

Report

Subject : Appropriation of Land Surrounding the Bourne Hill Site
Report to : The Cabinet
Date : Wednesday 05 September 2007
Author : John Crawford
Cabinet Member for Finance: Councillor Andrew Roberts

1. Summary:

Cabinet agrees on a preferred option to protect the use of the green spaces surrounding Bourne Hill.

2. Background:

At its meeting on 13th June when considering the possible appropriation of land at Bourne Hill in connection with the Council's office project Cabinet amongst other things instructed Officers to investigate all available options to protect the use of the green spaces surrounding Bourne Hill.

3. The current position:

- 3.1. The Council owns the whole of the land ["the Land"] edged in bold on the attached plan ["the Plan"].
- 3.2. Bourne Hill and Wyndham Park was acquired by the Council's predecessor in title under the Public Health Acts 1875–1925. It is open to the Council to appropriate the whole or any part to another statutory purpose or to dispose the whole or any part in accordance with the provisions of the Local Government Act 1972. Advertisement of any intention to appropriate or to effect a disposal must first be given.
- 3.3. The Greencroft and St Edmunds Churchyard were separately acquired by the Council's predecessor in title under the Open Spaces Act 1906. Again appropriation or disposal may take place in accordance with the provisions of the Local Government Act 1972.



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- 3.4. Byelaws have been made by the Council under the Public Health Act 1875 with regard to the Council House grounds.
- 3.5. Byelaws have been made by the Council under the Open Spaces Act 1906 with regard to the Greencroft. An indeterminate licence subsists in favour of a third party in respect of a path alongside the boundary of 60 Greencroft.
- 3.6. St Edmunds Churchyard is consecrated land. No tombstone or monument can be moved without the consent of the bishop.
Part of St Edmunds Churchyard is let to a third party for a term of 99 years expiring on 23.06.2100. Any appropriation or disposal of the let part would be subject to the existing lease.
- 3.7. The Land is within a conservation area. Such status does not mean that development proposals cannot take place but that the planning authority would have regard to the effect of any proposals on the designation.
- 3.8. The Land [excluding the footprint of the Council House, former Victorian extension and temporary buildings and Arts Centre] together with other non green spaces [staff open area, car parks, Bourne Hill road, Arts Centre extension and the old swimming pool] are the subject of an application for registration as a town green. Should the application be successful either in whole or in part neither the Council nor any successor would be able to place any structures on registered area or areas or interrupt their use other than in limited circumstances. A separate report deals with the town green application.
- 3.9. The Council House is a grade 2* listed building. Listing does not mean that development proposals cannot take place but is designed to protect the Council House and its surroundings from changes which materially alter the importance of the Council House or its setting.
- 3.10. There is a scheduled ancient monument within the Council House grounds. It is illegal to carry out works to it other than in limited circumstances without the consent of the Secretary of State.
- 3.11. The Council has the benefit of existing planning and listed building consents in respect of the Council's office project. As development has already commenced pending any fresh planning and listed building consents being obtained the Council is liable to comply with the conditions of the existing consents and associated Memorandum of Understanding. These include long term management plans for archaeological preservation and landscaping. The Parks Team is developing parks management and development plans for various areas including Bourne Hill the Greencroft and St Edmunds churchyard. Such plans may present opportunities for the local community to get involved.
- 3.12. On 23.07.2007 Cabinet resolved amongst other things to appropriate the Secret Garden and the land lying immediately to the east of it in the event that the Council's office project continued albeit in a modified form which involved construction related activities and following the completion of the Project to review appropriation.

- 3.13. A separate report is being presented to this Cabinet meeting concerning the temporary appropriation of land surrounding the old swimming pool.

