

Agenda

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Scrutiny Committee

Extraordinary Meeting

This meeting will be held on:

Date: **Monday 18 November 2024**

Time: **6.00 pm**

Place: **Long Room - Oxford Town Hall**

For further information please contact:

Celeste Reyeslao, Scrutiny and Governance Advisor

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Members of the public can attend to observe this meeting and.

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Committee Membership

Councillors: Membership 11: Quorum 4 substitutes are permitted.

Councillor Katherine Miles (Chair)

Councillor Tiago Corais (Vice-Chair)

Councillor Mohammed Altaf-Khan

Councillor Chris Jarvis

Councillor Dr Amar Latif

Councillor Edward Mundy

Councillor Simon Ottino

Councillor Asima Qayyum

Councillor Dianne Regisford

Councillor Mike Rowley

Councillor Anne Stares

Apologies and notification of substitutes received before the publication are shown under *Apologies for absence* in the agenda. Those sent after publication will be reported at the meeting. Substitutes for the Chair and Vice-chair do not take on these roles.

Agenda

	Pages
1 Apologies for absence	
2 Declarations of interest	
3 Chair's Announcements	
4 Consideration for call-in request relating to Cabinet Decision - Disposal of Land at Foxwell Drive, Headington	7 - 14
<p><i>Publication Note: A previously published exempt report has been replaced by a publicly accessible version. The agenda has been restructured to reflect this amendment, with the revised report now listed under public business. Exempt information is contained within appendices pursuant to Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972. Should the Scrutiny Committee wish to discuss matters relating to the information set out in Appendices 3 and 4, it will be necessary for the Committee to pass a resolution to exclude the press and public from the meeting (as set out in agenda item 5).</i></p> <p>On 16 October 2024, Cabinet made a decision to enter into an Option Agreement for the disposal of land at Foxwell Drive.</p> <p>The Committee is asked to consider the call-in for this Cabinet decision.</p>	
5 Matters exempt or part exempt from publication and exclusion of the public	
<p>If the Committee wishes to exclude the press and the public from the meeting during consideration of any aspects of the preceding or following agenda items it will be necessary for the Committee to pass a resolution in accordance with the provisions of Section 100A(4) of the Local Government Act 1972 specifying the grounds on which their presence could involve the likely disclosure of exempt information as described in specific paragraphs of Part 1 of Schedule 12A of the Act if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>(The Access to Information Procedure Rules – Section 15 of the Council’s Constitution – sets out the conditions under which the public can be excluded from meetings of the Council)</p>	

5a	Consideration of call-in request relating to Cabinet Decision - Disposal of Land at Foxwell Drive, Headington - Exempt Appendices	15 - 20
5b	[Originally published report] Consideration of call-in request relating to Cabinet Decision - Disposal of Land at Foxwell Drive, Headington	21 - 24
	<i>This has been replaced by the report attached to Agenda Item 4 and 5a (exempt appendices).</i>	

Information for those attending

Recording and reporting on meetings held in public

Members of public and press can record, or report in other ways, the parts of the meeting open to the public. You are not required to indicate in advance but it helps if you notify the Committee Services Officer prior to the meeting so that they can inform the Chair and direct you to the best place to record.

The Council asks those recording the meeting:

- To follow the protocol which can be found on the Council's [website](#)
- Not to disturb or disrupt the meeting
- Not to edit the recording in a way that could lead to misinterpretation of the proceedings. This includes not editing an image or views expressed in a way that may ridicule or show a lack of respect towards those being recorded.
- To avoid recording members of the public present, even inadvertently, unless they are addressing the meeting.

Please be aware that you may be recorded during your speech and any follow-up. If you are attending please be aware that recording may take place and that you may be inadvertently included in these.

The Chair of the meeting has absolute discretion to suspend or terminate any activities that in his or her opinion are disruptive.

Councillors declaring interests

General duty

You must declare any disclosable pecuniary interests when the meeting reaches the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you.

What is a disclosable pecuniary interest?

