken

26. As mentioned in paragraph 15, the risk of a successful Town or Village Green Application would be reduced by the land being held under the specific statutory provisions of the Open Spaces Act 1906.

Financial Implications

27. As the land would no longer be held for education purposes, management and maintenance costs would be with the Open Spaces Team. As mentioned above, some of the costs may be borne by the Offsetting Scheme referred to in paragraphs 11, 12 and 20.

Legal Implications

28. The Council is entitled, under local government legislation, to appropriate the land from education use to use as public open space to be held under the Open Spaces Act 1906. The holding of land under a specific statute is the most effective way, under current case-law, for a local authority to guard against a Town or Village Green Application. The Act enables a council to make bye-laws to regulate and control the land. The advertising of the bye-laws on the land reinforces the statutory position by making it clear that the land is held under the Act.
29. The appropriation of land to use under the Act 1906 would impose on the Council obligations to keep the land in a good and decent state and any future appropriation of the land for other purposes, or its sale or the granting of a lease for more than seven years, would require advertising and the consideration of any objections.

Options Considered

30. Enquiries made by Bradford-on-Avon Town Council for managing the site have not been pursued by the Town Council to date, however the appropriation does not preclude future discussions in this regard. No other options have been considered.

Conclusions

31. The issues associated with Poulton Field have caused the Primary School to declare that the land is no longer required for education purposes. Consent has been obtained from the Secretary of State to take Poulton Field out of education use and the necessary pre-conditions have been satisfied for the appropriation of the land to use under the Open Spaces Act 1906 to be managed as public open space under the Act.
32. As the decision to appropriate is a major decision (as a matter which is commercially, politically or strategically sensitive) the approval of Cabinet is necessary for the proposed appropriation.

Alistair Cunningham, Corporate Director, Growth, Investment and Place,
Corporate Leadership Team

