

Cabinet

Report Title:	Appropriation of Land for Planning Purposes at Old School Drive and Wangford Road in Reydon, Southwold
Meeting Date:	22 March 2016
Lead Councillor(s):	Councillor Richard Smith MVO, Cabinet Member for Finance
Local Councillor(s):	Councillor Michael Ladd
Director:	Geoff Dobson, Director of Resource Management
Assistant Director or Head of Service:	Duncan Johnson, Assistant Director - Property
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Brief summary of report

1. Land previously used by Suffolk County Council (“the Council”) for youth services plus access and parking for the adjoining playing field and shown edged red on the attached Plan (the Land) is proposed to be sold to Orwell Housing Association (“OHA”) to develop 6 bungalows for occupation by elderly people. To facilitate this development it is necessary for the Council to appropriate the land for planning purposes and override an existing easement granted to the owner of an adjacent property known as the Farthings Bungalow.
2. Although not expressly defined under the Town and Country Planning Act 1990 (TCPA 1990), s246 of the Act states that any reference to the appropriation of land for planning purposes is a reference to the appropriation of it for the purposes for which land could be acquired under sections 226 and 227 of the TCPA 1990. Therefore planning purposes means an appropriation (or acquisition) which will facilitate the carrying out of development, re-development or improvement which is likely to contribute to the economic, social or environmental well-being of the area, or which is required in the interests of the proper planning of the area in which the land is situated.
3. Provided that land is validly appropriated for planning purposes, then under section 237 of TCPA1990 (power to override easements and other rights) the erection, construction or carrying out or maintenance of any building or work on the land (by the council or a person deriving title from the council) or use of the land is authorised if it is done in accordance with planning permission, notwithstanding that it interferes with certain private rights such as restrictive covenants and easements.
4. The effect of triggering section 237 is that private rights are effectively overridden and converted into a claim for compensation.
5. The requirement is that the Council resolve that the Land is no longer required for the purposes for which it is currently being used. In reaching this decision

the Council must consider the public need within the locality for the existing use and whether the purpose of appropriating the land is in the interests of the proper planning of the area. In demonstrating this, the Council must be able to show that there is a nexus between their inhabitants and the appropriation other than a purely financial motive.

6. This report sets out the background and recommendation that the Land be appropriated for planning purposes and requests that Cabinet resolves that the land is no longer required for its current use.

What is Cabinet being asked to decide?

7.
 - a) That the site off Old School Drive and Wangford Road in Reydon, Southwold (“the Land”) (shown for identification purposes only edged red on Annex 1 to the report) held by the County Council be appropriated from its current use of car park and community youth services to planning purposes, under Section 122 of the Local Government Act 1972
 - b) To resolve that the land is no longer required for the purpose for which it is currently held.

Reason for recommendation

8. To enable the land to be sold for affordable housing to be occupied by older people in need of care and support and to provide improved community youth and childcare facilities on the adjoining land.

What are the key issues to consider?

9. The reason appropriation is required is to facilitate the re-development and improvement of the site, which is likely to contribute to the economic, social or environmental well-being of the area. The effect of appropriation is to hold the land for a purpose different to the purpose for which it is currently used. If construction or building works are then carried out on land which has been appropriated by a local authority for planning purposes, the development (in accordance with planning permission) will be able to go ahead even if it involves interference with certain interests or rights over the land. Therefore the development can proceed and the planning permission be implemented thus contributing to the economic, social and environmental wellbeing of the area.

Appropriation of the Site for purposes set out in s237 of the Town and Country Planning Act 1990

10. The appropriation of land and buildings refers to the process whereby a council alters its purposes for holding land and buildings. The general power to appropriate is contained within section 122 of the Local Government Act 1972.
11. Section 237 of the Town & Country Planning Act 1990 (“s237”) provides that where a council acquires land or appropriates land for planning purposes the development of the land may override third party rights enjoyed over the land.
12. The beneficiaries of such rights may however claim compensation but cannot seek an injunction to delay or terminate the development.

13. If having appropriated or acquired land for planning purposes a council transfers that land to another party (perhaps a developer), that other party will benefit from being able to override certain third party rights during construction work. This is important to those building or having construction work carried out because it gives them certainty that the work will not be stopped as a result of a third party obtaining an injunction from the court. Such an injunction could severely delay the construction project and give rise to considerable additional financial costs.
14. On inspection of the title documents it is clear that an adjacent landowner has a right of way over the land. However, some rights may not be apparent from inspection and historic ones may not always be recorded at the Land Registry or Land Charges Registry. The application of s237 therefore mitigates the risk of unknown interests existing.
15. The right to claim compensation caused by the loss of right is enforced against the owner of the land but if that owner does not meet this obligation then the compensation claim can be enforced against the local authority.

Who are the current users of the Land?

