

REPORT TITLE: OPEN SPACE LAND DISPOSAL AT WELLINGTON PARK,  
NEWLANDS

22 JUNE 2022

REPORT OF CABINET MEMBER: Councillor Martin Tod – Leader and Cabinet  
Member for Asset Management

Contact Officer: Steve Lincoln Tel No: 01962 848 110 Email  
[slincoln@winchester.gov.uk](mailto:slincoln@winchester.gov.uk)

WARD(S): DENMEAD

PURPOSE

To obtain approval for the transfer of 16 hectares of public open space at Wellington Park, Newlands from Winchester City Council to Newlands Parish Council together with the maintenance sum, currently at £1.4m which was provided by the developer as part of the s106 agreement.

RECOMMENDATIONS:

That Cabinet:

1. Notes that no objections were received as a result of the notice publicising the intention to dispose of the public open space as required by s123(2A) of the Local Government Act 1972.
2. Agrees the disposal of open space at Wellington Park, Newlands identified edged red on the Plan ['Winchester Transfer Areas' 1S1194/WTA1, 09/03/17] at Appendix (i) to Newlands Parish Council.
3. Agrees the transfer of the open space maintenance sum (currently £1,457,764.96) to Newlands Parish Council, and delegates to the S151 officer to confirm the final sum at the point of transfer.
4. Authorises the Service Lead Legal to prepare all transfers/agreements necessary to implement the recommendations above.

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District
- 1.2 The land comprises areas of meadow, woodland, open water and amenity grassland. The site also contains numerous veteran oak trees which will remain and be protected under the management of the parish council.
- 1.3 Living Well
- 1.4 The site provides access to a network of high quality and easily accessible open spaces which are important for the health and wellbeing of the local community. There are opportunities for informal recreation, access to wildlife, areas for picnicking, walking and children's play.
- 1.5 Your Services, Your Voice
- 1.6 Disposal of this open space to the parish council empowers and enables local people to have more direct control and a greater say in how their local parks and open spaces are managed and maintained.

### 2 FINANCIAL IMPLICATIONS

- 2.1 The 16 hectares (ha) of open space at Wellington Park, Waterlooville was laid out by the developer, Taylor Wimpey in 2016 and transferred to the council in 2017 at no cost, in accordance with a s106 agreement (c7.4.4 page 75) linked to the planning permission.
- 2.2 Taylor Wimpey was also required to provide a sum of £1.577m for its future maintenance, along with £53,000 for a play area in the Havant Borough Council area. The fund has been further supplemented by interest that has accrued since 2017.
- 2.3 In the intervening years, while the council has been maintaining and enhancing the site, a proportion of the commuted sum has been spent and the fund now stands at £1,457,764.96. On disposal of the land, this fund will move across to the parish council to assist them with the costs of managing the site in perpetuity.
- 2.4 The council sought an external valuation of the land which concludes that:
  - a) The restricted value of the land is £470,000, which reflects the value once the capital value is offset by all maintenance obligations.
  - b) The unrestricted value and the restricted value are the same, as the land has no development potential.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Local Government Act 1972 defines open space by reference to the definition given in s336(1), Town and Country Planning Act 1990, as : “any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”. The land at Wellington Park falls within this definition.
- 3.2 The council has the power to agree to dispose of open space under sections 111 and 123 of the Local Government Act 1972. Under section 123(2A) of the 1972 Act a council may not dispose of open space unless before doing so they cause notice to be published of the intention to do so, specifying the land in question, and advertising for two consecutive weeks in a local newspaper. The council must then consider any objections to the proposed disposal.
- 3.3 The relevant advertisement pursuant to s123 (2A) of the Local Government Act 1972, was placed in the Portsmouth Evening News from 10 March 2022 for two weeks. No objections were received.
- 3.4 Section 7 of the Open Spaces Act 1906 enables the council to convey the land on the condition that it already has the “power, either with or without the consent of any other corporation or persons, to sell [the] land”. This power is to be found in s123(1) of the 1972 Act, and is subject to the condition in s.123(2) that the consent of the Secretary of State is required for disposals at less than best consideration.
- 3.5 The Local Government Act 1972: General Disposal Consent 2003 (the General Consent) gives a general consent by the Secretary of State for transfer of open space land at an under value of up to £2m. The valuation report provided to the council concludes that the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2m.
- 3.6 The valuer concludes that placing a restrictive covenant on the land to secure its use as recreational open space would depress its value below that which could be achieved by an unrestricted sale on the open market, so the terms of the General Consent are met and will be relevant.
- 3.7 If this disposal is authorised as recommended, ownership of the open space land will be transferred from the council to Newlands Parish Council. The responsibility for maintaining these open spaces as publically accessible, open and unenclosed areas, in accordance with the s106 agreement, will be transferred from the council to the parish council in accordance with an appropriate legal arrangement.
- 3.8 There are no direct procurement implications related to this decision as land disposal does not fall within the Public Contract Regulations 2015.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 Should this land be retained by the council, it would be maintained and paid for via the grounds maintenance contract. By transferring the land to the parish council, the work involved in overseeing and monitoring this maintenance does not become a long-term requirement.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The open space was secured at nil cost through an s106 agreement between the council and the developer to meet the needs of the new community.
- 5.2 The council's 'Open Space Assessment', a supporting policy document to the Local Plan, identifies the land as protected open space. A transfer of the land at nil cost would see the land remain as open space on the parish council's asset register in a similar way to that of the city council and remain as accessible public open space in perpetuity.

