



## **PORTFOLIO HOLDER DECISION NOTICE**

### **INDIVIDUAL DECISION BY THE LEADER OF THE COUNCIL**

### **TOPIC - TRANSFER OF PLAY AREAS AND RECREATION GROUND AT WHITELEY TO WHITELEY PARISH COUNCIL**

### **PROCEDURAL INFORMATION**

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

### **Contact Officers:**

**Case Officer:** Damian Offer, Tel: 01962 848419, Email: [doffer@winchester.gov.uk](mailto:doffer@winchester.gov.uk)

**Committee Administrator:** Nancy Graham, Tel: 01962 848 235, Email: [ngraham@winchester.gov.uk](mailto:ngraham@winchester.gov.uk)

### **SUMMARY**

On 9 February 2011, Cabinet gave approval, in principle, to the proposed transfer of six play areas and Meadowside Recreation Ground from the City Council to Whiteley Parish Council (CAB2118, Playground Five Year Refurbishment Plan – Update refers). Approval was given subject to the proviso that:

- The transfer be publicly advertised (in accordance with Section 123(1)(2A) Local Government Act 1972); and
- That final approval be sought from either Cabinet or the Leader via the Portfolio Holder decision making process once all representations had duly been considered.

The City Council advertised the disposal of public open space in May (see CONSULTATION below). The closing deadline for comments was 16 June 2011 and no representations have been received.

The Overview and Scrutiny Committee is asked to consider transfers of land at less than best consideration exceeding £50,000 and this Decision Notice will be considered at its meeting to be held 26 September 2011.

### **DECISION**

- 1) That the proposed transfer of five play areas and Meadowside Recreation Ground be approved as proposed in CAB2118.
- 2) That the freehold of the six sites be disposed off at a nominal value of £1, but subject to a restrictive covenant requiring that the land not to be used other than as public open space.
- 3) That the Head of Finance be authorised to determine the final amounts to be transferred to Whiteley Parish Council from the Whiteley Fund, having regard to Appendix 5 of Report CAB2118.
- 4) That the Corporate Director (Operations) be authorised to approve any arrangements between the Whiteley Parish Council and DC Leisure regarding the use of the City Council's changing rooms at the Meadowside leisure Centre in association with the adjacent Recreation Ground.

### **REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

The management of play areas and open spaces at Whiteley is currently resourced from the Whiteley Fund. This fund will be exhausted mid-way through 2013 at which point the full costs for grounds maintenance will fall to the City Council, if arrangements are not made to transfer the sites to the Parish Council.

Whiteley Parish Council has agreed to take on management of the sites listed below from 1 October 2011:

- Meadowside Recreation Ground (incl. Skate Park and 'Area K' Play Area);
- Rosemary Gardens Play Area;
- Saffron Way Play Area and Open Space;
- Cheshire Close Play Area;
- Mollison Rise Play Area; and
- Caraway Play Area.

The Council and Parish Council have each appointed solicitors to act on their behalf in facilitating the proposed transfer. The title deeds have been passed to the City

Council's external solicitors and searches are being undertaken with Land Registry to confirm the boundaries and title of those areas which it is intended to transfer.

The Parish Council has expressly advised that they are seeking a freehold transfer rather than a long lease. This corresponds with the intention of facilitating full local community responsibility for and control over the management of the areas to be transferred. Furthermore, a freehold transfer is less complex and more cost-effective to facilitate than a lease with its associated continued management arrangements.

However, consideration has been given to safeguarding the future of the transferred land as public open space but also allowing the Parish Council sufficient freedom and discretion in management of the land to respond to the needs of the local community. Appropriate provisions in the form of a restrictive covenant requiring the land not to be used other than as public open space will be made within the terms of the transfer agreement. In addition to safeguards within the transfer, the land is afforded protection under the planning system, being classified within the Local Plan and Local Development Framework as open space, for which there is a presumption against loss.

Given that the proposed transfer constitutes a disposal of public open space, public notices have been placed in appropriate locations (see CONSULTATION below).

It is proposed to convey the freehold of each of the individual parcels of land for £1.00. The sports field was recently valued as part of the asset valuation at £215,000, while the remaining 8 acres of land have been valued for Land registry purposes at £120,000. The following valuations have been provided for Land Registration purposes:

- Saffron Way :- £15,000
- Cheshire Close :- £5,000
- Mollison Rise:- £5,000
- Carraway Rd:- £5,000

Section 123 of the Local Government Act 1972, authorises the City Council to dispose of land in any manner it wishes, subject to detailed provisions in that Section. Where the land is to be disposed off at less than the best consideration that can reasonably be obtained, (and the disposal is other than a tenancy of less than seven years) the consent of the Secretary of State to the disposal is required.

In this case, given the valuations set out above and the proposed nominal disposal price, the land will be disposed off at less than the best consideration that can reasonably be obtained, and therefore the consent of the Secretary of State to the disposal would be required.

However, the disposal will fall within the terms of the General Disposal Consent (England) 2003. This allows disposal where any undervalue is less than £2,000,000

and the local authority considers that the purpose for which the land is being disposed is likely to achieve the promotion or improvement of economic, social or environmental well-being of the whole/part of its area or the residents thereof.

In this case, based on the valuations set out above, the total undervalue would be £245,000, well below the maximum in the General Consent. It is considered that the disposal would be likely to contribute towards the objectives of promotion and improvement of economic well-being of the residents of the Council's area as a whole (in that the ongoing maintenance costs will be met by local residents and users), and also will contribute towards the social and environmental well-being of the residents of Whiteley (in that the Parish Council will provide close local management of the land and promote its use for recreation purposes).

Alongside the transfer of land, the City Council will make a pro-rata transfer from the Whiteley Fund of those funds associated with the management of the areas being transferred. Indicative figures for this transfer have been calculated and are shown in Appendix 5 to CAB2118.

Meadowside Leisure Centre, which is run by DC Leisure on behalf of the City Council, currently provides the booking service and changing facilities for users of the sports pitches at Meadowside Recreation Ground. DC Leisure has an agreement with the City Council to retain the income from sports pitch bookings in payment for provision of these services and facilities. The Parish Council has already entered into separate discussions with DC Leisure to establish an independent agreement that will continue this arrangement from 1 October 2011 when the Parish takes on the recreation ground. The City Council will need to approve any arrangements as this will impact on the current management agreement with DC Leisure.

For further details, please refer to [CAB2118](#)

### **RESOURCE IMPLICATIONS:**

Officer time in arranging the transfer contract (Legal and Landscape and Open Spaces).

City Council's legal fees (an estimate of £7,100 has been received) for independent solicitors (Davitt Jones Bould) to draw up the transfer agreement. These fees will be paid from the City Council's retained portion of the Whiteley Fund.

### **CONSULTATION UNDERTAKEN ON THE DECISION**

Under Section 123(1)(2A) Local Government Act 1972, the Council is required to advertise all proposed disposals of Open Space. The proposed transfer of land to Whiteley Parish Council constitutes such a disposal and the City Council advertised its intentions in the following locations:

- Mid Hants Observer in the weeks of 23 and 30 May;

- Public notices on City Council website 18 and 25 May; and
- Parish Council notice-board.

The closing deadline for comments was 16 June 2011.

No representations have been received.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED  
FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION  
NOTICE**

That Decision Notice was considered at The Overview and Scrutiny Committee on 26 September 2011 where it was agreed that the matter not be called-in.

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR  
OFFICER CONSULTED**

n/a

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

**Approved by: (signature)**

**Date of Decision: 27.09.11**

**Councillor Beckett – Leader of Winchester City Council**