

Report to Cabinet Sub Committee Acting as Trustees for Lower Memorial Park Failsworth

Lower Memorial Park Failsworth

Trustees: Cllr Fielding, Cllr Roberts and Cllr Shah

Officer Contact: Roger Frith – Head of Regeneration and Development

Report Author: Ben Hill – Principal Regeneration Officer
Ext. 5261

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Reason for Decision

The Council, acting in its capacity as charitable trustee, is required to make resolutions to authorise certain actions by the trustees to regularise the procedural steps taken to allow the installation of a drainage ditch and the placing of topsoil on the land from the adjoining residential development site.

Executive Summary

As part of the development of the Lancaster Club, Bellway Homes have constructed a drainage attenuation basin and relocated top soil on part of the adjoining Lower Memorial Park Trust/Centenary Fields land.

A complaint has been received from a Member of the Friends of Moston Brook group concerning the works taking place and the condition of the land as a result of the works. Discussions are ongoing with this group to address the concerns and issues raised and to resolve these.

Recommendations

- (1) To authorise legal officers to inform the Charity Commission of the procedural omissions in relation to the granting of an easement over part of the land to include the construction and laying of an attenuation basin and

drainage pipes and the dumping of top soil from the neighbouring playing fields and the proposals as to how these omissions will be remedied.

- (2) To authorise officers to appoint an independent Charities Act surveyor to advise the trustees generally in relation to the issues arising and in particular to review the terms of the easement and consider appropriate compensation to the charity for any disamenity to the land caused by the works taking into account all pertinent events and circumstances including but not limited to the requests of the complainant and any other representations made and the offer by the Council to gift additional land into the trust.
- (3) To authorise officers to provide all necessary support and assistance to the trustees in this matter to enable them to avoid any possible conflict of interest and to fulfil their statutory duties in relation to the trust land.
- (4) To authorise officers to arrange a further meeting with the Friends of Moston Brook and agree who should attend.
- (5) To authorise officers to arrange public consultation on the proposals for compensation and any other proposals put forward by the Friends of Moston Brook or other members of the public.

Cabinet Sub Committee Acting as Trustees for Lower Memorial Park, Failsworth

17 September 2018

Lower Memorial Park Failsworth.

1 Background

- 1.1 The Council acquired the former Lancaster Club site from Oldham Athletic in a deal that enabled the club to remain in Oldham, using its capital receipt to acquire a new site. The Council plan was to recover its outlay by disposing of the site for residential development. This required some preparatory work to relocate allotments and playing field facilities, following which the site was marketed for residential development and Bellway Homes Ltd was selected as the preferred developer. The planning consent granted for the site will deliver 150 new homes. The site is immediately adjacent to the Lower Memorial Park. The approved scheme for the Bellway development included an attenuation pond on charity park land as well as permission to run a foul drainage connection across the land.
- 1.2 Complaints have been received from a Member of the 'Friends of Moston Brook' Group regarding the works which have taken place, the current condition of the land and permissions required for the works. There is a concern that members of the local community feel aggrieved with the size of the attenuation basin and the placing of the topsoil.
- 1.3 As part of the Lancaster Club Development, permission was obtained from the Charitable Trustees in July 2015 for:
 - A land swap – This tidied up the boundary between the Lancaster Club and Trust Land that better reflected the 'on the ground' position. The land swap resulted in 0.14 acres of Trust land being transferred to Bellway and 0.38 acres being transferred to the Trust.
 - Approval to the creation a Surface Water Attenuation Basin – The basin collects clean surface water during heavy rainfall and then regulates its flow into the Moston Brook. It is a Sustainable Urban Drainage Scheme and is widely acknowledged as good practice. Moston Brook is a heavily modified water body and is counted as a main River. It suffers from bad /poor water quality. The resulting flows of clean water via the attenuation pond will help with water quality of the brook through dilution. In approving this arrangement, the Trustees noted that the basin would also create a small wetland area which will increase bio-diversity and habitat on the Trust Land.
 - The granting of easements across the trust land for underground drainage pipes.
- 1.4 A plan showing the scope of land covered by the Trust is at appendix 1.

2 Current Position

- 2.1 The attenuation basin and drainage pipeline works have been problematic mainly due to weather conditions and whilst the works have now been completed, the site is still fenced off. The works have been carried out in accordance with the approved planning consent and include the provision of new steps down to Moston Brook to improve access. Works to re-instate the steps has now been completed and these
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are open to the public. The landscaping around the basin needs to be finished and this area will remain fenced off until this work is agreed and completed.

