

To: City Executive Board – 31st March 2010

Item No:

Report of: Head of City Development, Head of Law and Governance
and Head of Corporate Assets

Title of Report: Oxpens Meadow

Summary and Recommendations

Purpose of report: To consider the implications of the Council motion of the 25th January inviting CEB to apply to register part of the Meadow as a Town Green and to seek approval to investigate the options to transfer the land into a form of community trust.

Key decision – No

Executive lead member: Councillors Bob Price and Colin Cook

Report Approved by:
Executive Director, City Regeneration:
Finance:
Legal: Jeremy Thomas
Head of Environmental Development:

Policy Framework: Improve the local environment, economy and quality of life policy objective of the Oxford City Council Corporate Plan. West End Area Action Plan.

Recommendation(s):

The City Executive Board is recommended to instruct officers to investigate further the option of transferring ownership of the land at Oxpens Meadow, shown unhatched in the plan attached to this report, across to a Community Trust and to report back to CEB.

Introduction

1. At Council on 25th January the following Motion was adopted by general assent.

“Council invites the City Executive Board to apply to the County Council to register the area shown in green on the Identified Sites Map at page 5 of Part 1 of the adopted West End Area Action Plan as a Town Green under the Commons Act 2006 as the best means of securing the long term protection of the Meadow from encroachment.”

2. A plan is attached (**Appendix 1**) to this report which shows the area concerned.
3. The motion follows on from the application submitted by SENDRA (St. Ebbe’s New Development Residents’ Association) that Oxpens Meadow, comprising 5 acres (2,2ha), be designated a Town Green under s.15 of the commons Act 2006. This application is with the County Council, as the relevant authority, for consideration.
4. The difference between the SENDRA application and the Council motion is an area of land behind the Ice Rink annotated as a hatched area on the Plan. Therefore the hatched area is excluded from the area the subject of this report.
5. This report considers the implications of the request from Council and suggests that there are two further options to be considered.

Background

6. Oxpens Meadow was acquired by the City Council from Christchurch in 1923. In all some 16 acres of land was acquired as public open space under section 164 of the Public Health Act 1875. This land included what is now the Ice Rink and adjacent car park, part of the Oxford and Cherwell Valley College site together with Oxpens Meadows.
7. The Oxford Local Plan of November 2005 sought to protect the main part of Oxpens Meadow as open space (SR 5) and allocated the adjacent Oxpens site as land with the potential for development (DS 62). The more recent West End Area Action Plan of June 2008 confirmed the Oxpens site as a development site and Oxpens Field (WE 8) as an open space to be enhanced. However the policy also explained that flood compensation measures would need to be implemented on this space.
8. A flood risk assessment study had indicated that part of the developable part of the Oxpens site was within the flood risk area. However, through providing a comparable volume of flood storage elsewhere this would enable the flood risk to be overcome. The proposal in the West End AAP was that this would be achieved through removing the higher tipped

material on the Oxpens Meadow, adjacent to the Ice Rink, and restoring the Meadow as open space.

Application for a Town Green: Implications of Town Green Status

9. Once an area of land has been granted the status of a Town Green the relevant legislation (2006 Commons Act and Inclosure Acts 1857 and 1876) ensures that the land is retained in such use.
10. The 1857 Act provides that it is an offence wilfully to do anything on a town green that will injure the green or interrupt its use or enjoyment as a place for exercise and recreation. This effectively prohibits any change in character to the land that forms the Green.
11. The 1876 Act states that it is an offence to encroach, disturb, inclose or build on a town or village green unless this is done "with a view to the better enjoyment of such town or village green". The flood remediation works could not be described as works that would better the enjoyment of the town green for the lawful sports and pastimes that are in SENDRA's application. The flood remediation works are primarily to better the land that is outside the application site.
12. The implications of this is that it would not be possible to carry out the proposed flood remediation work described above even though such a scheme would restore and indeed improve the open space.
13. There is no provision in the legislation to seek secretary of state approval to do anything to a Town Green. This mechanism applies only to common land which is not applicable here.
14. It is theoretically possible to use the land in a manner inconsistent with town green status but this can only be done with the consent of each and every inhabitant of the area and this is likely to be impractical.
15. If Oxpens were registered as a Town Green the only option available to the Council to enable the flood remediation works to be carried out would be to apply for deregistration of the land as a town green. However, if the area to be deregistered is over 200sq m alternative land must be provided. Consideration of a number of criteria would also be given before any order authorising deregistration of a town green could be given including the interests of the neighbourhood, the conservation of the landscape and the protection of public rights of access to any area of land.
16. Whilst the Board is sympathetic to the wishes of SENDRA and local residents and the expressed wishes of Council to see this land secured for the long term from encroachment, an application for the area to be a Town Green would have significant implications for the ability of the Council to realise the development potential of the main Oxpens site,

