

To: Cabinet – 16 October 2024
Report of: Executive Director – Development
Title of Report: Appropriation of land at Bertie Place to a planning purpose

Summary and Recommendations	
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 (the “Land”). This paper relates to the appropriation of part 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
Recommendation(s): That the Cabinet resolves to:	
1. Note that following the statutory public notification process of the Council’s intention to appropriate the Land to planning purposes, three written representations (including one signed by 97 people) were received in response to the public notice; and	
2. Approve the appropriation of part of the 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).	

Appendices and supplementary information	
Appendix 1A	Copy of the consultation responses
Appendix 1B	Summary of objections in response to advert of intent to appropriate Site A to a planning purpose
Appendix 1C	Cabinet objection to Bertie Place, August 2023
Appendix 1D	Public Address and Questions, Council, October 2023

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 2028), 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 affordable housing supply programme: Bertie Place. Bertie Place (Bertie Place Recreation Ground and Land Behind Wytham Street) is located within the Hinksey Park ward.
1. 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 late 2024. This report is separate to the planning process and the overview provided is for the information only.
4. The current proposal is for a 100% affordable housing development of 31 homes (22 for Social Rent and 9 for Shared Ownership).
5. The image below details the extent of land to be appropriated at Bertie Place. The area for appropriation comprises part of Site A only.



Image 1: Red line drawing of the land on Site A to be appropriated to a planning purpose.

6. Site B is currently scrub land and the scheme is predicated on minor works and improved public access to Site B. For reference, the image below details the location of Site B, along with the whole of Site A.



Image 2: Red line drawing indicating Site A and Site B.

7. For more information on the scheme's background please refer to the [Council's August 2023 Cabinet report on project approvals and intent to appropriate land at Bertie Place](#).
8. Additional scheme information relating to the financial appraisal is provided in an [appendix to the August 2023 report](#) which was exempt from publication.
7. The red line drawing above indicates a change to the originally advertised land for appropriation to a planning purpose. It is now intended to appropriate only the area of land on Site A where housing will be developed rather than the whole of Site A.
8. The remainder of Site A which, as detailed in the planning application, will host the new MUGA (Multi-Use Games Area) and play equipment, will retain its current status as land within the General Fund for use as a pleasure ground (see para 17). Furthermore, Site B, an area of green space equivalent in size to Bertie Place A, will be improved and made more accessible as part of the project.
9. While the status of this area as recreation ground will not change, for health and safety reasons the area will need to be closed for the duration of the development and construction phase including land remediation works, the building of the new MUGA, play area, bridge access and open space development (Site B) as well as the whole of the housing construction phase.
9. It is anticipated that the whole development which includes the re-siting of the recreation facilities, and the construction of the housing will take 18 - 20 months.

Appropriation of the land from its present use as a recreation ground for housing

10. Appropriation allows a council to change the purpose for which it holds the land. Generally, councils must only use land for the statutory purposes for which it was acquired or following acquisition, appropriated. Appropriation is the process by which land held by a council pursuant to one statutory function is transferred to another statutory function.
11. A council may appropriate land held from one purpose to another only if the land in question is no longer required to be held for the purpose for which it is held before the appropriation.
12. Where the land to be appropriated is used as open space the council must advertise its intention to appropriate the land and consider any objections made to the proposed appropriation.
13. The Land at Bertie Place is used as a recreation ground (i.e., open space) and is protected by a public trust (under section 164 of the Public Health Act 1875) preventing its use for other purposes. Appropriation of the land under the mechanism described above will have the effect of discharging this public trust allowing the council to use the land for other purposes.
14. It should be noted that there may be other rights and restrictions over the land which will need to be dealt with appropriately in due course.
15. In August 2023 Cabinet agreed to commence the appropriation process of the land at Site A, Bertie Place as set out in the report, noting the intent to take a further report to a later Cabinet.
16. Following Cabinet's decision of August 2023, a notice announcing the Council's intention to appropriate the land at Bertie Place was published in the Oxford Times for two consecutive weeks from 21st September to 6th 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.
17. A summary of objections received, and Oxford City Council's response to them, is detailed in Appendix 1B. Since the advertisement was placed officers have reviewed the extent of the land proposed to be appropriated. There has been a reduction to the amount of land that is intended to be appropriated. Previously this was the whole of Site A. This change is a response to the objections received. It allows the recreational facilities to remain being held within the General Fund for recreational use.
18. The land allocated for the new MUGA and playground will not be appropriated to a planning purpose and will remain held for use as a recreation ground.
10. The land proposed for housing development must be transferred from the General Fund ("GF") to the Housing Revenue Account ("HRA") prior to completion. A future report will be brought to Cabinet for recommendation to Council in due course.

