
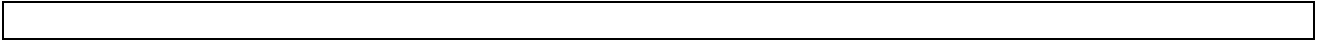


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|  Executive 30 November 2016 | | Agenda Item No. 11a |
| Title | Future Use of Land adjacent to 39 High Street, Kenilworth | |
| For further information about this report please contact | Chris Makasis, Estates Manager chris.makasis@warwickdc.gov.uk 01926 456040 Russell Marsden, Asset Manager russell.marsden@warwickdc.gov.uk 01926 456038 | |
| Wards of the District directly affected | Kenilworth, Abbey | |
| Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006 | No (Appendices that are confidential by virtue of Paragraph 3 are elsewhere on the agenda) | |
| Date and meeting when issue was last considered and relevant minute number | n/a | |
| Background Papers | Valuation report, correspondence with landowner | |

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| Contrary to the policy framework: | No |
| Contrary to the budgetary framework: | No |
| Key Decision? | No |
| 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 | 22/11/16 | Bill Hunt |
| Head of Services | 24/11/16 | Vacant/Rob Hoof |
| CMT | 24/11/16 | Chris Elliott, Bill Hunt, Andrew Jones |
| Section 151 Officer | 24/11/16 | Mike Snow |
| Monitoring officer | 25/11/16 | Andrew Jones |
| Finance | 25/11/16 | Mike Snow, Roger Wyton |
| Portfolio Holder(s) | 24/11/16 | Cllr. Phillips, Cllr. 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 future use of Warwick District Council (WDC) owned land adjoining 39 High Street, Kenilworth

2. **RECOMMENDATIONS**

- 2.1 That Executive approves:

- The granting of permission to the owners of 39 High Street to undertake works to the southern wall of The Pound, owned by WDC, to allow suitable foundations to be created for an extension to their property, subject to the wall being rebuilt at the owner's expense to a standard and specification approved by the Council, in consultation with Historic England, and to the owners obtaining planning permission and conservation area consent.
- The incorporation of a public 'access path' from High Street to Abbey Fields onto WDC land, as shown at **Appendix Two**.
- The granting of a licence to the owners of 39 High Street to allow them to site a contractor's compound on WDC owned land to allow the proposed works to be undertaken to their property.

- 2.2 That Executive approves the financial proposals relating to recommendation 2.1, as set out in **Appendix Five** in the Private and Confidential section of the agenda.

- 2.3 That Executive grants delegated authority to the Deputy Chief Executive (BH) and the Asset Manager, in consultation with the Portfolio Holder for Housing & Property Services, to agree appropriate legal agreements and the detail of the specification for the works to the wall of The Pound.

- 2.4 That the Executive agrees that the balance of the contributions received is allocated to the Capital Investment Reserve as discussed in section 5.

3. **REASONS FOR THE RECOMMENDATIONS**

- 3.1 The owners of 39 High Street, Kenilworth applied for planning permission in November 2015 for 'demolition of [an] existing dwelling in a Conservation Area and erection of [a] replacement dwelling and extension to the rear to form [a] single dwelling to Passivhaus standards'. Planning permission was granted by Planning Committee on 22 June 2016 subject to the conditions in the officer's report attached at **Appendix One**.

- 3.2 In order to discharge the planning conditions and undertake the work the owners of the property have approached the Council to discuss three interlinked issues:

- A suitable agreement in respect of the southern wall of The Pound that will allow it to be stabilised or reconstructed with deeper foundations, necessary to allow discharge of condition 6 of the planning permission, as set out in Appendix One.
- A proposal to relocate a public access path from High Street to Abbey Fields, which currently crosses land within the demise of 39 High Street, onto land owned by WDC.
- A proposal to site a compound for the contractor's undertaking the work on WDC owned land.