4. Options:

4.1. Declaration of trust

- 4.1.1. The Council could make a declaration of trust respecting the Land for the common good of the City of Salisbury or for public recreation which if certain criteria were met could be charitable. Doubt has been cast as to whether a declaration of trust following acquisition of property by a local authority would come within any available express power but it is thought that the well-being powers conferred by the Local Government Act 2000 are wide enough to overcome any doubt.
- 4.1.2. The creation of a trust is likely to amount to a disposal at law. The consequences are:
- Advertisement of the intended disposal must first be given
 - As disposal will be for a consideration less than the best that can reasonably be obtained then unless the value of the land involved is less than £2M when the General Disposal Consents Order 2003 may be relied upon the prior consent of the Secretary of State will be required
 - As and when the Local Government and Public Involvement in Health Bill becomes law it will be open to the Secretary of State to issue a direction that the Council may not dispose of land worth more than £100,000 in aggregate backdated to 01.01.2007 without the consent of a designated person. Any non consensual disposal will not be enforceable against the new Wiltshire authority. Agreement should be reached with Wiltshire County Council first.
- 4.1.3. A declaration of trust gives away the Council's beneficial interest in the Land so that the Land may only be managed and disposed of in accordance with the terms of the trust. If a charitable trust disposition may only be effected in accordance with the procedure set out in section 36 Charities Act 1993 or in specified circumstances further to an order of court or the Charity Commission.
- 4.1.4. Ordinary trusts are subject to the rule against perpetuities as regards duration but charitable trusts are not. A charitable trust may therefore last indefinitely and even if the original objects fail over time the trust will be applied by the Charity Commission or the court for other objects resembling the original ones as nearly as possible. Whilst there is no guarantee that an ordinary trust would protect the Land in perpetuity a charitable trust could.
- 4.1.5. The Council can be the trustee under section 139 Local Government Act 1972. Alternatively a third party can be appointed as a trustee.
- 4.1.6. Should a parish council be formed for the City of Salisbury prior to the abolition of the Council the Council could following formation of the parish council consider transferring the Land to the parish council as trustee on the terms of the trust.

4.2. Transfer to a third party on terms

- 4.2.1. The Council could transfer the Land to a third party on the basis that the third party covenants with the Council and for the benefit of the residents of Salisbury not to erect any buildings on the Land and not to use it for any purpose except for public recreation. Provided the transfer is made further to section 33 of the Local Government [Miscellaneous Provisions] Act 1982 it would be immaterial for the purposes of enforcement whether the Council

retained any land that would benefit from the covenants.

- 4.2.2. The third party could be a new parish council or a community group which depending on its structure may or may not be a community land trust [which could be constituted as a charity, limited liability partnership, a community interest company an industrial and provident society, a company limited by guarantee or as an unincorporated association]. External funding may be available to facilitate a transfer.
- 4.2.3. Prior advertisement must first be given and agreement should first be reached with Wiltshire County Council. In the event that transfer is for a consideration less than the best that can reasonably be obtained then unless the undervalue is less than £2M Secretary of State consent will be required. Additionally the State Aid rules would need to be complied with.
- 4.2.4. The Lands Tribunal may wholly or partially discharge or modify covenants in certain limited circumstances. There is therefore no guarantee that the Land would be protected in perpetuity.

4.3. Lease to a third party on terms

- 4.3.1. The Council could let the Land on a long lease e.g. 999 years to a third party on the same terms as a transfer.
- 4.3.2. The same considerations as set out in 4.2.2 and 4.2.3 above apply.
- 4.3.3. At general law a lease ends on expiry and can be brought to an earlier end by forfeiture or surrender. Whilst certain types of lease have the benefit of statutory protection there is no guarantee with any lease that the Land would be protected in perpetuity.

4.4.Registration as a town green

- 4.4.1. The consequences of a successful application to register the whole or any part or parts of the Land as a town green are set out in 3.8 above.
- 4.4.2. The prospects of success of the current application referred to in 3.8 above are dealt with in the separate report. The Council would have the same prospects of success if it made an application.
- 4.4.3. Under section 16 Commons Act 2006 the Council can apply to have land registered as a green released from registration provided that where the area sought to be released is more than 200 square metres the Council must make a simultaneous application to register replacement land. Registration does not therefore guarantee that the Land will be protected in perpetuity.
- 4.4.4. Should Cabinet choose an option other than to seek registration as a town green Cabinet will need to decide whether to pursue the preferred option immediately or to await the outcome of the current application which is unlikely to be determined before early 2009.

5. Impact of appropriations:

It will not be possible to pursue a preferred option to include the Secret Garden and the land adjoining referred to in 3.11 above nor should Cabinet resolve to appropriate the land surrounding the old swimming pool site referred to in 3.12 above at the same time as the remainder of the Land. Any land appropriated to other purposes even temporarily will need to be considered when the purposes for the temporary appropriations no longer subsist.

