

Title: Abbey Fields Swimming Pools Project
 Lead Officer: Pdraig Herlihy (01926 456228)
 Portfolio Holder: Councillor Ian Davison
 Wards of the District directly affected: Districtwide, but especially
 Kenilworth Abbey and Arden Ward

Approvals required	Date	Name
Portfolio Holder	09/10/23	Councillor Ian Davison
Finance	05/10/23	Richard Wilson/Betty Gong
Legal Services	05/10/23	Kathryn Tebbey
Chief Executive	05/10/23	Chris Elliott
Director of Climate Change	05/10/23	Dave Barber
Head of Service(s)	05/10/23	Darren Knight
Section 151 Officer	05/10/23	Andrew Rollins
Monitoring Officer	05/10/23	Graham Leach
Leadership Co-ordination Group	16/10/23	
Final decision by this Committee or rec to another Cttee / Council?	No Recommendation to: Council	
Contrary to Policy / Budget framework?	No/Yes	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	Yes – Appendix A is exempt by virtue of Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	No	
Accessibility Checked?	Accessibility audits have been conducted earlier in this project	

Summary

The project to construct a new Abbey Fields Swimming Pools building has found significant medieval remains under the previous building. This has required a redesign of the foundations of the building and a reappraisal of the construction methods to be employed in order to ensure that the remains are protected as much as possible. The Council is working closely with Historic England to ensure this outcome is achieved. These two elements have already added considerably to the cost and time of the project and will also add considerably to the cost and time required to complete the construction. The purpose of this report is to seek authority to continue with the project. This will entail entering into a revised contract with the main contractor with a revised contract sum and a revised programme for the works, and related actions.

Recommendations

- (1)** That Cabinet delegates authority to the Chief Executive, in consultation with the Leadership Coordination Group, to enter into a revised contract with Kier Construction Ltd trading as Kier Construction-Eastern with a revised programme and a revised contract sum, always provided that the total project capital cost for the Abbey Fields Swimming Pools project from January 2021 to the completion of the works does not exceed a ceiling set out within the private and confidential Appendix A to this report and an appropriate level of contingency can be maintained within this ceiling at the start of the contract.
- (2)** That, subject to Recommendation (1) being approved, officers are to undertake other tasks including the continued employment of Mace Consult Ltd as project managers and cost consultants in order to deliver the project as cost effectively and as expeditiously as possible.
- (3)** That Cabinet recommends to Council that Recommendations 1 and 2 to this report are funded by external borrowing from the Public Works Loan Board (PWLB), with the revenue cost of the borrowing to be factored into the Medium Term Financial Strategy (MTFS).

1 Reasons for the Recommendations

1.1 The project to date

- 1.1.1 The project to replace the previous Abbey Fields Swimming Pools has been a key priority for the Council since the project began in 2018.
- 1.1.2 The previous swimming pool building has been demolished and minor construction works on the site had already started but have been halted whilst the Council makes a decision to continue or not.
- 1.1.3 The project works at Abbey Fields have found significant medieval remains under the previous building. The Council is working closely with Historic England, the County Archaeologist and Archaeology Warwickshire to decide how best to preserve the key elements of these remains underneath the new building. The foundations of the new building are being carefully re-designed to avoid the remains as much as possible. The recording and mapping of these remains has been a slow and painstaking process, and this has delayed work on this project.
- 1.1.4 Constructing a building on this site will now be more expensive and will take a longer time than was previously expected. This is because additional

requirements will be placed on the construction team, in order to ensure that damage to the medieval remains from the construction process is limited as much as possible.

