

To: Cabinet
Date: 15 November 2023
Report of: Executive Director (Development)
Title of Report: Appropriation of Land at Bertie Place to a Planning Purpose

| Summary and Recommendations | |
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| Purpose of report: | This report seeks approval to appropriate land (change the statutory basis on which it is held by the Council from one function to another) currently held for public open space purposes at Bertie Place Recreation Ground. This paper relates to the appropriation of Site A to a planning purpose for the objective of building affordable housing. |
| Key decision: | Yes |
| Cabinet Member: | Councillor Ed Turner, Cabinet Member for Finance and Asset Management Councillor Linda Smith, Cabinet Member for Housing |
| Corporate Priority: | More Affordable Housing and Meeting Housing Needs |
| Policy Framework: | Housing and Homelessness Strategy 2023 to 2028 |
| Recommendations: That Cabinet resolves to: | |
| <ol style="list-style-type: none"> 1. Note that following the statutory public notification process of the Council's intention to appropriate the Land to planning purposes, three written representations were received in response to the public notice; 2. Approve the appropriation of land in the Council's ownership at Bertie Place Recreation Ground Site A (see Image 1 for plan) ("the Land"), to planning purposes, so as to facilitate its future development for new housing (per planning application number 23/00988/FUL) in accordance with section 122 and further, thereby, rely on section 203-205 Housing and Planning Act 2016 to permit the development of the Land to proceed; and 3. Recommend to Council to approve the appropriation of the Land from the General Fund to the Housing Revenue Account (HRA) subject to planning permission for planning application 23/00988/FUL being granted. | |

| Appendices | |
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| Appendix 1 | Equalities Impact Assessment |

Introduction and background

1. The Council continues to develop a supply programme to deliver more affordable housing through multiple work streams, including the delivery of homes through the Council’s housing company – OCHL; direct delivery by the Council; joint ventures; regeneration schemes; acquisitions; and enabling activity with Registered Providers, community-led housing groups, and other partners. The Council seeks to deliver over 1,600 affordable tenure homes across the next four years (to March 2027), with at least 850 of those at the most affordable Social Rent level.
2. OCHL continue to deliver an extensive programme of development schemes in accordance with the OCHL business plan.

Scheme information

3. This report relates to one development in the programme, Bertie Place. Bertie Place (Bertie Place Recreation Ground and Land Behind Wytham Street) is located within the Hinksey Park ward.
4. The scheme remains subject to planning consent. A planning application for the site was submitted in May 2023 (23/00988/FUL). It is anticipated that the application will go to Planning Committee in December 2023. This report is separate to the planning process and the overview provided is for the information only.
5. The current proposal is for a 100% affordable housing development of 31 homes (22 for Social Rent and 9 for Shared Ownership).
6. The image below details the extent of land to be appropriated at Bertie Place. The area for appropriation comprises Site A only.

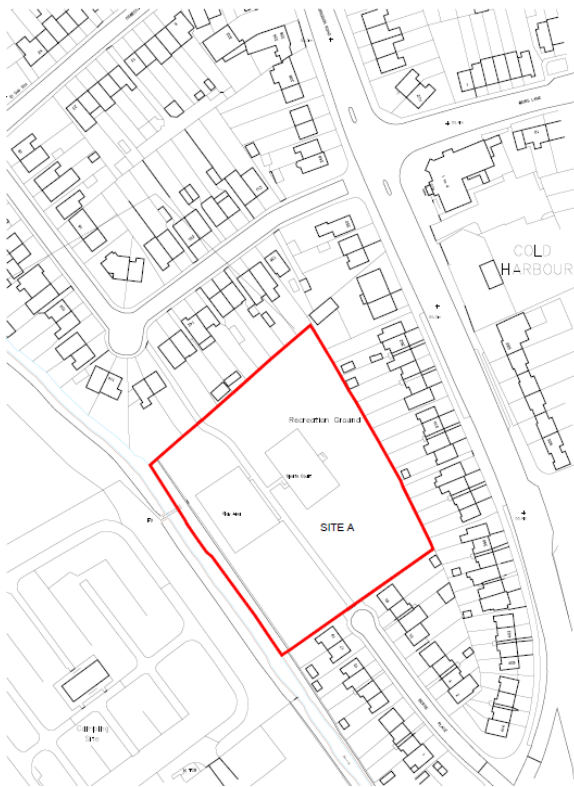


Image 1: Red line drawing of Site A.

