

 <b>Executive</b> <b>29 June 2020</b>		<b>Agenda Item No.</b> <b>3 (III)</b>
<b>Title</b>	Use of Delegated Powers - Relocation of Kenilworth Rugby Football Club	
<b>For further information about this report please contact</b>	Andrew Cornfoot (01926) 456203 Site Delivery Officer <a href="mailto:andrew.cornfoot@warwickdc.gov.uk">andrew.cornfoot@warwickdc.gov.uk</a>	
<b>Wards of the District directly affected</b>	Cubbington & Leek Wootton; Kenilworth Abbey & Arden; Kenilworth Park Hill; Kenilworth St. John's	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	N/A	
<b>Background Papers</b>	N/A	

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	Yes
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes - 1,117
<b>Equality Impact Assessment Undertaken</b>	No

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	12/02/2020	Chris Elliott
Head of Service	12/02/2020	Dave Barber (Development Services); Lisa Barker (Housing)
CMT	12/02/2020	Chris Elliott/Andy Jones/Bill Hunt
Section 151 Officer	12/02/2020	Mike Snow
Monitoring Officer	12/02/2020	Andy Jones
Finance	12/02/2020	Mike Snow
Portfolio Holder(s)	17/02/2020	Cllr John Cooke (Development Services); Cllr Richard Hales (Finance); Cllr Jan Matecki (Housing)
<b>Consultation &amp; Community Engagement</b>		
N/A		
<b>Final Decision?</b>	Yes	
<b>Suggested next steps (if not final decision please set out below)</b>		

## 1. **Summary**

- 1.1 This report informs Members of an urgent decision taken by the Chief Executive under delegated authority CE(4), following consultation with Group Leaders, to approve the Council entering negotiations for the purchase of land currently occupied by Kenilworth Rugby Football Club (hereafter referred to as KRFC) at Thickthorn Kenilworth, and also to take proactive steps to help facilitate the development of land at Warwick Road for sporting use.
- 1.2 Due to the Coronavirus outbreak and in line with the self-isolation Government advice, the 18 March 2020 meeting of the Executive was cancelled. As a result, the decisions on the agenda for that meeting were taken under the Chief Executive's delegated authority CE(4).

## 2. **Recommendations**

That Executive notes the decision taken by the Chief Executive, after consultation with Group Leaders, under delegated authority CE(4) to:

- 2.1 Note the Warwick District Local Plan position as it relates to KRFC.
- 2.2 Note the financial principles underpinning KRFC's plan to move to a new site.
- 2.3 Agree that officers enter into negotiations with KRFC for the in-principle purchase of the land allocated in the Local Plan for housing at site H06 occupied by KRFC thereby helping to facilitate the relocation of KRFC to land at Warwick Road and that the terms of funding for the land purchase are developed by the Council's Heads of Finance and Housing and Deputy Chief Executive & Monitoring Officer (DCX (AJ)), in consultation with the Portfolio Holders for Finance, Housing and Development Services, having taken appropriate advice from the Council's solicitors. Should negotiations lead to a satisfactory conclusion, then a report(s) will be submitted to Executive and/or Council for the necessary permissions and release of funding.
- 2.4 Agree to make available up to £300k from the New Homes Bonus to enable KRFC to complete all the necessary steps to submit a planning application and achieve all the necessary consents for its relocation subject to appropriate security being put in place as agreed by the Council's Head of Finance and Deputy Chief Executive & Monitoring Officer (DCX (AJ)), in consultation with the Portfolio Holders for Finance and Development Services, having taken appropriate advice from the Council's solicitors.
- 2.5 Delegate the details of a legal agreement (and applying a charge on the land) that will be required to be entered into with KRFC relating to the up-front funding to the Council's DCX (AJ) and Section 151 Officer and that expenditure was authorised of up to £3,000 in legal costs funded from the Service Transformation Reserve to draft and complete the necessary legal agreement.

## 3. **Reasons for the Recommendations**

- 3.1 This was an urgent matter which could not wait until the next Executive meeting. Because of the Coronavirus outbreak, it was not known when the Council meetings would resume.
- 3.2 This resulted in the use of delegated power CE(4), which states:

*"The Chief Executive be authorised to deal with urgent items that occur between meetings, in consultation with the relevant Deputy Chief Executive, Head(s) of Service (if available) and Group Leaders (or in their absence Deputy Group Leaders) subject to the matter being reported to the Executive at its next meeting."*

### 3.3 Recommendation 2.1

3.4 In September 2017, Warwick District Council adopted the Warwick District Local Plan 2011-2029. Local Plan policy DS11 'Allocated Housing Sites' addresses the allocation of land for housing development and associated infrastructure. Site H06 – East of Kenilworth (Thickthorn) – is given an indicative allocation of 760 dwellings and includes two parcels of land occupied by KRFC. The club benefit from the freehold of a parcel of land c.1.8 hectares in area which includes the club's first team pitch and clubhouse (see Appendix 2) and also occupy a larger parcel of land, c.7.6 hectares in area (see Appendix 1) and physically separated by the smaller parcel, under a 999 year long-leasehold (over 965.5 years remaining) from the freeholder Stoneleigh Estates.

