

DECISION TAKER: Councillor Kelsie Learney, Cabinet Member for Climate Emergency

REPORT TITLE: FIELD IN TRUST DEDICATION FOR TOPFIELD, KINGS WORTHY

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WARD(S): THE WORTHYS

## PURPOSE

Topfield, Kings Worthy was used to meet the planning requirement for open space provision for the adjacent housing development and was purchased by the council from the developer in 2020/21 along with the site's 35 new affordable housing units. Its status as public open space was secured by a s106 planning agreement.

Topfield is approximately 5 hectares of open space consisting of wildflower meadow grassland, amenity grassland and woodland with footpath provision and site furniture including benches, picnic tables and interpretation boards. It is owned and managed by the city council.

The community has been consulted on options for the protection method for the open space and Fields In Trust is the preferred option. Fields in Trust protection is a legal agreement (a deed of dedication) between Fields in Trust and a landowner that they will retain it for use as a green space, usually a public park, playing field or recreation ground, in perpetuity.

## RECOMMENDATIONS:

1. That the council agrees to dedicate the land ("the Land") shown edged red on the attached plan (Appendix 1) as a "Field in Trust" in perpetuity in order to secure the use of the land for biodiversity, access and recreation.
2. That the Service Lead – Legal be authorised to liaise with and to enter into a deed of dedication with Fields in Trust in respect of the Land.

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the climate emergency, reducing carbon emissions and creating a greener district.
- 1.2 The Winchester Biodiversity Action Plan (BAP) is a vital part of the Carbon Neutrality Action plan and seeks to protect species rich grassland and woodland as priority actions. The land at Topfield meets the aims of the BAP and the deed of dedication will give it enhanced protection for biodiversity, access and recreation.
- 1.3 The potential for local residents to be engaged in a volunteering capacity contributes to the Council's Living Well priorities.

### 2 FINANCIAL IMPLICATIONS

- 2.1 A one-off administration fee of £80 is payable to Fields in Trust, and a subsequent fee of £80 to register the land with Land Registry. This cost will be met from within existing budgets. Legal officer time will be required to deal with the deed of dedication but this can be managed within the existing resources of the Legal team.
- 2.2 The ongoing cost of maintaining this land is already included within the General Fund revenue budget. No additional liabilities or obligations are made of the council by this dedication that would increase costs.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The extent of the land to be dedicated has been carefully considered and agreed by ward members, Cabinet Member for Climate Emergency and local residents. Fields in Trust has agreed that it is potentially a space which should be protected.
- 3.2 There are minimum criteria to be met before land can be dedicated as a Field in Trust. These relate to how the land is used and it being publicly accessible.
- 3.3 The deed of dedication would be agreed between Fields in Trust and the council and sets out what the council can and can't do with open space, without needing to consult Fields in Trust. Ownership and management of the land would remain with the council. There is no requirement to rename the space.
- 3.4 As part of the legal framework, the council will continue to be liable for the maintenance and upkeep of the land. The dedication does not remove any of the obligations which are set out in the S106 agreement.

3.5 The dedication by the council of the Land is not a disposal of open space for the purposes of s123 of the Local Government Act 1972 as ownership of the land is not changing and it will continue to be public open space. There is no requirement to advertise the intent to dedicate the land.

#### 4 CONSULTATION AND COMMUNICATION

4.1 Community consultation and engagement was undertaken by the developers in 2018 when preparing for the planning application for the development. In their planning statement in support of the planning application they highlight key engagements including:

- a) Meetings between the Leader of Council, Ward Members and the Parish Council
- b) Events with the local members of the Parish Council and members of TFAG.
- c) 17th September 2018 Parish Council voted on '*whether to support WCC's proposal to construct up to 35 houses on Top Field, provided that a serious consideration is given to improve the Tesco junction, and that the remainder of the field after building was dedicated as a Field in Trust*'. The vote resulted with 9 in favour; two against and no abstentions.
- d) Stakeholder Event 4th October 2018

4.2 As part of Top Field Action Group's (TFAG) Village Green Application for Topfield consultation in 2013 involved over 140 users of the field. This survey had a different focus but it did collect information on how and why people were using the open space at Topfield. This data reinforces the usage from the 2018 consultation with the primary activities being walking, dog walking, enjoying nature, informal play and jogging.

4.3 The council undertook a consultation event in 2020, following the commencement of the development, when it was confirmed that the open space would be transferred to the council along with responsibility to manage it. One hundred people attended the consultation event in 2020 in person, and a further 5 people commented via email as they could not attend. A further information-update event was held in 2022 and Fields in Trust was one of the discussion topics at both. TFAG were represented at both consultation events.