#### 6 CONSULTATION AND COMMUNICATION

- 6.1 The council is authorised to dispose of any land that it owns but, where such land can be regarded as open space, such disposal must be publically advertised. The relevant advertisement pursuant to s123 (2A) of the Local Government Act 1972, was placed in the Portsmouth Evening News from 10 March 2022 for two weeks. The objections received must be considered before making any decision to dispose of the site. No objections were received.
- 6.2 Furthermore, the disposal of the open space to Newlands Parish Council is being undertaken in consultation with the parish council. The parish council has agreed to accept a transfer of the land and the accompanying maintenance sum, and recognises that this will provide it with an opportunity for more control over how the open spaces within its jurisdiction are managed. This has been discussed at meetings of both the parish council and West of Waterlooville Forum.

#### 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 An ecological management plan has been made available for the site by the city council, and the parish council has agreed to undertake management in substantial accordance with this plan.
- 7.2 The land will remain as protected open space through the Local Plan and the restrictive covenant to be included in the transfer of the land to the parish council, and will continue to function in such a way as to deliver benefits for both wildlife and people. In addition the site provides a range of other environmental services including flood attenuation, carbon capture, urban cooling and removal of pollutants through the extensive reed bed system.

## 8 PUBLIC SECTOR EQUALITY DUTY

8.1 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, (and Cabinet must, as the decision maker in respect of the proposed decision, have due regard) to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act.
- b) Advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them.
- c) Foster good relations between persons who share relevant protected characteristics and persons who do not share them.

8.2 An equality impact assessment has been completed to assess the impact of this decision. The assessment is found at appendix (ii) which concluded that the transfer of open space and the maintenance sum to Newlands Parish Council will have no negative effect on the community or individuals on the basis of their race/gender/disability/sexual orientation/age or religion.

8.3 Maintaining public access to the area and hence recreational activities such as walking, picnics and children's play benefits a wide group of residents. The effect of the transfer particularly on parents with young children, children and the elderly will be a positive one as the open spaces will continue to be available and accessible to all vulnerable groups.

8.4 The transfer agreement will ensure that public access to the site will be retained and in this way will ensure that those with protected characteristics can still easily visit the local public open spaces.

8.5 Cabinet should refer to the equality impact assessment at appendix (ii). Overall, the proposed decision is considered to contribute towards advancing equality of opportunity particularly due to the provision of local parks and open spaces, on persons with protected characteristics.

## 9 DATA PROTECTION IMPACT ASSESSMENT

9.1 Having had regard to the council's obligations under the Data Protection Act 2018 and UK General Data Protection Regulation 2018, it is considered that a Data Protection Impact Assessment (DPIA) is not required for this report.

9.2 Any data collected as a result of, any event, consultation and engagement with the project is processed in accordance with data protection legislation.

## 10 RISK MANAGEMENT

10.1 Not transferring the open space to the parish council would mean a loss of opportunity for local management.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Financial Exposure</i>		

<i>WCC do not have sufficient funds to transfer.</i>	Funds are available and have been ring fenced for this purpose	Transfer of funds strengthens the asset base of the parish council
<p><b>Legal</b> <i>The decision is challenged.</i></p> <p><i>Appropriate legal arrangements cannot be completed.</i></p>	<p>All necessary statutory processes have been complied with.</p> <p>Discussions have been ongoing with the Parish Council who have agreed to take the land including responsibility for its maintenance. The parish council have appointed a solicitor.</p>	
<p><b>Innovation</b> N/A</p>	N/A	N/A
<p><b>Reputation</b> <i>That there may be a need for Newlands Parish Council to seek advice in the management of the site.</i></p>	The council will provide support at the outset to Newlands Parish Council to ensure they have all the necessary tools to undertake effective and efficient management of the site.	Council reputation is enhanced through successful transfer and empowerment of the parish council.
<p><b>Achievement of outcome</b> <i>That the parish council fails to maintain the land to the expected standard.</i></p>	<p>The council will provide support at the outset to Newlands Parish Council to ensure they have all the necessary tools to undertake effective and efficient management of the site.</p> <p>A management plan has been written and agreed with Newlands Parish Council, which will be included in the terms of</p>	<p>The parish council's ability to respond to local need/demand ensures the open space is managed more effectively.</p> <p>This council can focus its resources on securing and delivering new areas of open space as they become available through the development management process.</p>