- 3.3 Following lengthy negotiations with the owners of 39 High Street and their representatives, discussions with the relevant service areas within WDC and appropriate legal and valuation advice a proposed agreement has been reached on each of these issues. Members will wish to note that the joint owner of the property is Councillor Whiting, Finance Portfolio Holder. As is normal in such commercial negotiations there has been no member involvement up to this point and Cllr. Whiting, who has a Disclosable Pecuniary Interest in respect of the issues contained within this report, will play no part in the decision making process regarding the recommendations.
- 3.4 The Pound, shown in cross-hatching on the plan attached as **Appendix Two**, dates back to the 16th Century, when it was created to hold stray sheep, pigs & cattle until they were claimed by the owners. WDC had granted a license to the previous owners of 39 High Street for the area to be used as garden land for the property. This license, which had been in place for c35 years, was terminated when the property was sold in 2014. Since that date The Pound has been maintained by WDC as a landscaped public space, with an information board explaining The Pound's history and public seating.
- 3.5 The first element of the proposed agreement relates to the southern wall of The Pound. It is recommended that WDC enters into a formal agreement with the owners of 39 High Street that allows them to remove the wall (having labelled the stones), construct new foundations and rebuild the wall with 50% new stones and 50% of the saved stones so that the rebuilt wall matches its current appearance. This work would be undertaken entirely at the owner's expense to a specification agreed by WDC, in consultation with Historic England. The wall is not listed but is sited within a Conservation Area and the proposed works, necessary to discharge a condition of the extant planning permission will require a separate planning and conservation area consent, which would need to be obtained by the owners at their expense.
- 3.6 The proposed works will have a significant advantage to WDC as the new foundations will guarantee the future stability of the wall. Although a recent visual inspection of the wall identified only minor repair needs to the existing coping stones this was not a full structural survey and is it possible that further, more extensive, works might be required to this WDC owned asset at some point in the future. WDC will retain full maintenance responsibility for the wall prior to the works commencing and on completion of the works, hence the need for agreement of a detailed specification. An indication of the likely extent of the works to be undertaken is, however, set out in confidential **Appendix Four**.
- 3.7 The second element of the proposed agreement relates to a public access path running from 39 High Street to Abbey Fields. The current path, shown in hatching on the plan at **Appendix Two**, crosses land that is part & parcel of the property. This area the path crosses was formerly used as a vehicle driveway but appears not to have been used for this purpose for a number of years. The current muddy path crosses a poorly maintained area to the side of the building to be demolished before exiting the property at the bottom of its garden, via a metal 'kissing gate', onto a WDC owned grassed track that leads into Abbey Fields.
- 3.8 The current owners of 39 High Street wish to close off this public access path across their land and restore the land it crosses to a vehicular drive serving the reconstructed property. They have proposed that the path is relocated onto the WDC owned land adjacent to theirs, on the western side of the boundary wall to

their property. This would mean that the public path ran for its entirety, from its start on High Street, along the grassed access track that leads into Abbey Fields. This grassed area is owned and maintained by WDC as a potential vehicular access track into Abbey Fields, although it has not been used for this purpose for many years as more suitable vehicular access points are available at a number of other locations.

- 3.9 The proposal would see the path shown as the hatched area on Appendix Two removed and replaced by public access over the WDC owned grass track, as shown by the stippled area in **Appendix Three**. The stippled area runs to the existing kissing gate which would be removed by the owners of 39 High Street allowing their boundary wall to be extended to block up this gap, again, entirely at their expense. It is understood that the owners will subsequently take appropriate legal measures to address any title issues affecting the proposal, with any professional costs arising from this also being borne at their expense.
- 3.10 The proposal has the advantage of creating an improved public pedestrian access into Abbey Fields. Were the path to remain in its existing location the public would be sharing the access with a vehicular drive when walking to the existing kissing gate. If the path is moved they would be walking over the grass track that the kissing gate currently exits onto for the whole length of the path. To facilitate the relocation it is proposed that the existing, padlocked, wooden 'five-bar' gate at the north end of the grass track is replaced with a dual-purpose gate that allows both pedestrian and vehicular access (in the event of an emergency) but which is secure and prevents unauthorised vehicular access to Abbey Fields. Other than the cost of the gate, there will be no additional costs to the Council in relation to moving the access path or in relation to its future maintenance, as the proposed new route is over a grass area that is already maintained by the Council.
- 3.11 The relocation of the access path would uplift the value of the property at 39 High Street. The value of this uplift has been calculated on the Council's behalf by the District Valuer and, in accordance with standard practice, it is proposed that the owners of 39 High Street would pay WDC a sum equivalent to the value of half of this uplift in return for the relocation of the path onto its land. The details of this proposed financial agreement are set out in confidential **Appendix Five**.
- 3.12 The final element of the proposals relates to the siting of a contractor's compound, on WDC land. The existing property at 39 High Street abuts the public pavement along High Street and for the property to be demolished and rebuilt the contractor's compound can not be accommodated within the property's boundaries. One option would be to site the compound on the public highway but given the adverse impacts this would have on pedestrian and traffic flows along High Street it has been accepted by both parties that the optimum site for the compound would be on the WDC owned grass track referred to above, which is directly adjacent to 39 High Street.
- 3.13 It is proposed that a licence is granted for the owners of 39 High Street to use this land as a temporary site for a secure contractor's compound for a period of 18 months, extendable on a rolling monthly basis if necessary. The financial terms for the granting of this licence are set out in confidential **Appendix Five**. If the 18 month licence period needed to be extended the financial terms would also be extended, on a pro-rate basis, as explained in the appendix.