4.4 As the adjacent housing development was a "rural exception" site to planning policy, the community was given assurances that the land would not be further developed for housing but provided as open space for local people to enjoy. Residents have requested that the land is protected by Fields in Trust which strengthens the protection afforded by the existing S106 agreement that secures the land as public open space as part of the planning process. This is also supported by local and cabinet members.

4.5 The community has been consulted on options for the protection method for the open space (at the 2020 and 2022 consultation events) and Fields in Trust is the preferred option. The community-led Topfield Action Group and local councillors support this course of action.

## 5 ENVIRONMENTAL CONSIDERATIONS

5.1 The site consists of woodland and scrub boundaries which hold significant benefits for wildlife, including protected species such as dormice which have been identified on site. Species-rich grassland habitat has been created on site and this, as well as woodland is recognised in the Winchester Biodiversity Action Plan (BAP) as habitat that offers benefits for wildlife including invertebrates and reptiles.

5.2 Both of these BAP habitats offer benefits in terms of carbon sequestration and the sustainable management of the species-rich grassland is in line with the BAP and Winchester District Carbon Road Map's aims.

5.3 Future management of the species-rich grassland could include seed collection – as a sustainable management approach. Woodland will be managed via selective coppice to enhance woodland in general and to ensure a range of species and a diversity of age of trees and shrubs to benefit biodiversity and dormice in particular.

5.4 There are footpaths and Rights of Way across the site, including the Watercress Way route that runs through the woodland (west to east) along the southern boundary of the site. The Watercress Way Charity have long-held a desire to open this section of the route.

5.5 The Fields in Trust designation would protect the open space and ensure it will be managed for biodiversity, recreation and access.

## 6 PUBLIC SECTOR EQUALITY DUTY

6.1 After an initial screening exercise, a full equalities impact assessment was not deemed appropriate because there will be no change to the status of the land or how it is accessed or managed.

## 7 RISK MANAGEMENT

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<u>Financial Exposure</u> Costs to maintain the land exceed expectations.	An annual payment from the HRA is included as part of the planning agreement.  Management plan for the	Local people could be engaged in a voluntary capacity to aid management of the site.

	site clearly sets out expectations.	
<u>Exposure to challenge</u> Stakeholders challenge decision to or not to pursue dedication.	<p>The local community engagement undertaken has shown support for the proposals to dedicate the land.</p> <p>Legal advice has confirmed that there is no need to advertise the dedication and that correct process has been followed.</p>	
<u>Innovation</u>		
<u>Reputation</u> Future development of the open space appears to go back on previous commitments.	By designating the site as FIT the council would be protected from accusations of plans to develop Topfield open space.	
<u>Achievement of outcome</u> The land is subject to pressure for development in the future following policy changes that cannot be known at this time	<p>The long-term dedication will protect against possible future changing policy and development demands</p> <p>It will demonstrate the importance of land of this nature and strengthen its protection.</p>	
<u>Property</u>		
<u>Community Support</u> The community doesn't support the FIT dedication	Local residents have requested the dedication and FIT status will strengthen existing protection given under the	

	planning process by the S106 as well as making a public commitment by the council of the FIT status.	
<u>Timescales</u>		
<u>Project capacity</u>		

## 8 OTHER KEY ISSUES

8.1 None

## 9 SUPPORTING INFORMATION:

9.1 Topfield, Kings Worthy was used to meet the planning requirement for open space provision for the adjacent housing development and was purchased by the council from the developer in 2020/21 along with the site's 35 new affordable housing units. Once in public ownership, Winchester City Council proposed to provide a number of enhancements to support the use of the land (all of which have now been completed apart from the interpretation boards and finger posts which are underway) including for example:

- a) Supply and install field gate to prevent vehicular access to Top Field, but allow access for maintenance vehicles
- b) Supply and install timber finger posts at junction points on paths to guide people
- c) Design, supply and install interpretation panels to complement basic signage
- d) Supply and install combined waste/dog waste bins and picnic benches
- e) Existing paths to be mown with wider margins
- f) Repairs to existing paths
- g) Create new footpath links to divert pedestrians away from important habitats (mowing/flattening of ground)
- h) Create new meadow in the central open space by flattening the heavily ploughed (inaccessible) land.