Report Author: Will Gray – Estates Surveyor

Background Papers

None

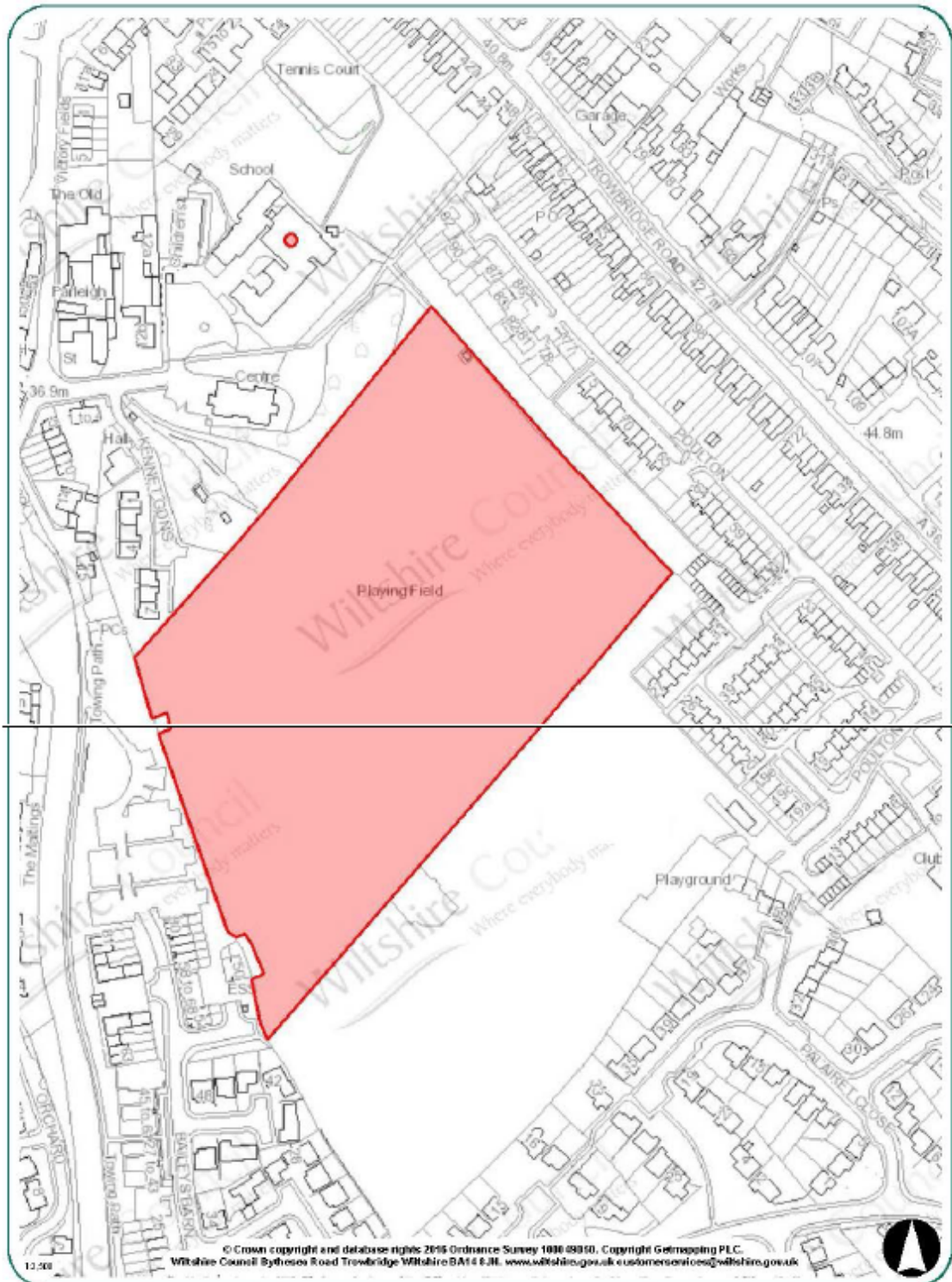
Appendices

Appendix 1 - Site Plan

Appendix 2 - Letter from Fitzmaurice School Chair of Governors

Appendix 3 - Letter of Consent from the Education and Skills Funding Agency

Appendix 1 – Site Plan



Appendix 2 – Letter from Fitzmaurice School Chair of Governors



FITZMAURICE PRIMARY SCHOOL

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BA15 1LE

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Head teacher: Mrs Tracey Dunn

Clare Medland
Head of School Place Commissioning
Commissioning, Performance and School Effectiveness
Children's Services,
Wiltshire Council
Bythesea Road,
Trowbridge,
BA14 8JN

2nd May 2017

Dear Clare

Fitzmaurice Governing Body have been discussing the school grounds and in particular the area of land known locally as 'the Top Field'. This is the piece of land that has been considered for the biodiversity offsetting scheme with Wainhomes.

Fitzmaurice School is restricted in this land due to its location, being detached from the school, and open to the public. It provides considerable safeguarding and children protection considerations as, if used, the public and children would come into close proximity. It is a favoured area for dog walkers who do not clean up after themselves and by sectors of the community who see its location as a place for anti-social activity. Due to these reasons School has had minimal use of the land; this being limited to running around it for Sports Relief every other year and running around it for a fun run annually. It has not been used for curriculum studies for a considerable time; when it was last used for this several years ago we found that concerns were raised regarding subsidence, learning this was why the copse was planted. We also found what we could do very restricted by the remains of anti-social behaviour.

Fitzmaurice Governors have therefore concluded that this land is surplus to the School's requirements having sufficient grounds that it can use and does use within the main school boundary. Governors request that the Local Authority undertake the necessary action to remove this ground from the School's designation.

Yours sincerely

Nicola Williams
Chairs of Governor



Appendix 3 – Letter of consent from the Education and Skills Funding Agency



Education and Skills Funding Agency
Legal and Transactions Team
Sanctuary Buildings
20 Great Smith Street
London
SW1P3BT
Tel: 0370 000 2288

28 February 2018

Will Gray
Estates Surveyor
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Our Reference: 07/865-02

Sent via email – will.gray@wiltshire.gov.uk

Dear Mr Gray

Fitzmaurice Primary School

Thank you for your application for consent under s77 of the School Standards and Framework Act 1998 for the council to take a playing field, shown hatched green at Annex1, which is no longer usable due to health and safety concerns, out of educational use.

This letter is to inform you on behalf of the Secretary of State for Education that consent has been granted.

Consent is conditional on the council entering the following restriction on the registered title of the land shown hatched green at Annex1:

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

This decision was based on the information provided by or on behalf of the council. Consent does not provide or imply any additional funding from departmental budgets. You are reminded that the school remains responsible for managing any safeguarding issues arising from this transaction.

Yours sincerely



Jennifer Clark ¹¹
Legal Lead, Real Estate Team
Education and Skills Funding Agency

Copied to

Simon Foster, Caseworker, Real Estate Team, ESFA

Annex1 Showing the site of Fitzmaurice Primary School edged red, with the area to be taken out of use hatched green.