achieve a viable development, and a significant part of the proposed regeneration of the West End.

Protection under the 1875 Legislation

17. The Council could continue to resist the SENDRA application for a Town Green. Officers have presented arguments that the public already have the rights to use the Meadow as open space under the original legislation. Therefore there is no need for the Meadow to be protected as a Town Green. Indeed the Commons Act process becomes unnecessary, because there is no need to argue that the right has had to be acquired by informal public use over the last 20 years.
18. To date the Council has argued that rights over land cannot be acquired for the purposes of Town Green status as the right for the public to access and enjoy the land is already in existence. Oxford City Council bought 16 acres of land from Christchurch College in 1923 under s164 of the Public Health Act 1874. Section 164 provides for access over and on the land by the public for recreational purposes (“by right”).
19. SENDRA are submitting that of the 16 acres bought for this purpose the Council has appropriated 11 acres (or thereabouts) to other uses and has ultimately developed the land so that it is no longer open space. The Council agrees with this submission.
20. SENDRA however also submit that of the 5 acres left as open space the Council has appropriated some of that land in the past to alternative uses (mainly refuse tipping and coal storage) and that this appropriation has removed the land from the protection of the 1874 Act and allowed local inhabitants to acquire rights (“as of right”) over the land. The Council has not accepted this assertion.
21. SENDRA have not specified which parts of the original 16 acres they believe have been appropriated to the uses of coal storage or tipping but made general statements that all or part of the application land has been appropriated or used in a way that is inconsistent with the 1875 Act.
22. If the Council can satisfy the County Council (as the Registration Authority) that the land is used by the public at large “by right” then the Town Green application must as a matter of law fail.
23. SENDRA submitted their application in September 2008. Submissions have been made by both parties to the Inspector. The County Council have not forwarded the latest set of submissions to the Inspector as both parties have agreed to stay the matter to allow consideration of this report. The Council have suggested that there should be a stay for three months until the 19 May 2010
24. If the submissions were sent to the Inspector he has the option of requesting further submissions, making a determination or calling a

hearing to hear evidence on the legal argument as a preliminary issue to the substantive application.

25. It should be noted that the area behind the Ice Rink (that is hatched on the plan) that is currently being proposed to be removed from any voluntary registration the Council might make does not currently meet the criteria in the Commons Act 2006 for registration as a town green. This is because in 1993 the Council appropriated this land away from public open space protected by the 1875 Act. Twenty years use of the land therefore runs from 1993 and could not be gained until 2013 as prior to 1993 the public had rights to access and use the land and therefore could not acquire such rights for the purpose of registration.

Community Trust

26. Members will be aware that SENDRA is proposing its action for a Town Green because despite the protection afforded by the 1875 Act over the years particularly after the end of the Second World War the Council has appropriated parts of the open space for other uses, such as the Ice Rink, cattle market and Oxford and Cherwell Valley College. Although the land is protected as open space under this very old legislation it would not fulfil the spirit of the Council motion to see the land secured for long term protection from encroachment.
27. An alternative is therefore being suggested by officers for consideration by the City Executive Board. This would involve transferring the land could be transferred by the City Council to a form of Community Trust. The Community Trust could be provided with an endowment to help maintain and improve the open space in the future. In this way the community would have the power itself to protect the land from any adverse activities.
28. In return for being willing to transfer the land the Council would seek two reciprocal provisions, namely that SENDRA withdraws its current Town Green application and does not submit a new one, and that the community permits the flood remediation works to be carried out on part of the Meadow. Both reciprocal provisions would be conditions precedent to the transfer of the land but a conditional contract could be entered into to give SENDRA comfort over the withdrawal of their application.
29. It is understood that the County Council are amenable to the proposed stay in the proceedings. However the County Council has advised that while a town green application is made by a person or persons once it is accepted as a valid application then it becomes something akin to a public application which would prevent SENDRA from being able to withdraw the application without a solution as to the future of the land and it going before a committee of the County Council.