3.5 KRFC wishes to improve and expand the use of its facilities and to locate onto a single site and this is not possible at the existing sites it occupies. It therefore approached the Council to see whether an alternative site was available.

3.6 Local Plan policy DS23 allocated land for outdoor sports and recreation in Kenilworth. In relation to the matter under consideration it states that:

*"...and land at Warwick Road (SP2), Kenilworth, as shown on the Policies Map, is allocated for provision of outdoor sport.*

*Appropriate facilities associated with the provision of outdoor sport will be permitted provided that they preserve the openness of the green belt and do not conflict with the purposes of including land within it".*

3.7 KRFC considers that by relocating their current site to SP2 (see Appendix 3), it can improve and expand its facilities whilst consolidating facilities on one site.

### 3.8 Recommendation 2.2

3.9 KRFC is c.34.5 years into the 999-year lease. Its plan is to sell its freehold interest in the main club site at Glasshouse Lane to partly fund the relocation of the club. In tandem with its landlord, respective interests in the larger 'Cowpatch' site would be surrendered contemporaneously to a third-party for a capital sum. That capital sum is estimated to be considerable and based on the work that KRFC has already undertaken would: enable new facilities to be developed at the Warwick Road site; enable an endowment to be put aside to ensure the long term future of KRFC; and allow for a payment to be made to Stoneleigh Estates. Discussions have taken place between KRFC and Stoneleigh Estates over a number of years and they are in agreement to this approach.

3.10 The capital sum to be paid to Stoneleigh Estates has still to be agreed between the parties, however, KRFC has been clear that this sum must take account of the need to develop the Warwick Road site and provide the endowment. If these elements cannot be agreed then KRFC will be unable to move and given the length of tenure benefitting KRFC, Stoneleigh Estates would receive no capital sum.

### 3.11 Recommendation 2.3

- 3.12 KRFC and Warwick District Council (WDC) officers have been working closely over the last few years to arrive at the position where Local Plan policies are in place to facilitate KRFC's move and the Council has supported the rugby club in their negotiations with the landowner of the Warwick Road site and also with Network Rail (the new site spans a railway line and access will be required over existing railway bridges). Whilst KRFC has been clear that they are looking for best value from offers for their land, the relationship with the Council has led KRFC to consider whether it would be advantageous for the Club to enter into a deal with the Council whereby the Council would take a freehold interest in one or both of KRFC's current sites. KRFC has therefore indicated that if the Council is able to meet its valuation of the site then it would be happy to do a private deal with the Council.
- 3.13 KRFC has indicated that they intend to market the 'Cowpatch' in the near future with the first team pitch site anticipated to be marketed at a later date. Based on discussions with the club it appears less likely that the Council would be able to compete with the market for the smaller site.
- 3.14 If the Council is unsuccessful in meeting the valuation of the club and therefore do not purchase the site, officers would also consider if there are any opportunities whereby the Council could work with any successful bidder to take on the affordable housing element to be provided within the scheme.
- 3.15 The following strategic approach is currently being followed with regards to KRFC's relocation to Warwick Road:
- KRFC will fund the construction of the new facilities at Warwick Road with the funds it gets from the sale of the current sites;
  - If able to meet KRFC's valuation for the sites WDC promotes and/or develops the Thickthorn land for housing;
  - If unable to meet KRFC's valuation for the sites, the land will be sold to private developer(s) and WDC will see the return of the up-front funding it has provided
  - The development of the Thickthorn land results in the following:
    - A share for Stoneleigh Estates
    - KRFC share arising from its interest in the land
    - A share for KRFC to pay for the construction of the facilities on site.
- 3.16 Executive has made it clear that it wishes to take a more proactive role in the housing market but has been stymied by the Council's lack of land in its ownership available for development. This means that any significant house-building programme would rely on the purchase of land at market rate. The proposal put forward by KRFC enables officers to explore land purchase of a significant scale.
- 3.17 To undertake the work necessary to progress the negotiations, officers may need to call on professional assistance. For example, surveys, legal advice, market intelligence and site capacity work. A budget with sufficient funds (the Housing Strategy and Development budget) is available to undertake this work and therefore no additional funding is sought from Executive for this. It will also be necessary for much internal work to produce the business case to ensure the proposal is affordable to the Housing Revenue Account and the General Fund.
- 3.18 Should officers determine that they wish to recommend to Executive that an offer is made for either of KRFC's sites and satisfactorily negotiate with KRFC then a

report(s) will be submitted to Executive and/or Council for the necessary permissions and release of funding.