7. Site B is currently scrub land and the scheme is predicated on minor works and improved public access to Site B.
8. For more information on the schemes background refer to the [Council's August Cabinet report on project approvals and intent to appropriate land at Bertie Place.](#)
9. Additional scheme information relating to the financial appraisal is provided in the (commercially sensitive) [appendix to the August report.](#)

Appropriations

10. Appropriation means changing how the Council holds the land. The Council holds land for the statutory purposes for which it was acquired or following acquisition, appropriated. Appropriation is the process by which land held by the Council pursuant to one statutory function is transferred to another statutory function.
11. It is important to note that appropriation covers only land owned by Oxford City Council.
12. The Land is held by the Council as a pleasure ground under section 164 of the Public Health Act 1875 – this status as a pleasure ground amounts to a public trust over the Land preventing its use for other purposes. Appropriation of the Land to a planning purpose under section 122 of the 1972 Act (see previous paragraph) will have the effect of discharging this public trust.
13. It should be noted that there may be other trusts over the land which will need to be dealt with appropriately in due course.

14. The August report notes that two separate “appropriations” are required for this development.
15. First, the land at Site A must be appropriated to planning purposes and the purpose of building affordable housing. This was subject to Cabinet agreeing to the commencement of the appropriation process, planning permission being granted and the conclusion of the consultation exercise.
16. In August 2023 Cabinet agreed to commence the appropriation process of open space land at Site A, Bertie Place as set out in the report, noting the intent to take a further report to a later Cabinet.
17. Second, if the proposed appropriation process has been approved and completed and should planning permission be granted, the land must be appropriated (i.e. transferred) from the General Fund (“GF”) to the Housing Revenue Account (“HRA”) under a separate legal mechanism.
18. This report deals with the appropriation of Site A to a planning purpose to build affordable housing.
19. Should planning consent not be obtained, revised schemes may be considered by OCHL.
20. The Council holds land for the statutory purposes for which it was acquired or following acquisition appropriated. Section 122 Local Government Act 1972 governs the process of appropriation. The Council may appropriate (transfer) land held from one function to another if it believes that it is no longer required to be held for the function it is presently held for and the purpose for which it is to be held in future is a purpose it could have acquired the land if it did not already own it.
21. Section 122 provides that before appropriating any land which is public open space the council must give notice of its intention to do so and consider any objections made to the proposed appropriation. Comments will be given due consideration and a summary report to be submitted to Council. The notice must be given in a local newspaper over a period of two consecutive weeks.
22. If the Planning Permission is granted, this would allow the Council to rely on section 203-205 Housing and Planning Act 2016 to override any restrictions on the use or development of Land (private rights of way or other restrictions) in return for payment of compensation to affected landowners.
23. Following the grant of planning permission, the Land would be developed as part of the Bertie Place development.
24. Subject to the determination of the planning application by the planning committee the intention is that the land which holds the children’s play area and MUGA be appropriated back to the GF from the HRA following the development period. Further approval will be required following completion of the works to undertake the

transfer of that part of the Site (covering open space, the play area and the MUGA) not used for housing.

Intention to appropriate the Land

25. Following Cabinet's decision in August to advertise the Council's intention to appropriate open space land, this report seeks approval to appropriate the Land.
26. As per the provisions of Section 122(2A) a notice was published in the Oxford Times for two consecutive weeks from 21 September to 6 October. A plan showing the location of the area proposed to be appropriated was available for inspection during work hours at the Oxford City Council offices (The Town Hall) during this time.
27. This notice included contact details for the Head of Law and Governance and the Council's postal address to receive comments from members of the public. The Council allowed comments to be received from 21st September to 6th October.
28. All objections were requested in writing before 5pm on 6 October 2023. A summary of objections received, along with responses to address these, is detailed below.

Objections and stakeholder engagement

29. In determining whether to appropriate land that is held for public open space purposes the Council has a duty to properly consider any representations received following publication of the public notice and the outcome of the Equality Impact Assessment.
30. In further determining whether to appropriate land to planning purposes so as to override rights affecting its development, good practice suggests that Council's should weigh in the balance the reasons of securing the development of the land against the impact the loss or private rights may have on those affected recognising that compensation is payable where such right can be demonstrated to exist.
31. Three letters of objection were received during (or immediately after) the notice period. The specific objections detailed in the letters and the Council responses to these points are set out below.

Objection to the public notice seeking clarity on the on the specific section of the Local Government Act 1975 in use for the appropriation.

32. In response to this objection the Council would like to make it clear that the basis for the appropriation of the land to a planning purpose is under s.122 of the Local Government Act 1972. Section 123 does not apply as the Council is not proposing to dispose of the land.

Objection on the basis that the site is still required under its current purpose and is not surplus to requirements.

33. The National Planning Policy Framework is cited in one objection.

34. The Bertie Place Recreation Ground has been identified for development in successive Local Plan documents for over 18 years, all of which have followed a process of consultation and public engagement prior to them being adopted.
35. The National Planning Policy Framework (NPPF) is not relevant for the determination of the appropriation process. It is the Local Planning Authority who will need to have regard for NPPF when it determines the planning application. Cabinet does not need to take into account NPPF when it makes its decision.