- 1.1.5 In order to satisfy Historic England that the new building will not cause substantial harm to the medieval remains, it is proposed to raise the foundations of the building by 50cm, as well as moving from a ground-bearing slab to a suspended slab construction. This will raise the ridge of the building by 35cm as the rest of the increase in height can be absorbed by minor changes within the structure of the building. There will be some amendments to the construction process within the remainder of the building, but the general layout and design of the building will remain identical to the existing Planning Permission.
- 1.1.6 These changes will require the submission of an application for a Material Amendment to the existing Planning Permission under Section 73 of the Town and Country Planning Act 1990. This submission has now been made. It is hoped that a decision can be given by early 2024. If permission is granted and the Council agrees Recommendation 1 of this report then work can begin as soon as the contractor can mobilise, assuming a revised contract has been signed.
- 1.1.7 The Design Team has been progressing the conceptual work on the changes required to the foundations in order to reduce the impact on the medieval remains. Historic England has confirmed in writing that they are now content with the proposals that have been made. They have effectively reinstated our Scheduled Monument Consent and the Council can continue with the new design. The Design Team will now proceed with the detailed design of the revised foundations.
- 1.1.8 The on-site work to analyse the medieval remains is now largely complete but the financial and time consequences for the project are not yet precisely known. There will be delays and additional costs caused by the archaeological works and also by the different construction process now required. It is clear that costs and time will both be significant.

1.2 **Cost, risk and programme implications**

- 1.2.1 In reaching a decision on whether to proceed with the project, the Council will have to consider the cost, risk and programme implications of continuing at Abbey Fields.
- 1.2.2 Due to the submission and consideration of a Section 73 Material Amendment to the Planning Permission and the redesign of the foundations of the building, if the Planning Permission is granted, the start on site date will be delayed until February or March 2024.
- 1.2.3 Should the Council decide to continue with the scheme, there are a number of factors that will extend the construction period from the previous estimate of 74 weeks to a new estimate of 114 weeks. The relevant factors include restricted access routes across the site to preserve the medieval remains; a constant watching brief from Archaeology Warwickshire until all ground works are complete; the possibility of additional archaeological finds; more restrictive work practices in order to reduce hazards and use of smaller machines. This gives a revised predicted completion date in the summer of 2026.
- 1.2.4 The main influences on the predicted increase in costs are prolongation of the works as shown above; re-tendering of all the works packages because the previous prices are all now out of date; waning interest from some sub-

contractors due to the time delay; archaeological watching brief and inflation due to previous and future delays.

- 1.2.5 The contractor Kier has provided two scenarios for the increase in the costs – a 'lower assessment' and a 'higher assessment'. This is to provide an element of range in the figures, and to demonstrate that these are early indications which require substantially more detailed work before they can be finalised. These figures are therefore confidential as they represent one position in the negotiation between the contractor and the Council.
- 1.2.6 In addition to these potential increases, there will be additional sums for increases to demolition contract and site supervision, reinstatement of a project contingency at a rate of 5% of the Kier budget forecast (This is to cover currently unknown problems or opportunities during construction) and the increase in professional fees for Mace Consult Ltd and other consultants that will be payable due to the prolongation of the project.
- 1.2.7 It is intended that detailed negotiations on cost will be undertaken with Kier to establish a new and agreed contract price before any final decision to proceed can be made. In this way it will be possible to reinstate the existing balance of the risk between the Council and the contractor, as shown in the existing contract between the parties. There is a fine balance to be made in these negotiations on price. The Council needs to ensure that their cost consultants Mace Consult Ltd will be working hard with Kier to minimise the increase in cost, but it is also important that the agreed price is achievable as the Council does not want to be in a position of facing requests for further increases at a later date.
- 1.2.8 It is a requirement of the management of a project on a Scheduled Monument that a full and complete record of the historical and archaeological importance of the medieval remains found on the site are recorded in detail within the County Archive. Discussions have already been held with the County Archaeologist to make sure that this duty is discharged as thoroughly as possible.
- 1.2.9 The Council is also determined to ensure that the educational benefits of the discovery of the medieval remains are maximised in future engagement with local schools. The Council's Arts team will devise one or more educational projects to deliver in local schools, based on the medieval remains found.

2 Alternative Options

- 2.1 In considering Recommendation 1 of this report, Councillors will need to decide whether to continue with the project at Abbey Fields. In making this decision, it is appropriate for the Council to compare the new projected costs and programme at Abbey Fields with theoretical alternative options and theoretical alternative sites, to establish whether it would be quicker and/or cheaper in theory to cancel the project at Abbey Fields and begin a new theoretical alternative project on a new theoretical site.
- 2.2 This theoretical comparison is intended at this stage to assist with the decision as to whether to proceed with the project at Abbey Fields. If it was decided not to proceed with the project at Abbey Fields, then a full options appraisal process would have to begin again, if it was decided to still seek to provide a swimming pool facility for Kenilworth. At that time other sites would be appraised, alternative designs considered and public consultation undertaken.