30. At this stage it is not possible to advise Members on the details relating to such a transfer. A number of issues would need investigation including:
- What organisation would be the new owner of the land? This could be SENDRA itself.
 - Who would be the trustees/directors? OCC would probably wish to participate?
 - Should OCC retain any interest in the land? Not necessarily.
 - For what purposes and uses the land is to be held for? Identification of the current agreed uses.
 - What powers would the new owner/trustees have to deal with the land?
 - Who would maintain the land? The new owners could contract with Parks.
 - When should the land be transferred to the new owner? Probably after the completion of the flood remediation works.
 - What would be the structure of any transfer? It is hoped there are existing models that could be drawn upon such as via the Development Trusts Association.
31. CEB is recommended to instruct officers to look in greater detail at the establishment of a Community Trust and asks officers to explore this option further with SENDRA.

Level of risk

32. A risk assessment has been undertaken and the risk register is attached (**Appendix 2**). The main potential risk for the City Council is that someone or a body other than SENDRA seeks to start the process afresh of making a Town Green application.

Climate change / environmental impact

33. The continued use of Oxpens Meadows as open space, especially under the ownership of a Community Trust would protect an important urban green spaces.

Equalities impact

34. Oxpens Meadow is already accessible to all. This proposal would maintain this.

Financial implications

35. The assumption is that there would not be any particular cost to the Council other than the legal costs of a transfer and the cost of external legal advice.

Legal Implications

36. These are set out in the body of the report.

Conclusion

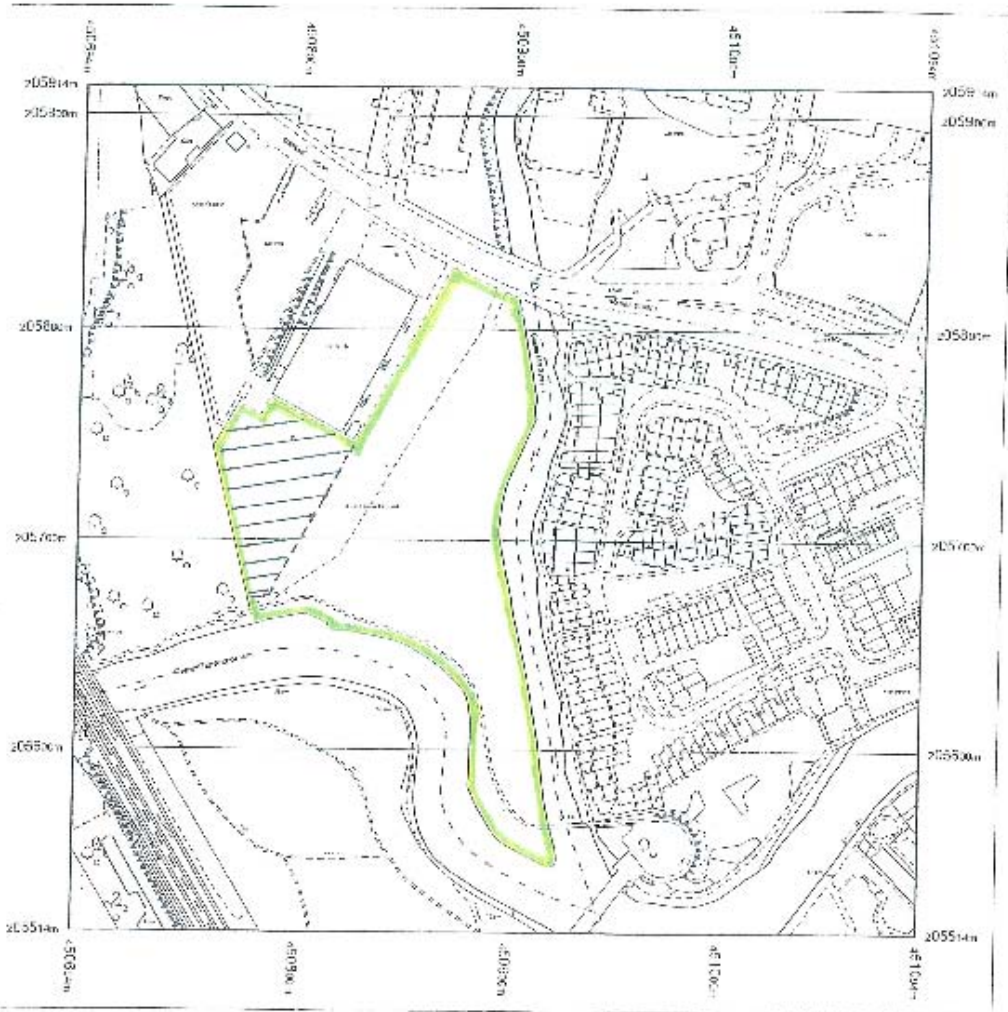
37. Members will be mindful of the spirit of the Council motion to secure the main part of the Oxpens Meadows as open space for the benefit of the community. However its designation as Town Green would seriously limit the ability of the City Council to achieve the best development of the main developable part of the Oxpens site as proposed in the West End Area Action Plan. Therefore it is proposed that the option of investigating the transferring of the Meadow into a form of Community Trust be investigated.