Objection based on community access for 85 years. Access is important for the health and wellbeing of community and provides a safe space for young people to gather and play. This is viewed as the only community amenity is also used by the Rivermead Park development and visitors to the adjacent campsite.

36. Access to green space, a MUGA and a children's play area will be retained with residents and wider public (including visitors to the campsite and residents of Rivermead Park) able to access these facilities.
37. Other recreation facilities including parks with play areas are available within walking distance. Hinksey Park has a wide range of recreation facilities including play equipment, sporting facilities and, further, access to Dean's Ham Meadow. This is a 16-minute walk from Bertie Place.
38. Fox Crescent Park is a play area a 7-minute walk from Bertie Place.
39. In relation to the Rivermead Park development, there are many housing developments which are constructed without an on-site play area.

Objection on the basis that the amount of land the Council is seeking to appropriate exceeds 250 square yards, as per section 122 of the Act.

40. With reference to section 122(2)(a), the restriction based on exceeding 250 square yards only applies if the land consists of common land. Site A does not constitute common land and as such, the procedure under section 122(2A) applies and not the procedure under section 122(2).
41. Furthermore, Site B is an area of green space equivalent in size to Bertie Place A and will be improved and made more accessible. Subject to approval, it is intended that areas relating to the play area and MUGA will be appropriated back to the General Fund following the development.

Objection to a difference in size between the appropriation notice and the Local Plan.

42. The site area specified on the Local Plan policy SP32 is 0.66 hectares (Plot A) (equivalent to 6600 square metres). The notice of appropriation states 7777.7 square metres are to be appropriated. The area for appropriation is shown clearly on the plan attached to the notice.

43. The discrepancy noted is accounted for by the inclusion of a 10m 'no-build' buffer zone from the watercourse. The buffer zone is included in the appropriation notice as landscaping works are proposed to the edge of the watercourse. Also included in some of the existing highway at the end of Bertie Place for some changes.

Objection to the use of the term “regeneration” in relation to the development. This was referenced in two of letters.

44. The Council views the use of the term as appropriate for the combined works of delivering new affordable housing, re-provision of a play area and a MUGA, and improved access to and development of green space.

Objection that there is confusion between Oxford City Council and the 'Development Company' OX Place and no clear body to which to address concerns regarding the development. This includes at consultation events.

45. Objections to the development are dealt with as part of the formal planning process and managed by Oxford City Local Planning Authority. This takes into account all objections to the development. The development has been subject to both a pre-application consultation and a statutory consultation.

46. All consultation events run in relation to the proposed development at Bertie Place have been coordinated by OX Place.

47. It is acknowledged that OX Place is a Council wholly owned company but both OX Place and Oxford City Council are separate legal entities with different roles and responsibilities in respect of this development. OX Place, as the developer and the applicant, is responsible for managing the pre-application process and submitting the planning application. Any complaints regarding the pre-application process should be directed to OX Place. Objections made to OX Place will be responded to by them directly.

48. Objections to the planning application are dealt with by the Local Planning Authority.

Objection to noise nuisance from MUGA

49. Objections relating to the re-provided facilities will be taken into account as part of the planning process.

50. The MUGA is designed to help minimise noise.

Objection to size of MUGA

51. Objections relating to the re-provided facilities will be taken into account as part of the planning process.

52. A new MUGA is provided part of the development however it is noted that there is a reduction in the size of the MUGA.

Objection to loss of play equipment, reduction in size of play area and potential change in age group for which the park caters. Currently the park caters to a wide range of children's ages but there is concern that this will be reduced to only children aged five years and under.

53. Objections relating to the re-provided facilities will be taken into account as part of the planning process.

54. Proposals for the play area remain indicative at this stage and will be tested through the planning process; however, the intention of the Council is to re-provide a play area which caters to a range of age groups. It is intended to further engage the community on how the play area is set out and used.

Objection to risks to children of moving about on slippery grass sloping down to the water course.

55. There is currently a wire fence separating the open space and the waterway. A replacement fence will remain along the watercourse. There will be no change to this and therefore no increased risk.

Objection to the loss of space for 'free play' by 80 per cent. The recreation ground will not be replaced by equivalent or better provision in a suitable location.

56. Objections relating to the recreation ground will be taken into account as part of the planning process.

57. In response to concerns regarding the loss of green space at Bertie Place Site A, it is intended that improved accessibility into and around Site B will address this issue.

58. The landscaping at Bertie Place Site B will provide a green space connected to the area via an accessible footbridge which leads to a nature path. The path will be designed to accommodate walking and wheeling activities, including the use of wheelchairs, pushchairs, bicycles and scooters.