- 2.3 There are many variables that are hard to define with any certainty at this time in making a comparison between the option of continuing with the project at Abbey Fields and moving to a new site.
- 2.4 A new site might be less problematical for the construction process and it would cause less interim and permanent disturbance within the Abbey Fields.
- 2.5 However, the opportunity cost of any alternative site would be substantial since to avoid using Green Belt land existing housing sites would need to be used and they are very valuable. (see also paragraphs 2.11 and 2.12 below). Other than sites that the Council owns it would not be possible to guarantee that land would be available for such a purpose. Using any development site would reduce the number of houses that can be built. Designing a new building on a new site and obtaining planning permission could take at least two years. Inflation in the construction industry will continue to rise during that time. The Council has already spent £3.39m on developing this design on this site and demolishing the previous building.
- 2.6 The Council would have to decide what to do with the existing site. Historic England has confirmed that it would require that the site was returned to amenity grassland or wildflower meadow to ensure the least damage to the remains. It could not, therefore, be opened as an attraction or educational resource. Construction on another site in Kenilworth would be likely to cause disruption to people living near to the site, both during construction and when the building was in use.
- 2.7 In planning terms, the District Local Plan says that "all town centre options should be thoroughly assessed before less central sites are considered. First preference should be given to town centre locations". Any Planning Application for a less central site than Abbey Fields would have to establish whether or not the increased cost and construction programme at Abbey Fields was sufficient reason to move to a less central site.
- 2.8 In programming terms, the project at Abbey Fields is predicting a start on site date in early 2024, with a 114-week construction period, giving an opening date in the summer of 2026. A project on a theoretical alternative site would need to go through the whole options, feasibility and design process, including several periods of public consultation. This would lead to a start on site date of at least September 2026. An anticipated 74-week construction period, (depending on site conditions and what may be found below ground) would lead to an earliest possible opening date in the Spring of 2028, which is approximately one and a half years after the Abbey Fields programme.
- 2.9 It should be noted that the programme for an alternative site contains substantially more risk than at Abbey Fields, as there are more steps required within the process. The current site at Abbey Fields is recognised as an extremely complex site with high levels of risk. However, the site does have an agreed design, Planning Permission (although a new Section 73 application will be required) and a contractor in contract (although price will have to be renegotiated). Many of the risks on this site are now known and allowance has been made within the costings calculated. A new design on a new site will be open to risks relating to site conditions, planning permission, commercial viability, procurement of a contractor and inflation in the intervening period.
- 2.10 Private and Confidential Appendix A to this report shows a cost comparison with a theoretical alternative. This comparison is taken from this point forward. It is acknowledged that £3,390,000 has been spent to date on the Abbey Fields site on design, project management, demolition and managing the implications of

the medieval remains. This is included within the figures in the table in the Appendix A for both options as the money has already been spent by the Council.

- 2.11 The figure for the cost of land in Appendix A is based on market rates for land in Kenilworth. It also includes various additional costs that the Housing Revenue Account (HRA) would incur if the land were to be taken from one of the Council's housing sites in Kenilworth. The Council's housing sites are the only potential sites in Kenilworth that are owned by the Council, and there is no certainty that any other sites would be available for purchase.
- 2.12 However, it should also be noted that there is a significant risk that use of one of the Council's existing housing development sites could incur additional costs to the Council. The Council has received £9,591,000 from Homes England for the delivery of the new school and 516 dwellings in Kenilworth. The agreement with Homes England says that the Council is to use its best endeavours to deliver the full amount of this housing or there will be a requirement to repay all or part of the grant received. If the Council chooses to place a swimming pool building on one of these sites, then it could be hard to prove that it had used its best endeavours to maximise the housing provided, and there is a significant risk that some or all of the grant would be reclaimed.
- 2.13 The table assumes that a new swimming pool building on a new site would have the same construction cost as the expected cost of the pools at Abbey Fields before the discovery of the medieval remains, plus 1.8 percent, which is the predicted increase necessary to comply with the new Building Regulations, which would apply to a new facility. This has been compared with national data and is considered to be a reasonable sum for a facility of this type. It is then necessary to add the loss of income to the Council from the houses that could not be built; inflation in the period before construction can start; the cost of a new design process from scratch and the cost of cancelling the current contract with Kier to this option. When these items are added it is predicted that a new swimming pool building on a theoretical new site would cost more than the project at Abbey Fields, at the lower estimate and the higher estimate for that project.
- 2.14 It is also considered that any other site would take almost one and a half years longer to open to the public. As well as additional cost and time, the proposal to consider an alternative site would carry a higher risk in a number of factors than continuing at Abbey Fields. These risks include such items as site availability, ground conditions on the new site, obtaining Planning Permission, Planning Conditions required, procuring a new contractor in a competitive market and construction inflation in the intervening period.
- 2.15 A further consideration with regard to the use of an alternative site is income to be generated from the new swimming pool in either location. Recent benchmarking work by officers on financial forecasts show that any new swimming pools facility will run at a loss for the first few years whilst the programme is developed. This loss is reduced once the site and user base is established.
- 2.16 If this general trend were to continue beyond the end of the existing contract it is not unreasonable to assume that the facility would be producing a franchise fee (payment to the Council) from year 5 onwards, rather than a management fee (payment from the Council).
- 2.17 Although the figures could reasonably be expected to be small, it appears that the sooner the facility is open to the public the sooner the performance can be