- 3.14 During the period of the works neither the existing public access path crossing the land within the demise of 39 High Street nor the proposed new access route along the WDC owned grass track would be available for public use. The former route would be within the construction site and the proposed new route would be blocked by the compound area. However, alternative public access points leading from High Street into Abbey Fields are available c100 metres down the street to the east or c150m up the road to the west which would be unaffected by any access restrictions during the construction period. As previously explained alternative vehicular access points will also remain available throughout the construction period.
- 3.15 It is recommended that the finalisation of an appropriate specification for the works to the wall of The Pound and legal agreements relating to the public access path and site compound are completed under delegated authority, by the officers named in Recommendation 2.3 in consultation with the Portfolio Holder for Housing and Property Services.

4. **POLICY FRAMEWORK**

- 4.1 The recommendations in this report are consistent with the Council's Fit for the Future strategy and seek a commercial return to assist with the delivery of the 'Money' strand of this strategy and the achievement of a balanced budget.
- 4.2 The recommendations will allow the owner of the property to construct what is believed to be the first Passivhaus in the district which will assist in the delivery of the Sustainability strand of the Council's Sustainable Community Strategy.
- 4.3 The proposal to rebuild the wall to The Pound will enhance a Council owned asset, assisting in the delivery of the Asset Management Strategy.

5. **BUDGETARY FRAMEWORK**

- 5.1 The proposals provide for the Council to receive contributions in respect of the proposals relating to the path and a licence fee for the proposed site compound, as detailed in confidential **Appendix Five**.
- 5.2 There will be a cost to WDC of c£1,500 to replace the existing wooden five-bar gate at the north end of the grass track from High Street to Abbey Fields with a new dual-purpose pedestrian and vehicular access gate, as described in paragraph 3.9. The costs of this work would be met in full from the proposed contribution for the relocation of the path.
- 5.3 As both the contributions due to be received will be classed as revenue funding, the Council has flexibility as to how this funding is used. It is recommended that the remaining balance of the contributions would be allocated to the Capital Investment Reserve for use towards future capital projects.
- 5.4 There are a number of legal agreements that will be required if the recommendations are accepted:
- An agreement relating to the proposed works to the wall of The Pound, including an agreed specification in addition to normal standard terms and conditions
 - An agreement in relation to the new public access path and its location
 - A licence for the compound.

Draft agreements have already been prepared by the owner's representatives, minimising the cost to the Council. The remaining work can be accommodated within existing budgets.

6. RISKS

6.1 The risks to the Council of the proposals are minimal:

| Risk | Potential Consequences | Risk Mitigation |
|---|---|--|
| Works being undertaken by the owners of 39 High Street take longer than envisaged | Vehicular access route to Abbey Fields is inaccessible for longer than 18 months | This access is not currently used. Were access required by emergency services other, more suitable access points are available and will be maintained throughout the duration of the works. The financial agreement provides for this scenario |
| Easement on land owned by 39 High Street prevents relocation of the access path to WDC land | Inability to proceed with the proposal in relation to the path contained in recommendation 2.1 and explained in paragraphs 3.7 – 3.11 | In such a scenario the path would remain in its current position, crossing the owner's land and they would have to consider how public access would be maintained in accordance with the easement. The Council would continue to maintain the grass access track as now and would not replace the gate as proposed in paragraph 3.10 |
| Local residents object to the re-siting of the access path | Reputational damage to the Council | The proposed relocation of the path is considered to be beneficial to local residents as it will provide a more direct, easier to use access route to Abbey Fields than the existing one. |
| Any title issues which may prevent the compound being located on WDC land | Reputational damage to the Council | In the event that title issues are considered to be an unacceptable risk the owners would need to find an alternative site for the compound. There are no obvious alternative sites in the vicinity so it is possible that the proposed works might not proceed in such a scenario. The compound would temporarily block the access for the duration of |

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| | | the works but, as explained in paragraph 3.14, suitable alternative routes will be available throughout the construction period. |
| Unanticipated issues are discovered when the wall to The Pound is taken down | Higher than anticipated costs | The costs of the works will be borne in full by the owners of 39 High Street |
| The wall is not returned to WDC in an acceptable condition on completion of the works | Unanticipated costs for WDC to put the wall into a suitable condition | Agreement of an appropriate specification under delegated authority. Monitoring of the works by Building Control (or an appropriate Approved Inspector) during the construction phase. |

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

- 7.1 A range of alternative options have been considered in respect of the three elements of the proposals but have been rejected on the basis that the recommendations provide the best commercial return for the Council while allowing the planning permission to be discharged, public access to Abbey Fields from High Street to be improved and a significant contribution to be made to assist with the future maintenance of a WDC owned asset.