Recommendation

The City Executive Board is recommended to instruct officers to investigate further the option of transferring ownership of the land at Oxpens Meadow, shown unhatched on the plan attached to this report, across to a Community Trust and to report back to CEB.

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**List of background papers:
Version number: 4**



MAP 'A'

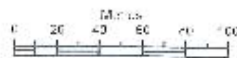
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Scale 1:2500

Compiled by: John E. Wright
Serial number: 0033-438
Centre coordinates: 450854.5 205713.5

Further information can be found on the OS Sitemap Information booklet or the Ordnance Survey web site: www.ordnancesurvey.co.uk

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Appendix 2

Risk Register

Risk Score **Impact Score:** 1 =Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic **Probability Score:** 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain

No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk		
		I	P			I	P	Action: Action Owner:	Outcome required: Milestone Date:	Q 1	Q 2	Q 3	Q 4	I	P	
					Mitigating Control: Level of Effectiveness: (HML)			Action: Action Owner: Mitigating Control: Control Owner:			⊗	⊗	⊗	⊗		
1	Someone else submits a fresh Town Green bid	4	2	SENRA agree to withdraw application but a n other starts the process again. The County Council need to formally agree with the approach.	Mitigating Control: Good communication with the community of the offer and progress with SENDRA Level of Effectiveness: M	4	1	Action: Close dialogue with SENDRA and the County Council. Appropriate joint communication to the wider community (meetings, press, newsletters) Action Owner: Head of corporate Assets Mitigating Control: Control Owner:	Outcome required: Milestone Date: 1 st . within one month of CEB.							
2	Community Trust too complicated	4	3	This is a new area for the City Council, with potential as yet unknown complications. The option proposed to CEB can not be	Mitigating Control: Thorough investigation as listed in main report and report back to CEB Level of Effectiveness: M	2	2	Action: Accept Action Owner: Mitigating Control: Control Owner:	Outcome required: Milestone Date: Within 3 months of CEB.							

				implemented, so has to be withdrawn from consideration													
3	SENDRA do not agree to the reciprocal provisions	4	2	Any offer from the City Council would require reciprocal provisions as listed in the report. These have to be negotiated yet.	Mitigating Control: Give time and care to dialogue with SENDRA Level of Effectiveness: M	4	1	Action: Accept Action Owner: Mitigating Control: Control Owner:	Outcome required: Milestone Date:								