Disclosable pecuniary interests relate to your* employment; sponsorship (ie payment for expenses incurred by you in carrying out your duties as a councillor or towards your election expenses); contracts; land in the Council's area; licenses for land in the Council's area; corporate tenancies; and securities. These declarations must be recorded in each councillor's Register of Interests which is publicly available on the Council's website.

Declaring an interest

Where any matter disclosed in your Register of Interests is being considered at a meeting, you must declare that you have an interest. You should also disclose the nature as well as the existence of the interest. If you have a disclosable pecuniary interest, after having declared it at the meeting you must not participate in discussion or voting on the item and must withdraw from the meeting whilst the matter is discussed.

Members' Code of Conduct and public perception

Even if you do not have a disclosable pecuniary interest in a matter, the Members' Code of Conduct says that a member "must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself" and that "you must not place yourself in situations where your honesty and integrity may be questioned". The matter of interests must be viewed within the context of the Code as a whole and regard should continue to be paid to the perception of the public.

Members Code – Other Registrable Interests

Where a matter arises at a meeting which directly relates to the financial interest or wellbeing** of one of your Other Registrable Interests*** then you must declare an

interest. You must not participate in discussion or voting on the item and you must withdraw from the meeting whilst the matter is discussed.

Members Code – Non Registrable Interests

Where a matter arises at a meeting which ***directly relates*** to your financial interest or wellbeing (and does not fall under disclosable pecuniary interests), or the financial interest or wellbeing of a relative or close associate, you must declare the interest.

Where a matter arises at a meeting which affects your own financial interest or wellbeing, a financial interest or wellbeing of a relative or close associate or a financial interest or wellbeing of a body included under Other Registrable Interests, then you must declare the interest.

You must not take part in any discussion or vote on the matter and must not remain in the room, if you answer in the affirmative to this test:

“Where a matter affects the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest You may speak on the matter only if members of the public are also allowed to speak at the meeting.”

Otherwise, you may stay in the room, take part in the discussion and vote.

*Disclosable pecuniary interests that must be declared are not only those of the member her or himself but also those member’s spouse, civil partner or person they are living with as husband or wife or as if they were civil partners.

** Wellbeing can be described as a condition of contentedness, healthiness and happiness; anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing.

*** Other Registrable Interests: a) any unpaid directorships b) any Body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority c) any Body (i) exercising functions of a public nature (ii) directed to charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management.

To: Scrutiny Panel
Date: 18 November 2024
Report of: Head of Corporate Property
Title of Report: Disposal of Land at Foxwell Drive, Headington

Summary and recommendations

Purpose of report: To respond to queries raised as part of the call-in.

Appendices

Appendix 1	Public Cabinet papers
Appendix 2	Exempt Cabinet Papers (Exempt from Publication information concerning financial or business affairs)
Appendix 3	Legal position (exempt from publication Legal Professional Privilege)

Introduction and background

1. The decision made at the October Cabinet meeting to approve entering into an Option Agreement with Ruskin College is now subject to a call-in on the basis that the decision could lead to a loss of open space, the length of time for the Option Agreement, and conflicts of interest. This report seeks to address these concerns.

Separation of functions and conflict of interests (the transaction and planning)

2. The decision to enter into the Option Agreement has been taken by Cabinet acting as Landowner. Whether it is the Council or a third party, property transactions are often subject to conditions being met and these regularly include the buyer securing satisfactory planning permission. This is often a requirement of a purchaser as they will not want to purchase the land if they cannot use it for the intended purpose.
3. In such cases it is not a matter for the seller to deal with the planning department and, in this case, there have been no discussions between officers within Corporate Property and the Planning Department. Any discussions, whether pre-application or concerning an application, will be a matter for the proposed purchaser and officers from Corporate Property will not be involved.
4. The Cabinet agreeing to enter into an Option Agreement conditional on planning does not seek to pre-judge any application Ruskin and their partners may make to the Local Planning Authority in relation to the scheme. The decision to enter into an option agreement is an executive function, the decision concerning

planning is a Council function. The Cabinet will have no power to determine the planning application. Cabinet Members were advised by the Monitoring Officer prior to the meeting of cabinet as what to consider where they also sit on the Planning Committee. Several members therefore recused themselves from the decision before Cabinet and did not attend on that item.