6. Consultation undertaken:

"Prescribed" internal consultees

7. Recommendations:

7.1 Cabinet resolves in principle its intention to pursue charitable status for the Land and [except with regard to the Secret Garden the land adjoining it and in the event Cabinet resolves to appropriate the land surrounding the old swimming pool such land] instructs the Head of Legal and Property to:

- Advertise as required by law
- Obtain a valuation from the Council's retained valuers as to the value of the Land [except as aforesaid] and if the valuation of the Land is more than £2M to seek the Secretary of State's consent

And with regard to the entirety of the Land

- Discuss Cabinet's intention to pursue charitable status with Wiltshire County Council with a view to seeking a consensus
- Liaise with the Charity Commission to check that the pursuit of charitable status is acceptable in principle
- Report back to Cabinet following completion of all of the above activities

7.2 Cabinet resolves that with respect to the Secret Garden the land adjoining it and [in the event Cabinet resolves to appropriate the land surrounding the old swimming pool] the land surrounding the old swimming pool when the purposes for the respective appropriations cease the Head of Legal and Property shall:

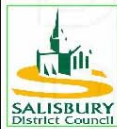
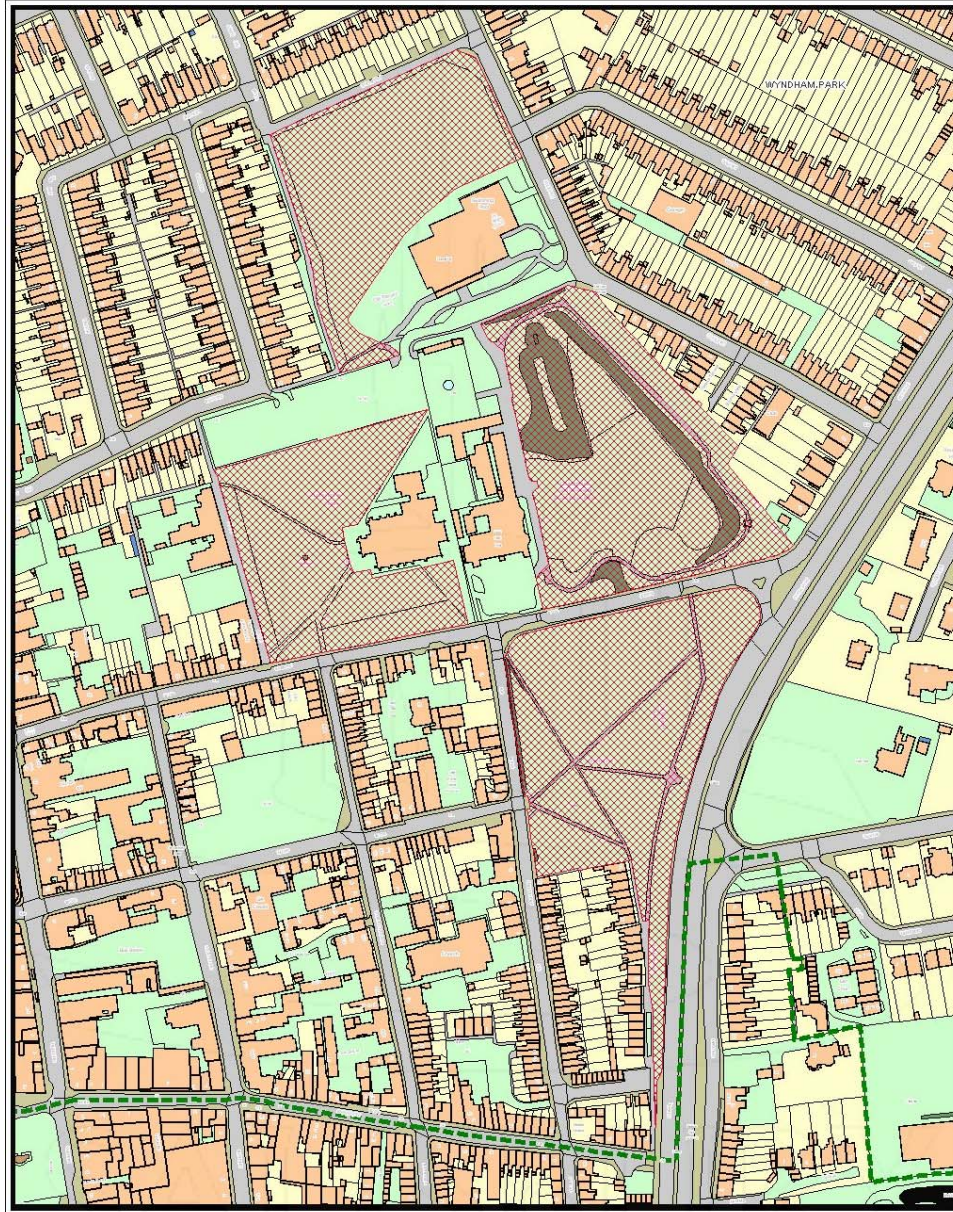
- Advertise as required by law
- Obtain a valuation from the Council's retained valuers as to the value of them and if their value is more than £2M to seek the Secretary of State's consent