9.2 The open space is approximately 5 hectares, consisting of wildflower meadow grassland, amenity grassland and woodland with footpath provision and site

furniture including benches, picnic tables and interpretation boards. The site hosts protected species including reptiles and dormice.

- 9.3 The site has a long and complicated history, with strong objection to a number of proposals that came forward to develop the site prior to planning permission finally being granted. The local community was strong in its view that the securing of Topfield as an open space in perpetuity was an essential element of the planning requirement from the development proposal. There has since been continued dialogue about the necessity to find a mechanism through which there was certainty that the land is retained in perpetuity as natural, accessible open space.
- 9.4 In these discussions a number of options were considered, with Fields in Trust (FIT) designation identified as a suitable way to protect the open space and ensure it will be managed for biodiversity, recreation and access. This would not change the way the council manages and maintains the land but would provide certainty over its long-term future and function, which was an important consideration for local people when it was agreed to develop the adjacent land for housing.
- 9.5 A FIT dedication is a legal agreement between Fields in Trust and a space's landowner that they will retain it for use as a green space, usually a public park, playing field or recreation ground, in perpetuity and the minimum criteria is to be consider for dedication is:
- a) Evidence of ownership, and where relevant freehold interest must be produced. FIT can only protect land in partnership with the landowner, or a leaseholder with a lease of at least 99 years.
  - b) FIT would generally expect the green space to be at least 0.2ha in size in order to accommodate recreation but are happy to consider the protection of smaller spaces where the value of them to the local community can be demonstrated.
  - c) The principal use should be outdoor recreation, sport or play. FIT definition of recreation also now encompasses natural and semi-natural nature spaces, such as woodland, local nature reserves and country parks. Spaces can also include buildings or facilities if the use is ancillary to the outdoor space.
  - d) The green space must have some form of permanent public access.
  - e) The public access to the space cannot be so restricted by exclusive events/activities as that it would mean more than 50% of the space is inaccessible to the general public for more than three months in a calendar year.
  - f) FIT can protect leased areas of land within a green space but would ask that the leaseholder agree to be party to the deed.

- 9.6 FIT offer the option to make changes to the agreement and recognise that circumstances can change and for this reason the deed has a certain level of flexibility built into it. In general, changes to the space which are ancillary to its use, i.e. supporting the primary activities taking place are usually fine and do not require FIT consent. Anything which is not ancillary to a space's use, such as buildings, commercial leases and changes of use, can be permissible but generally require FIT's consent. A landowner can seek this consent by making an application through the Field Change Request procedure. Should a landowner wish to remove a piece of land from protection, this is possible but FIT would usually require a new space, which is of equal or better quality than the existing protected space and which serves the same community, to be protected in return.
- 9.7 Following formal approval to enter into agreement to protect green space, FIT require a commitment to signing the Deed within six months. Once completed, within three months the council needs to apply to the Land Registry to enter a restriction and a notice against the registered title of the property. This prevents disposal (generally meaning sale or lease) without the consent of Fields in Trust.

## 10 OTHER OPTIONS CONSIDERED AND REJECTED

- 10.1 The council could decide not to dedicate the land. This has been rejected as the dedication of the land by FIT emerged as an important consideration for local people during the public consultation so not to dedicate would mean that we would not be responding to local aspirations.
- 10.2 Other options of securing the land were considered, such as a local nature reserve or wildlife site but these have been discounted as they did not afford the enhanced protection in perpetuity under FIT and which is preferred by the community. Local Nature Reserves are protected by the National Policy Framework. There is no explicit recommendation against development of these sites. Fields in Trust affords more protection as it is for in perpetuity and consultation events led to the feeling that FIT offers a more suitable protection for this site which includes access and recreation aspects of open space as well as nature benefits.
- 10.3 As highlighted in section 4, significant consultation and communication with the community and members was undertaken in relation to the management of Topfield and the conclusion was that FIT is the preferable dedication to secure the needs of the community.
- 10.4 Previously (before the planning permission for 35 affordable houses was granted) there was a community group that was pushing for the land to be a village green. This was prior to the council taking on ownership of the land and prior to discussions and consultation with the community & TFAG. The village green application was rejected by Hampshire County Council.

BACKGROUND DOCUMENTS:-

Previous Cabinet/Committee Reports or Cabinet Member Decisions:-

Planning application 19/00048/FUL was considered and permitted by Planning Committee on 20<sup>th</sup> June 2019.

Other Background Documents:-

Information on the process of dedication of land - [www.fieldsintrust.org](http://www.fieldsintrust.org)

APPENDICES:

Appendix 1 Site plan