16. Officers have confirmed that none of the Land is Open Space; the playingfield area has been leased to a football charity since 2002 therefore any public use of this area has been with the permission of the charity.
17. The former Youth Club building is used by 2 community groups; the Reydon Toddler Group who use it for one morning per week for 2 hours and the Southwold & Reydon Children's Centre who run two one hour sessions per week.
18. Both groups have agreed to vacate the site by Easter 2016 and are to be relocated for a period of around 9 months.
19. The groups have occupied on the basis of a temporary arrangement pending the redevelopment of the site.
20. The relocation sites are:
 Reydon Church Hall
 Reydon Village Hall
 Southwold Stella Peskett Hall

Details are being finalised but these locations are available for use and storage of equipment.

21. The groups will be able to use the new pavilion to be built by the Reydon Playing field charity at the end of the 9 month period. They are in agreement with the cessation of their current use primarily because the existing facility is in need of structural work and improvement. The new pavilion will provide much improved facilities for the groups.

What are the resource and risk implications?

22. If the right of way is not extinguished, considerable uncertainty exists as to whether the sale of the site to OHA will proceed, resulting in a lost opportunity to develop housing for older people in need of care and support and provide

improved facilities for the community and the groups mentioned at item 16 above.

23. Compensation may be sought by the owner of the Farthings bungalow. The Council's advisers are of the opinion that the amount is likely to be minimal as there is no evidence the right of way has been used since it was granted and loss of the right is judged to have minimal effect upon the residential amenity of the property.

What are the timescales associated with this decision?

24. With a Cabinet decision to appropriate the land, SCC will be able to proceed with the sale to OHA following compliance with the necessary requirements set out in the Town and Country Planning Act 1990 and other relevant legislation. We would anticipate contracts to be signed early in 2016 after Cabinet approval.

Alternative options

25. The alternative would be to enter into negotiations with the owner of the Farthings to remove the right of way. The timescale for resolving the matter would be indeterminate.

Who will be affected by this decision?

26. The owner of the bungalow would be affected as the beneficiary of the right of way. It is not however in use, so will have a minimal effect upon the residential amenity of the property.
27. The childcare groups mentioned at item 16 of this report.
28. SCC will be in a position to sell this site to OHA, who will be able to implement the planning permission granted and proceed with the development.

Main body of report

Background

29. SCC has agreed heads of terms to dispose of the Land to OHA. The site was part of the former Reydon Secondary School and contains an old prefabricated building, previously used for SCC youth services and a car park and access to the adjoining sports field which is leased to a playing field charity. This lease is to be surrendered and the freehold transferred to the charity. The car park will be re-sited and a new access to the playing field formed.
30. The site comprises approximately 0.61 acres and is to be sold to OHA who will develop 6 shared ownership tenure, affordable bungalows for occupation by older people (planning consent already granted) which will offer care support from the adjoining OHA owned Pitches View Care Home.
31. A right of way exists across the site to an adjoining bungalow "The Farthings", which has never been used and is unlikely to be used as vehicular and pedestrian access is available to the dwelling from Wangford Road. There is no entrance way from the Farthings to the right of way to facilitate its use. The Land to be sold (edged red), the right of way (coloured pink) and the Farthings bungalow are all shown on the attached Plan.
32. The disposal to OHA will take place simultaneously with the surrender of a long lease covering the majority of the car park and the entirety of sports fields

which adjoin the Land; the sports fields comprise approximately 7.6 acres. The freehold of the sports field will be transferred to the newly formed Reydon Playing Field Charity, who plan to provide a new sports pavilion which will be available to local community groups. The disposals are interdependent; some of the land under lease will form part of the disposal to OHA and part of the capital receipt for this sale will be used by SCC to fund the Sports Pavilion.

Proposal

33. The right of way across the site to the Farthings bungalow will prevent development as granted under the planning permission. It is therefore proposed that the Council declares that the Land is no longer required for its current use and resolves to appropriate the land for planning purposes; this will allow the Council to extinguish the right of way under s237 TCPA 1990.
34. The proposal will facilitate affordable housing development and sports facilities for the community thus it will contribute to the economic social or environmental well-being of the area. The proposal is made in the interests of proper planning of the area as the development provides public benefit via affordable housing the provision of community sports facilities and preschool care.
35. The effect of this decision will be to make third party interests, subject to compensation only and prevent any injunction being sought that could prevent or delay the regeneration of this site from proceeding. In making this recommendation officers have considered the overarching principle where the public good is put before the needs of private individuals. Suffice to say that officers have proceeded with caution and ensured that the individual needs within the locality for the existing use have been balanced against the public benefits associated with the development. An Equality Impact Assessment Initial Screening was undertaken and is attached to this report at Appendix A.

Sources of further information

Section 122 of the Local Government Act 1972.

Section 237 of the Town & Country Planning Act 1990

Equality Impact Assessment – Initial Screening: [Equality Impact Assessment - Initial Screening](#)