	the disposal and ensure the site continues to be effectively managed.	
<b>Property</b> N/A	N/A	N/A
<b>Community Support</b> <i>That the Parish Council does not have or does not retain support of the community.</i>	Ongoing discussion at parish meetings and community forum ensures community awareness.  The council to provide advice where necessary.	There is a likelihood of greater community involvement in the site and increased sense of ownership.
<b>Timescales</b> <i>Delay in decision and completion of the transfer with a corresponding reduction of the commuted sum for maintenance.</i>	All necessary statutory processes complied with.	Short delay to date has allowed the parish council to fully prepare for the transfer.
<b>Project capacity</b> <i>Additional council time required if transfer is prolonged.</i>	Council officer work programme to accommodate possible additional time.	

## 11 SUPPORTING INFORMATION:

- 11.1 The site for disposal comprises 16ha of meadow, woodland, scrub, open water and amenity grassland spread across a number of separate parcels of land. The majority of the site (13ha) lies to the west of the Wellington Park development in a single parcel known as Newlands Walk. See appendix (i) for a plan showing the location and extent of the open space.
- 11.2 Wellington Park was the first phase of the West of Waterlooville major development. It has been under construction since 2010 and was completed in 2017.
- 11.3 Planning permission for the Wellington Park site (council planning ref: 05/00500/OUT) was accompanied by a s106 legal agreement dated 20 December 2007 between Winchester City Council, Hampshire County Council, Havant Borough Council, Taylor Wimpey and Laing Homes. The

s106 agreement included terms which obliged the developer, to lay out and provide 16 ha of public open space and sustainable urban drainage features, as the supporting infrastructure to the new major development area, and to transfer £1.5M to the council to ensure future open space maintenance provision.

- 11.4 The s106 states that the open space land should be transferred to the 'relevant authority' upon completion. When the land was transferred by the developer in 2017 the future governance arrangements for the area had not been decided (Newlands Parish Council did not exist) so the sensible option at the time was to transfer the land to the city council and the land has been under the council's management since this date. Open space maintenance has been delivered through the council's grounds maintenance contract.
- 11.5 It has always been the intention of both the council and the new parish council to see the land transferred to the parish council at the earliest opportunity. Ownership by Winchester City Council was never seen as an appropriate long-term arrangement due to the desire for the local community to have more control and influence over the management of the site and for it to be able to enhance the area going forward, in a way which better meets local needs. This devolved management of open space reflects the established approach across the district, where both resident management companies and parish councils manage public open space very successfully in all areas.
- 11.6 All statutory processes associated with the disposal of open space have been completed, with a public notice of the disposal receiving no objections.
- 11.7 The council sought an external valuation of the land which concludes that:
- a) The restricted value of the land is £470,000, which reflects the value once the capital value is offset by all maintenance obligations.
  - b) The unrestricted value and the restricted value are the same, as the land has no development potential.
- 11.8 It is therefore recommended that the council transfers the open space at Wellington Park to Newlands Parish Council, along with the remainder of the commuted sum which is to be used towards the maintenance of the site in perpetuity with the parish precept.

## 12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 The alternative option is that the council retains management of the open space rather than it being transferred to the parish council. This has been discounted for the following reasons:
- a) Whilst the council has an effective grounds maintenance contract, it does not allow for local variation and/or subtlety of management. This can be more readily achieved when land is managed by local people for local people.



- b) The council is no longer the default recipient or transferee of new residential on-site open spaces, where those open spaces could be more appropriately managed by a local parish council or a resident management company.
- c) Allowing local people to have a more direct say in how their open space is managed engenders a better sense of ownership and responsibility and reduces issues such as anti-social behaviour and vandalism.
- d) The existing commuted sum is sufficient to help support the management of the site for the foreseeable future but there will be a need to use local precept at some point to sustain effective management of the site.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

N/A

APPENDICES:

- (i) Scaled plan ('Winchester Transfer Areas' 1S1194/WTA1, 09/03/17) showing the location and extent of the open space proposed for transfer to Newlands Parish Council
- (ii) Equality Impact Assessment.