8. Background papers:

- Council register of byelaws
- Application for registration for town green status

9. Implications:

- Key decision: yes
- Financial: advertising and valuation costs will be incurred
- Legal: set out in report
- Human rights: none
- Personnel: officer time
- ICT: none
- Community safety: none
- Environmental: protection of parks and gardens
- Council's Core Values: communicate
- Wards affected: Salisbury City wards



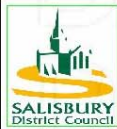
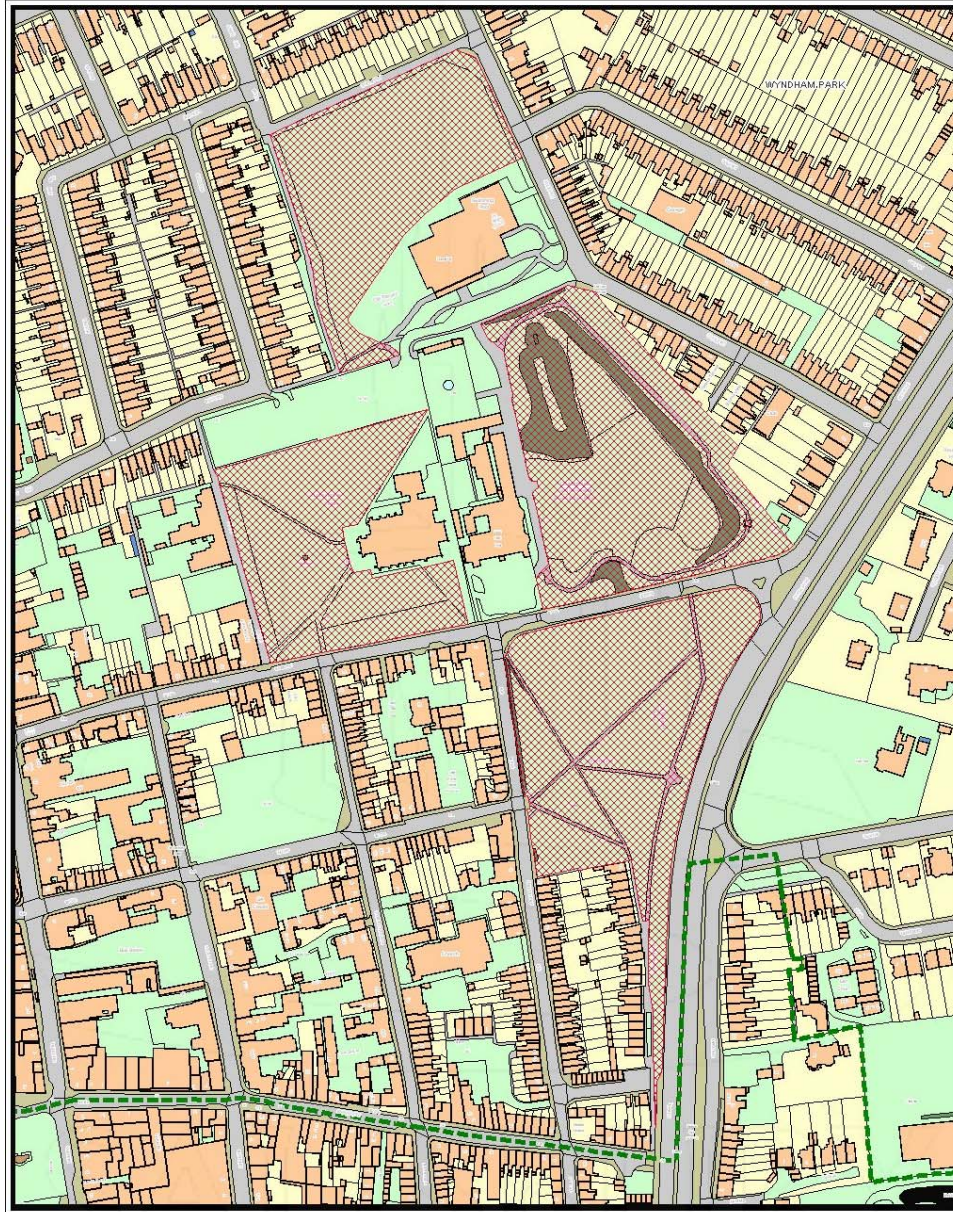
"The Land" Surrounding Bourne Hill, Salisbury

SCALE: 1:2500

DATE: September 2007

DEPARTMENT: Legal and Property

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