improved until it is generating a small income to the Council, rather than a cost. If an alternative site took longer to open to the public then the production of a small income to the public would not be delivered until a later date.

- 2.18 The other option would be to terminate the project to build a new swimming pool building for Kenilworth. This would provide a substantial saving on the capital budget and create less disturbance to local residents and users of Abbey Fields.
- 2.19 This option would mean that people in Kenilworth would have to travel to other towns to swim, leading to a substantial loss of amenity for local residents and increase in carbon emissions. Sport England would confirm that the Council was not providing the necessary swimming facilities for local residents, contrary to the Council's own Local Plan and Sports Facility Strategy.
- 2.20 The cost of this option going forward could be estimated to be £2,375,402, as this is the predicted cost of cancelling the contract with Kier and returning the site at Abbey Fields to grassland. It should also be borne in mind that the Council has already spent £3,390,000 with a number of bodies including Kier on developing the design for the Abbey Fields site and demolishing the previous building.

3 Legal Implications

- 3.1 If the recommendations in this report are agreed, it will be necessary to agree a revised contract with Kier at a new contract sum and a new programme. Legal advice has already confirmed the limitations applicable to contract modifications, including value and scope – these limitations will be kept firmly to the fore in negotiations to ensure compliance.
- 3.2 If the recommendations are agreed it will also be necessary to agree to a revision of the timescales and costs of contributing to the project for various other consultants, including Mace Consult Ltd.
- 3.3 If the recommendations in this report are not agreed, it will be necessary to negotiate the cancellation of the contract with Kier. The contractor is entitled to certain payments on termination and the precise amount of those payments is decided by a process of negotiation.
- 3.4 Appendix A to this report is confidential because of information relating to the financial or business affairs of any particular person (including the authority holding that information) by virtue of the fact that the Appendix contains information on the resources that may be required to complete a revised contract with Kier and this detail might put the Council at a disadvantage in its negotiations with Kier and may also be of commercial interest to Kier's competitors.
- 3.5 Appendix B to this report is confidential as it consists of the Confidential Addendum added to Item 6 of the Cabinet Report entitled Revenue and Capital Budget 2022/23 as submitted to the February 2022 meeting of the Cabinet. This was confidential at the time because of information relating to the financial or business affairs of any particular person (including the authority holding that information) by virtue of the fact that it contained information on the negotiations with Kier at that time.

4 Financial Services

- 4.1 Financial, contractual and procurement implications are central to this report and are contained within the body of the report.

- 4.2 The current budget, last approved within the Budget Setting 22/23 report (February 2022 – Item 6, Confidential Addendum), outlined provision for the Abbey Fields development totalling a maximum of £14.3m. This report is included as private and confidential Appendix B to this report.
- 4.3 The remaining financial implications are contained within the private and confidential Appendix A to this report (see paragraph 3.4 above).
- 4.4 The contractual negotiations on price with Kier have already commenced. These are confidential because they involve the Council’s financial negotiations with an identified third party. They are therefore included within the private and confidential Appendix A to this report.
- 4.5 Appendix B to this report shows the confidential addendum from Item 6 – Revenue and Capital Budget 2022/23 submitted to the Cabinet on 10th February 2022 for Members’ information.