5. In the event a planning application is forthcoming advice will be provided to members of the Planning Committee as to conflicts and interests.
6. Members who have attended the Code of Conduct training will be well versed on the considerations concerning predetermination and bias and there is a high threshold for demonstrating such.
7. There are no concerns over the Council separating its functions in this case as there will be no involvement of Council officers in the planning process. The Planning officers are all professionals and also used to dealing with applications for Council owned land. In this case however their dealings will be with the proposed purchaser and planning officers will only, as always, consider only the planning merits in relation to the planning application. The fact the Council is the current owner will not be a consideration.
8. Further the Planning team will be supported by a planning lawyer who will have had no part in the property transaction (which is dealt with by a separate legal team).
9. The Monitoring Officer is satisfied there is nothing at all unusual about the transaction, with no cause for concern, and that appropriate advice and safeguards will be put in place as needed throughout to protect the Council as LPA in its decision making.

Conflicts of interest – planning policy

10. In the call-in members raised the issue of conflict of interest and separation of function with regards to the planning policy function including either a next generation of or revised local plan 2024.
11. The Local Plan is a Council function and not a Cabinet function. Planning policy officers are professionals, with their own code of conduct and professional body and are also required to develop planning policies in accordance with the law and national policy. As with the previous draft plan, the development of planning policy will be done properly, with consultation, engagement, decisions, and Council and then is subject to independent examination. This is a well-established professional process and there is no reason to suggest that there would be a departure from this in relation to the site. The safeguards are in place as were with all previous planning policy development the Monitoring Officer and Head of Planning and Regulatory are confident this will remain the case.

Option Agreement – period

12. The proposed disposal of the land ensures that the Council uses its property to maximise income generation and rates of return in line with the Asset Management Strategy.
13. The land that Ruskin is looking to redevelop is sizeable, 8.7 acres for residential use and a further 3.5 acres for educational use. It will take a considerable period of time and financial investment for Ruskin to find a suitable partner, put together

a scheme that is likely to be acceptable to the Local Planning Authority and gain consent. The current issue with Thames Water sewage treatment plant and the standard Environment Agency objections will also need to be resolved in order for an implementable planning consent to be gained.

14. A ten-year option period will allow Ruskin to sufficiently explore all options available to them; a period of five years may not allow them sufficient time to explore all these options and Ruskin may decide to not proceed with the scheme. Our agents have advised that given the significant amount of work that would need to be undertaken before a planning application could be submitted a five year option would be considered a significant risk to the project and any bidders for the scheme would reduce the price are prepared to pay in an attempt to mitigate this risk, if they decided to make a bid for the scheme at all. A 10-year option is not unusual in these circumstances.

Risks Requiring Further Scrutiny – Sufficient Scrutiny

15. The purpose of scrutiny is not to make confidential information available to the public, FOIA is very much its own legal process and the fact a matter is for decision does not mean that all information on it should be disclosed under FOIA. There is a need to balance the public interest and the right to confidentiality and protection of commercially sensitive information of the Council and third parties.
16. FOIA is applied and processed by qualified professionals that will have taken a view in light of the information and the legislation as to whether the Council is obliged to release it, as is right to do. The fact Scrutiny may want to consider an item, that is a Cabinet decision or that it may come before planning is not relevant.
17. Referring to Part 15.12 of the Constitution, whilst members are entitled to see papers for a Cabinet decision this does not extend to information about the possible terms of a contract the Council is negotiating. Scrutiny then have further rights set out in section 15.11 which allows it access to confidential information on a decision it is scrutinising however this is subject to:
18. The Scrutiny Committee considering and discussion exempt information in closed session.
19. Members obligations as to confidentiality in 15.13.
20. As such Scrutiny can consider the information before Cabinet and effectively scrutinise the decision but it cannot do so in open session or share any information with a person outside the meeting. This still allows for effective scrutiny given this is in line with the legal framework concerning exempt papers, scrutiny and duties concerning commercially sensitive information of the Council's and third parties.
21. The Option Agreement has not yet been drafted; we have an agreed set of Heads of Terms that were summarised as part of the confidential appendix to the Cabinet report. It is not usual that the agreement is drafted and shared in final form as it is a technical document.

