

 WARWICK DISTRICT COUNCIL	EXECUTIVE MEETING - JUNE 2016	Agenda Item No. 11
Title	Land at Sabin Drive, Weston – under - Wetherly	
For further information about this report please contact	Chris Makasis, Estates Manager	
Wards of the District directly affected	Stoneleigh & Cubbington	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No, <u>but Appendix 2 is Private & Confidential as it contains</u> information relating to the financial or business affairs of any particular person (including the authority holding that information)	
Date and meeting when issue was last considered and relevant minute number	None	
Background Papers	None	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	No
Equality & Sustainability Impact Assessment Undertaken	No

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report authors relevant Deputy Chief Executive, Head of Service, Finance, Monitoring Officer and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive		Chris Elliott
Acting Head of Service		Robert Hoof
CMT		10.5.2016
Section 151 Officer		Mike Snow
Monitoring officer		Andrew Jones
Finance		Mike Snow
Portfolio Holder(s)		Dave Shilton
Consultation Undertaken		
Please insert details of any consultation undertaken with regard to this report.		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **SUMMARY**

- 1.1 To consider the disposal of land at Sabin Drive, Weston – under – Wetherly

2. **RECOMMENDATION**

- 2.1 The Executive approve the disposal of land adjoining 1 Sabin Drive, Weston – under – Wetherly, edged in thick black on Plan 1 attached, subject to the terms & conditions listed in the Private & Confidential Appendix 2 of this Report.

3. **REASONS FOR THE RECOMMENDATION**

- 3.1 The Sabin Drive Residential Estate was granted Planning Consent W/95/1361 in 1995 and was subject to a Section 106 Agreement of the 1990 Town & Country Planning Act that required for areas to be left as open land and designated as 'Public Open Space'.

- 3.2 These areas of Public Open Space are shaded on Plan 1, attached.

- 3.3 In June 2013 the owners of 1 Sabin Drive approached this Council with a request to purchase the area of Public Open Space that adjoins their house, which is edged in thick back on Plan 1 attached, exclusively for private garden use.

- 3.4 They wished to include the land within their demise to bring privacy to their dwelling and to resolve problems that had occurred on a number of occasions to the private manhole covers which serve 1 Sabin Drive (that are located in the Public Open Space) that had been damaged by the Grounds Maintenance Vehicles that tended the Public Open Space.

- 3.5 WDC informed the owners of 1 Sabin Drive that it was something that they would be prepared to consider, subject to Planning Consent for change of use of the land from Public Open Space to Private Garden Land, and subject to approval to this proposal from the local Parish Council, in this instance the Weston under Wetherly Parish Council.

- 3.6 Approval to the proposal was granted by the Weston – under – Wetherly Parish Council of 4th December 2013 so the owners then sought Planning Consent for the change of use from WDC, as the Local Planning Authority.

- 3.7 The WDC Planning Committee of April 2015 approved the change of use, under Planning Consent W/15/0161, which was subject to a number of Planning Conditions.

- 3.8 Following on from this, term & conditions for the sale of the land in question were agreed between WDC and the owners of 1 Sabin Drive, following approval from the original developer of the estate - Bloor Homes Ltd. - to the relinquishment of the restrictive covenant that permitted the site only to be used as Public Open Space.

- 3.9 The terms & conditions of the sale of the land in question, from WDC to the owners of 1 Sabin Drive, along with the relinquishment of the restrictive covenant by Bloor Homes, are Private & Confidential because they contain information relating to the financial or business affairs of any particular person (including the authority holding that information), but are listed in the Private & Confidential Appendix 2 of this Report.

- 3.10 These terms & conditions were approved by the relevant Head of Service, Local Councillors and Portfolio Holder, under Delegated Authority, but prior to the completion of the legal documents, it became aware to WDC that the sale of such Public Open Spaces (that had come into the ownership of WDC under a Section 106 Agreement) required (pursuant to section 123 of the 1972 Local Government Act) for Council Committee consent and a Local Councils Scheme of Delegation was not sufficient approval on such matters.
- 3.11 Subsection 2A of Section 123 of the 1972 Local Government Act states that a Council must not dispose of land consisting of, or forming part of, an open space acquired by a Council under a Section 106 Agreement (or such other superseding Act of Parliament or Regulation) unless the Local Council has publicised notice of its intention to dispose of such land in the Local Press for 2 weeks running, and considered any objection to the disposal.
- 3.12 The proposed disposal in question was thereafter duly advertised in the local 'Courier' newspaper on Friday 18th March 2016 and Friday 25th March 2016 informing all who had an objection to the proposal to make their objection to WDC, in writing, by no later than 15th April 2016.
- 3.13 An objection was received, and is listed in Appendix 1 of this Report, and the items raised in this objection have been considered by WDC. However, WDC would not wish to Lease the land to 1 Sabin Drive which would result in future periodical management & administrative fees and would not provide WDC with the sufficient consideration which WDC would need to provide Bloor Homes in order for them to remove the restrictive covenant.
- 3.14 Additionally, Planning Consent for the change of use confirmed that WDC, as a Local Planning Authority, did not believe that the loss of the small piece of Public Open Space would be detrimental to the area, nor to the entrance into Sabin Drive, taking into account the large surrounding areas of Public Open Space that would be retained on both sides of the entrance into Sabin Drive & on the estate. Furthermore, disposal of the land in question would provide WDC with a Capital Receipt ; would reduce WDC's future Grounds Maintenance costs ; and would ensure no further damages to the private manhole covers for 1 Sabin Drive that are located within the Public Open Space that WDC propose to dispose of. Plan 4 attached displays the location of the private manhole covers.
- 3.15 The Planning Consent that granted the change of use of the land in question from Public Open Space to private garden land & the erection of post and rail fence incidental to the enjoyment of 1 Sabin Drive, placed Planning Conditions on the proposal which will, among other things, ensure that the boundary fencing shall be constructed exclusively of a 1m high post & rail paddock fencing, as shown on Plans 2 & 3 attached, with future intention to plant sympathetic shrubs & flowers along the fencing/close to the fencing on the owners side of the fence.

4. **POLICY FRAMEWORK**

- 4.1 The proposal would comply with this Councils Fit for the Future policy through its 'Money' framework by assisting this Council to achieve a sustainable balanced budget.

5. **BUDGETARY FRAMEWORK**

5.1 The disposal of the land in question shall provide WDC with a General Fund Capital Receipt and reduce its liability concerning Public Open Space

6. **RISKS**

6.1

Risk	Possible Trigger	Possible Consequences	Risk Mitigation / Control
Refuse to Dispose of Land	The land will remain within ownership & responsibility of WDC	Reduced capital receipt WDC continue to pay Grounds Maintenance costs of the Public Open Space & continue to insure/indemnify WDC against any claims that may be brought against it due to injuries/damages that may occur on the land.	Approve disposal of the land

7. **ALTERNATIVE OPTION(S) CONSIDERED**

7.1 This Council retains the land and continues to maintain it, at its expense, and refuse all similar future requests hereafter.

8. **BACKGROUND**

8.1 None