5 Business Strategy

- 5.1 The proposal to build two new swimming pools at Abbey Fields in Kenilworth is a key project within the Business Strategy of Warwick District Council.
- 5.2 The project is central to the theme of Health, Homes and Communities. The presence of good quality facilities for the sport and activity of swimming is important to the providing of opportunities for local residents and visitors to choose to adopt healthy lifestyles.
- 5.3 The project has been carefully designed to meet the Green, Clean and Safe theme. The building includes all appropriate sustainability design features and the safety of its users has been the most important factor in the overall design.
- 5.4 The facility is also important for the Infrastructure, Enterprise and Employment theme. The building itself will be a central part of the social infrastructure of the town. The construction process itself will monitor the amount of local employment that it generates, and the subsequent management of the facility by Everyone Active will provide jobs and career opportunities for local people.
- 5.5 The project will contribute to the Effective Staff theme by offering colleagues in a number of departments experience in the managing of major capital projects, and the implications of such projects.
- 5.6 The project is a mainstay in the Maintain or Improve Services theme. The provision of affordable and flexible opportunities to take part in swimming in Kenilworth is a vital and central service to be offered to residents in Kenilworth and across the wider District, as well as to visitors to the area.
- 5.7 In order to contribute to the Firm Financial Footing over the Longer-Term theme the negotiations with Kier will be carried out rigorously, to ensure that the Council gets the best possible value for money, given the challenges of the site.

6 Environmental/Climate Change Implications

- 6.1 In order to comply with the Council’s policies on sustainability and its Climate Emergency Action Plan the Project Team considered all potential sustainability features for the design of the building. Every feature which paid for itself within its design life and which could be included within the footprint was incorporated into the design. The Project Team continue to monitor new innovations and only two months ago changed the water treatment method to be used to a newer and more sustainable alternative to the previous specification.
- 6.2 The Project Team will also continue to monitor developments in this field as the

project develops, if the decision is taken to continue, in order to ensure that any building constructed utilises all appropriate new technologies.

7 Analysis of the effects on Equality

7.1 An Equality Impact Assessment for the project and for the design has been completed. The design of the building has had equality as one of its central themes. The changing facilities will be on the 'Village Change' principle, which is acknowledged as the most flexible and equitable way of providing changing facilities for swimming pools for many people with specific requirements. The building contains a number of design features aimed at customers with a disability or other access needs. These include a 'Changing Places' changing room for customers with profound disability and 'pool pods' to enable customers with a disability to enter the water easily under their own supervision. The Equality Impact Assessment is provided as a background document to this report.

8 Data Protection

8.1 There are no specific Data Protection implications of the proposal.

9 Health and Wellbeing

9.1 The project will make a significant contribution to the health and wellbeing of the residents of Kenilworth, residents of the wider District and visitors to the area. The facilities will offer good quality facilities for the sport and activity of swimming on a year-round basis, contributing to the health and wellbeing of many people. The ancillary facilities such as the café and toilets will be open to all visitors to Abbey Fields, encouraging people to visit the facility even if they do not wish to swim, reducing social isolation. The 'Changing Places' changing room will be available to all users of Abbey Fields, meaning that families which include someone with profound needs will have a greater opportunity to get out into the open space of Abbey Fields.

10 Risk Assessment

10.1 The Risk Register is included as Appendix C to this Report.

11 Consultation

11.1 As the design of the facility has not changed in any significant way following the discovery of medieval remains, no further consultation on the design has been undertaken. Detailed and extensive consultation was undertaken at several stages in the design process for this facility. Since the discovery of the remains, a public update report has been widely circulated and a public meeting was held to inform the public of the current situation with the project, and the decision that would need to be taken in considering this report. A public open day was also held to allow the public to see the medieval remains before they were covered for their own protection, which was attended by over 1,000 people.

Background papers:

Public Update Report for Abbey Fields Swimming Pools Project

Archaeology on the Abbey Fields Swimming Pools Site

Equality Impact Assessment Report for Abbey Fields Swimming Pools Project