- 3.19 Recent experience of others sites has demonstrated that even with such an arrangement as outlined in this report, this neither guarantees a successful land purchase nor commits the Council to make a bid that matches or exceeds any market offer. The Council will undertake its own valuation and site capacity work which will form the basis of any offer and if that suggests a value that is notably lower than what a private developer is able to offer then it may be inappropriate for the Council to continue to compete for the site(s).
- 3.20 Recommendation 2.4
- 3.21 The relocation of KRFC to Warwick Road is a key part of the delivery of the Local Plan in Kenilworth. The relocation will provide the town and District with enhanced leisure facilities and will enable the development of the two rugby club sites for residential development, which together may enable around 200 dwellings to be delivered. This is important in delivering a comprehensive development in East Kenilworth as required by the Local Plan and reinforced by the Land East of Kenilworth Development Brief. Without the Council's support with up-front funding, there is a risk of delay in the relocation of the club and therefore housing delivery. Whilst at present the Council is satisfying its 5-year housing land supply and the Housing Delivery Test, delays on large sites do potentially put this at risk.
- 3.22 The opportunity to purchase KRFC's current site is one of a number of opportunities currently being explored which may make possible the Council's long-held ambition of delivering an extensive house-building programme. However, this opportunity only arises if in effect, the Council is prepared to put itself "in the shoes" of a developer.
- 3.23 KRFC is a community sports club and has limited funds. To take its plan forward, KRFC was relying on a developer providing up-front at-risk funding so that it could achieve the necessary planning consent to hopefully move to the Warwick Road site. At the time of writing the initial report, it was estimated that the cost of this work would be up to £300k. The developer's position would be that in return for providing this funding, it would have secured an option on the Thickthorn land so that it would ultimately be the freeholder when KRFC moved.
- 3.24 If the Council wishes to secure the land with the prospect of developing housing, it will need to act in a commercial manner by providing the up-front funding. However, there is a way to do this and release the up-front funding to KRFC without waiting for all the legal agreements for land purchase to be completed. It is proposed that WDC and KRFC enter into a similar agreement as the Council has with Kenilworth Wardens, as described below.
- 3.25 Facing similar circumstances, WDC agreed an approach with the neighbouring community sports club, Kenilworth Wardens, whereby the Council would provide forward funding. In that situation, a formal Project Agreement between the two parties was made and sets out how the two parties will work together on the project. The agreement includes details of the security that the Council has over this forward funding, which is through a Charge on the existing land. The Charge will remain in force until the preliminary funding is repaid to the Council either by:  
a) If the project proceeds to Phase 2 (Acquisition and Disposals), the preliminary work funding paid by the Council will be deducted from the club's return when the Council purchases the Thickthorn Land (unless otherwise agreed by the parties);  
or b) In the event that the project does not proceed to Phase 2 and the

Thickthorn Land is disposed of at any point in the future, the preliminary work funding paid by the Council shall be repaid within 5 working days of the Thickthorn Land being disposed of. The Agreement acknowledges that there may be a requirement for additional funding in excess of the initially agreed amount to carry out the preliminary work and under such circumstances, both parties shall agree whether or not to continue with the Project and if so, how the remainder of the preliminary work will be funded.

- 3.26 It is possible that should WDC provide up-front funding and planning permission is not achieved or the land values do not provide enough funding to enable KRFC to move, then WDC would have a charge against land that cannot be developed.
- 3.27 If Members agree to the approach, then it is recommended that Executive agrees to make available up to £300k from the New Homes Bonus to enable KRFC to complete all the necessary steps to submit a planning application subject to appropriate security being put in place. The Council's Head of Finance and Deputy Chief Executive & Monitoring Officer (DCX (AJ)), in conjunction with the Portfolio Holders for Finance and Development Services, will work with the Council's solicitors to ensure that the necessary security is achieved and that an appropriate commercial return is received. Within the Budget report agreed in February, £300,000 was included in the Revenue Budget to accommodate this transaction. This was funded from the Business Rate Retention Volatility Reserve in 2020/21, with the Business Rate Retention Volatility Reserve to be replenished from the anticipated New Homes Bonus in 2021/22.
- 3.28 Council officers remain committed to supporting KRFC relocation project as it will enable the delivery of Local Plan housing and outdoor sport allocations; enable the comprehensive development of allocated land in east Kenilworth in accordance with the Local Plan and the Land East of Kenilworth Development Brief; and will provide residents of the District with new and enhanced outdoor sports facilities. Without additional forward funding, there is a risk that the project will stall and impact upon the delivery of housing on the existing site.
- 3.29 Recommendation 2.5
- 3.30 A formal Project Agreement will need to be drafted and put in place relating to the up-front funding and how both parties will communicate and work together in relation to the relocation project. In order to draft the legal agreement and apply the charge on the land the Council will require legal expertise. The Project Agreement follows a similar approach as followed with Kenilworth Wardens and their relocation project.