Summary of objections

19. 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.
20. 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 of private rights may have on those affected recognising that compensation is payable where such right can be demonstrated to exist.
21. Three letters of objection were received during (or immediately after) the notice period. These can be found in Appendix 1A. It is noted that one of the representations comprised signatures of 97 individuals. Personal information has been redacted from these documents. The specific objections detailed in the letters and the Council responses to these points are set out below and in Appendix 1B.
22. This section summarises the key objections raised within written objections to the advertised intention to appropriate Site A. It also responds to specific key objections. A detailed breakdown of the objections along with Oxford City Council's responses is found in Appendix 1B. Additional formal objections and the accompanying responses can also be found in the Appendix 1C and 1D.
23. A number of concerns related to the relative size and nature of the alternative recreation facilities to be provided. Officers consider that the relative benefit to the community of the provision of the housing planned outweighs the changes in the size and nature of the facilities that will be available.
24. Some objections were made on the ground that the land is not surplus to requirements as a recreation ground. Officers do not contend that the land is surplus to requirements, but that it is no longer required for its present purpose given the proposal to provide alternative facilities as part of the project.
25. Various objections were based on errors of law. The legal position is set out under "legal implications" below.
26. There were various other objections cited which are not relevant to the decision to appropriate the land because:
 - they refer to matters that fall within the scope of the planning process;
 - they relate to the public's understanding of who is responsible for delivering the Bertie Place development; or
 - they relate to the council's use of the term "regeneration" in its communications on the proposals to develop Bertie Place.

Financial implications

11. There are no financial implications relating to the appropriation of the land to a planning purpose.

Legal issues

27. Generally speaking, a council must hold land for the purpose for which it was acquired. However, under certain circumstances councils have the power to appropriate land from one purpose to another by following a statutory process.
28. Bertie Place is currently used as recreation ground and was designated as open space. As such the Council must appropriate the Land to a planning purpose in order to discharge the public trust over it under the Public Health Act 1875 and to override any third-party rights which are extant and which would otherwise prevent the development from proceeding. The beneficiaries of any rights that are overridden as a result of the appropriation will be entitled to compensation.
29. 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.
30. 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.
31. In order to appropriate the land to a planning purpose under section 122 of the 1972 Act the Council must be satisfied that it is no longer required for its current purpose as a recreation ground. The legal position is that the land need not have fallen into disuse before it may be appropriated – the land may be no longer required for its purpose as recreation ground where the council intends to provide replacement facilities.
32. In making the decision cabinet should strike a balance between different land uses in the light of wider community interests, taking a broad view of local needs.
33. Bertie Place is identified for residential development in Oxford's Local Plan and the provision of new housing on the land will contribute to the achievement of the objectives of the Council's Housing, Homelessness and Rough Sleeping Strategy. Under the circumstances and given the urgent need for housing in the city it is the view of officers that on balance the interest of the community are best served in this case by the appropriation of the land for housing; the alternate facilities set out in paragraph 11 above will satisfy the need for recreation facilities in the locality and therefore the land to be appropriated will no longer be required for that purpose.
34. Before making the decision to appropriate the land Cabinet should consider the objections received in response to its notice of proposal to appropriate. The objections and officers' assessment of them are set out at paragraph 0 above and in Appendix 1B.

35. 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.
36. 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.
37. 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

38. 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. The public sector equality duty is an obligation on the council to have due regard in the exercise of its functions to the need to promote equality through the achievement of various equality objectives.
39. An Equalities Impact Assessment has been carried out and is included at Appendix 2. This sets out the proposed development, consultations and public engagement events, the specific concerns and the assessed impact in terms of the public sector equality duty objectives.
40. The report notes that the recreational facilities will be re-provided with an alternative and accessible green space made available. Park users and residents will continue to have the right to access these spaces. All current functions of the site, including the use of the pedestrian pathway, will continue to be available following the development.
41. There will be no reduction in access of facilities. There is a park bench currently on site and new bench seating is catered for in the site plans. It is noted that there are not currently toilet facilities on site. There are no formal recreational services (e.g. youth groups, sports clubs) provided on the site.
42. The report concludes that while there is a difference between the facilities currently available and the new recreation facilities proposed as part of the development this will not have a disproportionately negative impact on the protected characteristics.
43. The report details mitigating factors e.g., the re-provided MUGA and play area and the new accessible nature walk and green space. Free play and playground play activities can still take place and an increase in biodiversity will enhance the area.

44. The Council commits to monitoring the impact of the development through ongoing communication and engagement with the local community.
45. The report also details the high housing need within Oxford and the positive impact for families and single people waiting for affordable housing on the housing register.
46. Any adverse impacts to the community in undertaking this activity have been considered with mitigating actions undertaken or planned wherever possible. It is considered that these are balanced against 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

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

Report author	Dave Scholes
Job title	Affordable Housing Supply Corporate Lead
Service area or department	Housing Services
Telephone	01865 252636
e-mail	dscholes@oxford.gov.uk

Background Papers:

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