Risks Requiring Further Scrutiny – Land Repurposed as Public Open Space

22. The legal position is that the land is held by the Council for planning purposes and not open space. This is considered in more detail in exempt appendix 3. Counsel was instructed to consider the following points:

- Is the 2012 appropriation of the land, of which the land subject to the Option Agreement forms part, open to challenge on the basis the 2012 report suggests that some land would be returned to Public Open Space.
- If there is a risk of challenge should OCC advertise the proposed disposal as if it were held as public open space.
- Are there any further issues arising from the 2012 appropriation that should be considered.

23. With regards to the urban forest Ruskin College have advised that it will either be relocated or replaced as part of their wider scheme. There is also potential for OCC to relocate or replace the urban forest in an alternative location within the existing area of land. This will, however, be a matter for the LPA to consider in the consideration of any planning application.

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Background Papers:	
1	The Constitution

To: Cabinet
Date: 16 October 2024
Report of: Head of Corporate Property
Title of Report: Disposal of Land at Foxwell Drive, Headington

Summary and recommendations	
Purpose of report:	Request approval to enter into an Option Agreement for the disposal of land at Foxwell Drive, Headington.
Key decision:	Yes
Cabinet Member:	Councillor Ed Turner, Deputy Leader (Statutory) Finance and Asset Management
Corporate Priority:	Enable an inclusive economy; deliver more affordable housing
Policy Framework:	Asset Management Strategy

Recommendations: That Cabinet resolves to:	
1.	Give approval to the Heads of Terms for an Option Agreement, as outlined in the report, for the disposal of land at Foxwell Drive, Headington, noting that any development would be subject to planning;
2.	Delegate authority to the Executive Director (Development), in consultation with the Head of Law and Governance, the Head of Financial Services and the Deputy Leader (Statutory) - Finance and Asset Management to enter into the Option Agreement; and
3.	Delegate authority to the Executive Director (Development) in consultation with the Head of Law and Governance, the Head of Financial Services and the Deputy Leader (Statutory) – Finance and Asset Management to agree the final disposal price of the Land on the basis that it will comply with the requirements of S123 of the Local Government Act 1972.