#### 4. **Policy Framework**

##### 4.1 **Fit for the Future (FFF)**

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

<b>FFF Strands</b>
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<b>People</b>	<b>Services</b>	<b>Money</b>
<b>External</b>		
<b>Health, Homes, Communities</b>	<b>Green, Clean, Safe</b>	<b>Infrastructure, Enterprise, Employment</b>
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Becoming a net-zero carbon organisation by 2025 Total carbon emissions within Warwick District are as close to zero as possible by 2030 Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/ productivity of local economy Increased employment and income levels
<b>Impacts of Proposal</b>		
Opportunity for Council to provide social housing. Facilitates the relocation of Kenilworth Rugby Football Club	Opportunity to develop public spaces in line with Council's various strategies	Employment opportunities through construction phase
<b>Internal</b>		
<b>Effective Staff</b>	<b>Maintain or Improve Services</b>	<b>Firm Financial Footing over the Longer Term</b>
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
<b>Impacts of Proposal</b>		
Opportunity for staff development in place-shaping	Opportunity to provide high quality homes and services	Effective use of Council's resources

#### 4.2 **Supporting Strategies**

Each strand of the FFF Strategy has several supporting strategies. The Local Plan is one of the key strategies, cutting across many of the FFF strands and the relocation of KRFC on land at Warwick Road will enable the delivery of

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housing and outdoor sport allocations within the Plan. It will also support the delivery of housing targets, the delivery of affordable housing and enhanced sporting facilities for residents. The Land East of Kenilworth Development Brief SPD provides guidance for the delivery of development on allocations in east Kenilworth and the development of KRFC's existing sites is critical to the comprehensive redevelopment of the area.

#### 4.3 **Changes to Existing Policies**

The relocation of KRFC to land at Warwick Road will support the policies adopted within the Local Plan and guidance contained within Land East of Kenilworth Development Brief and also adheres to national and local policies rather than changing them.

#### 4.4 **Impact Assessments**

An Impact Assessment was undertaken for the Local Plan and the relocation of KRFC seeks to deliver on the aspirations of the Local Plan.

### 5. **Budgetary Framework**

- 5.1 If the Council were to seek to acquire KRFC's sites, a report will be brought to Executive including details of a funding strategy setting out how the land purchase could be funded if negotiations with the club are successful.
- 5.2 Within the Budget report agreed in February, £300,000 was included in the Revenue Budget to accommodate this transaction. This was funded from the Business Rate Retention Volatility Reserve in 2020/21, with the Business Rate Retention Volatility Reserve to be replenished from the anticipated New Homes Bonus in 2021/22. As discussed within the Budget report, New Homes Bonus of £2.2m is anticipated for 2021/22, although there is no certainty that this will be received.
- 5.3 The £300k advanced, subject to having suitable security in place, will be repaid when the scheme does eventually progress to Phase 2. If the scheme does not progress, the Council will be due to get its funding repaid should the Thickthorn land eventually be sold.
- 5.4 It is estimated that legal costs will amount to between £2-3,000 for the drafting of a legal agreement between the Council and KRFC. This will be funded through the Service Transformation Reserve which currently has an unallocated balance of £916k, assuming the higher Council tax is agreed at the local referendum in May, and £398k if the lower Council tax is agreed, as reported to Members within the February 2020 Budget Report.

### 6. **Risks**

- 6.1 Most of the risks emanating from the approach advocated in this report are mitigated by the need to submit further reports at a later date to the appropriate decision making body. There is an immediate risk that if Members agree to release the up-front funding then although security would be in place, this security might not be able to be readily realised. However, this is a risk Members will need to balance if they wish to take up the potential commercial opportunity available and the risk that without the



further up-front funding the relocation project may stall, thus risking the delivery of the Local Plan allocations and aspirations of the Local Plan and Land East of Kenilworth Development Brief.

6.2 Officers do not consider that any of the proposals are at odds with State Aid provisions but this will be further checked.

6.3 There are no direct risks associated with the report because the decision has already been taken.

7. **Alternative Option(s) considered**

7.1 No alternative options were considered as the decision was already made and the report was for information only.