Other recent objections

59. It is noted that representation was made at the August Cabinet meeting by Kaddy Beck, on behalf of the Save Bertie Park Campaign through submitting a statement and questions relating to the scheme. Her statement, and the response given to it by Councillor Susan Brown, Leader, are attached to the minutes of that meeting which are available on the Council's website.

60. At Cabinet the Affordable Housing Supply Corporate Lead highlighted that proposals for the play area remained indicative at this stage and would be tested through the planning process; however, the current intention of the Council is to re-provide a play area which catered to a range of age groups. It intended to further engage the community with regard to how the play area was set out and used.

61. In addition to responding to the objections noted above the Council has carried out an Equalities Impact Assessment to determine whether there are any groups likely to be negatively affected by the appropriation process, namely, the loss of public open space at the Bertie Place site.
62. A representation was made by Martin Hackett at a meeting of the Council on 2 October 2023. Details of the representation and response from Councillor Louise Upton can be found in the full minutes available at the Council website.
63. Councillor Upton noted that any planning application in relation to the site will need to set out how it accords with the policies within the Local Plan, and full consideration will be given to this through the planning process.

Rationale for appropriation

64. Officers believe that the positive benefits of developing the Land as an affordable housing scheme along with the provision of a new play area, MUGA (Multi-Use Games Area) and improved access to an alternative green space outweigh any negative impacts across both sites. In reaching this conclusion officers have considered the following including:
- a. all representations either opposing or supporting the intended appropriation have been received in response to public notices;
 - b. the new play area and access to green space will mitigate the loss of the Land as public open space;
 - c. an Equality Impact Assessment has been undertaken which indicates that there are no adverse disproportionate long-term impacts.
65. To progress the Bertie Place development, officers are of the view that the appropriation of council-owned land in this area will facilitate the development of the Land and will contribute to the achievement of further economic and social wellbeing of the area, namely in the delivery of affordable housing.

Financial implications

66. There were costs associated with publishing the notice of intention.

Legal issues

67. The activities, as set out in this report, relate to activity for the purpose of developing homes as affordable housing. This is within the Council's statutory powers. The general power of competence under the Localism Act 2011 and the Local Authorities (Land) Act 1963 enable the Council to develop land it already owns. The Council has power to appropriate land from one purpose to another under section 122 of the Local Government Act 1972.
68. Bertie Place is currently used as recreation ground and was designated as open space. It is the view of the Council that it should be appropriated to a planning purpose as there may be third party rights that need to be overridden to enable the development to proceed. The beneficiaries of any rights that are overridden as a result of the appropriation will be entitled to compensation.

69. Without overriding of third-party rights, the beneficiaries of those rights could potentially seek an injunction preventing the development from going ahead. Exercising the appropriation powers will override all third-party rights over the Land. These rights may include such things as rights of way that are unrecorded, and that OCC may have no knowledge of. It will also include any infringements of rights to light that may occur if the new development overshadows neighbouring properties.
70. Compensation is payable to landowners whose private rights of way or light are interfered with or overridden to the extent to which the value of their properties are reduced by no longer being able exercise any rights of way that are affected.
71. The activities, as set out in this report, relate to activity for the purpose of developing homes as affordable housing. This is within the Council's statutory powers. The general power of competence under the Localism Act 2011 and the Local Authorities (Land) Act 1963 enable the Council to develop land it already owns.
72. Any procurement of goods and services for the purpose of developing homes must be carried out in accordance with the Council's constitution and procurement procedures, complying with The Public Contracts Regulations 2015, including ensuring that best value is achieved.
73. It is likely that footpaths and rights of way will be temporarily suspended to allow for the development to proceed. This also includes the possibility of a temporary road stopping order to accommodate the utility connections. The Council will go through all necessary consultation processes to secure all appropriate permissions.

Equalities impact

74. Given the nature of the exercise of the powers proposed by the Council it is necessary for the Council to have regard to its public sector equality duty in reaching a final decision to appropriate the Land to planning purposes.
75. An Equalities Impact Assessment has been carried out and is an appendix to this paper.
76. Any adverse impacts to the community in undertaking this activity have been considered with mitigating actions undertaken or planned wherever possible. These should be balanced with the impact of improving provision for persons in housing need, through the delivery of more affordable and accessible housing to better meet client needs.

Carbon and Environmental considerations

77. There are no carbon or environmental considerations in relation to the appropriation.

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Background Papers:

1. 9th August 2023 Cabinet report: Bertie Place affordable housing scheme – project approvals and land appropriation
2. Planning application for erection of 31 affordable residential dwellings, with associated public open space, multi-use games area, childrens play area, access and landscaping – 23/00988/FUL

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