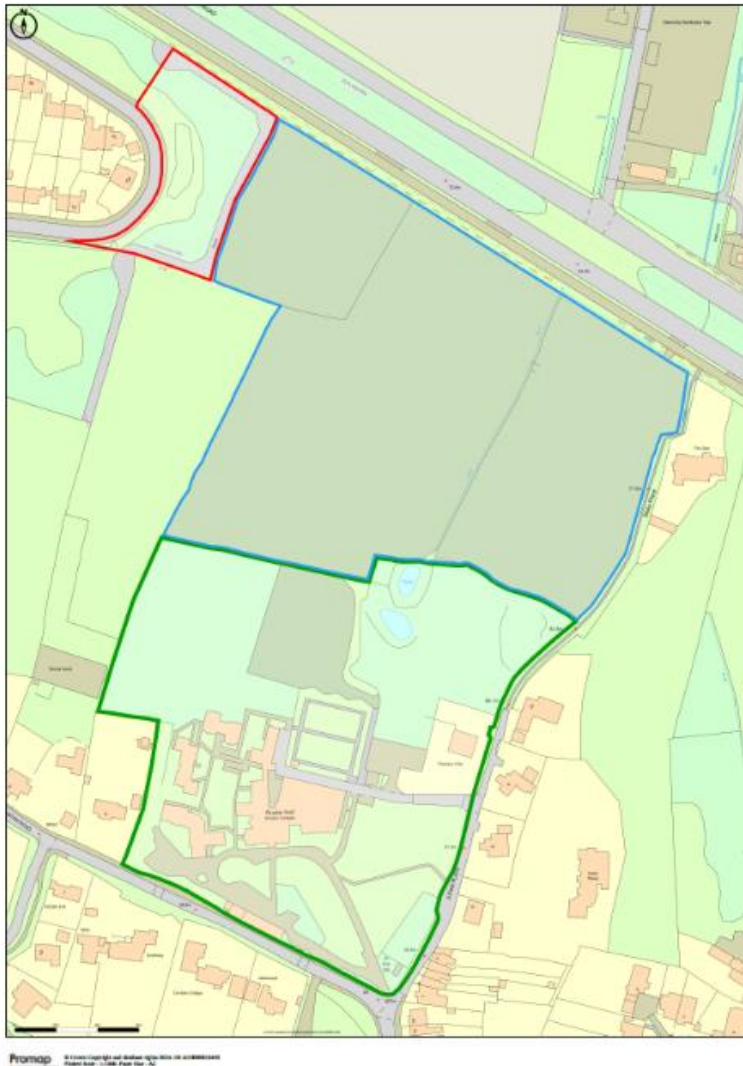
Appendices	
Appendix 1	Exempt Appendix 1 – not for publication
Appendix 2	Risk Assessment

Introduction and background

1. Ruskin College (the “College”) is situated on Dunstan Road, Headington. The College is looking to redevelop the educational facilities on the campus. To fund the redevelopment, they are looking to dispose of an area of land to the rear of the College known as Ruskin Field (the “site”) for residential development. Please see the plan below showing the site outlined in blue, it extends to approximately 8.7 acres.
2. The land the College are looking to redevelop for educational facilities is outlined green on the plan below, it extends to approximately 3.5 acres.
3. The existing access to the residential site is through Stoke Place. This a single carriage track and it is not large enough for access to the proposed residential development site. The College has identified a suitable access to the site from Foxwell Drive. The land that the College has identified is owned by the Council, outlined in red on the plan.
4. The College approached the Council during 2023 with regards to acquiring a right of way over the Council owned land. We have been having discussions with the College regarding this and have now reached an agreement to sell the land on a freehold basis to the College in the event planning consent is secured for the site.
5. The land that is subject to the agreement with the College forms part of a larger section of land that was appropriated in 2012 for planning purposes linked to the Barton Park Regeneration Project. Subsequent to the completion of the Barton Project Regeneration works the land has continued to be held for planning purposes. As such there is no requirement to advertise the disposal of the land to the College.
6. The key terms of the agreement are contained in the attached exempt appendix.

Plan of the Site

Plan 1 Ruskin Fields



Financial implications

7. The sale of the site could generate a significant capital receipt for the Council; however, there is no guarantee that the College will be able to secure planning consent for the site. There is also no certainty of the likely timing the capital receipt will be received at this time.

Legal issues

8. The Council is able to dispose of any land that it owns subject to the disposal being at the best consideration less than the best that can be reasonably obtained. The terms of the agreement will include mechanisms to ensure that the disposal complies with this requirement.
9. The land is not currently held as open space for the purposes of s. 122(2A) of the Local Government Act 1972, and there is no legal obligation to consult on the sale to the College.

10. Officers have consulted the relevant provisions of the Council’s constitution relating to land disposals and have received legal advice on these from the Legal Services team. Further comment on these matters may be found in the Exempt Appendix.
11. This report does not prejudice any application that the College, their agents or subsequent owners make to the Local Planning Authority.

Level of risk

12. Please see Appendix 2. This decision does not have an impact on anyone with protected characteristics, on this basis an Equalities Impact Assessment is not required.

Carbon and Environmental Considerations

13. There are no Carbon and Environmental considerations in respect of the recommendations made in this report.

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Background Papers: None

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