- 2.2 Shortly before commencing work on site (June 2017), Bellway Homes requested that they layer and re-grade the top soil from the former football pitches over part of the Trust Land. This is only the high quality top soil from the sports pitches and would be to a depth of around 30 to 45 cm.
- 2.3 Inspections have shown that the soil is to a depth of around 180-150 cm in places. The soil has been levelled and graded into the existing land and create a consistent surface. Seeding and landscaping is still required to the area around the attenuation basin.
- 2.4 The Friends of Moston Brook Project Officer has been involved throughout the process and has kept the Friends Group updated on a regular basis.
- 2.5 A meeting took place with the former Leader and representatives from the Friends Group in April 2018 where they requested that the land previously allocated as a Goals! Soccer Centre located between the Memorial Trust land, the Lancaster Club, Broadway and the new allotments should be gifted to and thus become part of the Charity Land.
- 2.6 One issue being raised as part of the complaint is that the Attenuation Basin may be unsafe especially for children.
- 2.7 The basin only contains water immediately after periods of rainfall. The slopes of the basin are 1:3 gradient which is an accepted safe gradient. Grass banks at the site of motorways are round 1:2. The pipes leading into and out of the basin have safety grills to prevent access.
- 2.8 There are no definitive guide lines on fencing or how basins should be left, although best practice is for them to be incorporated into their natural surroundings. Bellway Homes is willing to use some of the soil to create natural landscaping around the basin and install suitable signage.

3 Financial Implications

- 3.1 The cost of the Independent Survey is anticipated to be around £5,000 which will be met through Regeneration's Professional Fees budget.

4 Legal Services Comments

- 4.1 Independent legal advice has been obtained on behalf of the Trustees on the steps the Council and the Trustees should take in the circumstances which arise from the following actions and transactions:
 - (1) The grant of easements to Bellway Homes by the Council as trustee of the Charity for the construction of a sewer under the Charity Land to take foul water from the development site, the construction of an attenuation basin on the Charity Land and the deposit of a maximum of 6600 cubic metres of spoil on the Charity Land. This transaction had been approved in July 2015 by the sub-committee of the Cabinet of the Council to which the administration of the Charity has been delegated (the Sub Committee), and was subsequently comprised in a deed dated 26 May 2017 (the Deed of Easement).
 - (2) The deposit by Bellway Homes of top soil from the development site on to the surface of an area of the Charity Land, with the apparent permission of the Council
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but without any separate approval from the Sub Committee, to a depth of 150-180 cm in places.

- (3) The request by the Friends of Moston Brook (the Friends), a local organisation, for
- (i) the provision by the Council of an additional piece of land to replace the area of the attenuation basis (which can no longer be actively used for recreational purposes) and
 - (ii) the removal of the top soil, (a procedure which could cost in the region of £200,000.)

4.2 The general principles to be considered are:

- (1) All decisions relating to the Charity Land must be taken by the Council as trustee, i.e. by the Sub Committee, rather than by the Council as local authority.
- (2) It is not open to the Sub Committee to allow the Charity's property to be used for the benefit of a non-charitable body without (i) being sure that the action is in the Charity's best interests and (ii) securing the best terms reasonably obtainable for the Charity: s 119 of the Charities Act 2011 (the 2011 Act).
- (3) Transactions involving both the Charity and the Council as local authority require the prior consent of the Charity Commission in view of the conflict of interest and duty otherwise involved.
- (4) Any disposition of Charity Land, including the grant of an easement but not the grant of a licence, must in any case be carried out in accordance with ss 117-121 of the 2011 Act. Section 121 requires public notice to be given of the proposed disposition of any land held on trust for use for charitable purposes and requires the Trustees to take account of any representations received as a result.
- (5) Any grant of a licence over Charity Land must be clearly within the Charity's interests and made for the best consideration reasonable obtainable which is appropriate to the licence terms.

4.3 In the circumstances the course of action recommended is for the Council as Trustee to now:

- (i) Report the current situation to the Charity Commission.
- (ii) Seek independent advice on the damage caused (the extent of the disamenity), the extent of financial compensation required in the form of a gift of land to the Charity or other possible remedies.
- (iii) Discuss the proposed compensation/remedy/gift of additional land with the Friends and consult with the wider public on the proposals.
- (iv) Consider the independent advice and outcomes of the various consultations.
- (v) Seek the Charity Commission's approval to the proposed solutions.

5. **Co-operative Agenda**

5.1 Not applicable.

6 **Human Resources Comments**

6.1 Not applicable.

7 **Risk Assessments**

7.1 To be informed by the outcome of the independent survey.

8 **IT Implications**

8.1 Not applicable.

9 **Property Implications**

9.1 Outlined above.

10 **Procurement Implications**

10.1 Not applicable.

11 **Environmental and Health & Safety Implications**

11.1 Outlined above.

12 **Equality, community cohesion and crime implications**

12.1 Not applicable.

13 **Equality Impact Assessment Completed?**

13.1 No

14 **Key Decision**

14.1 Not applicable.

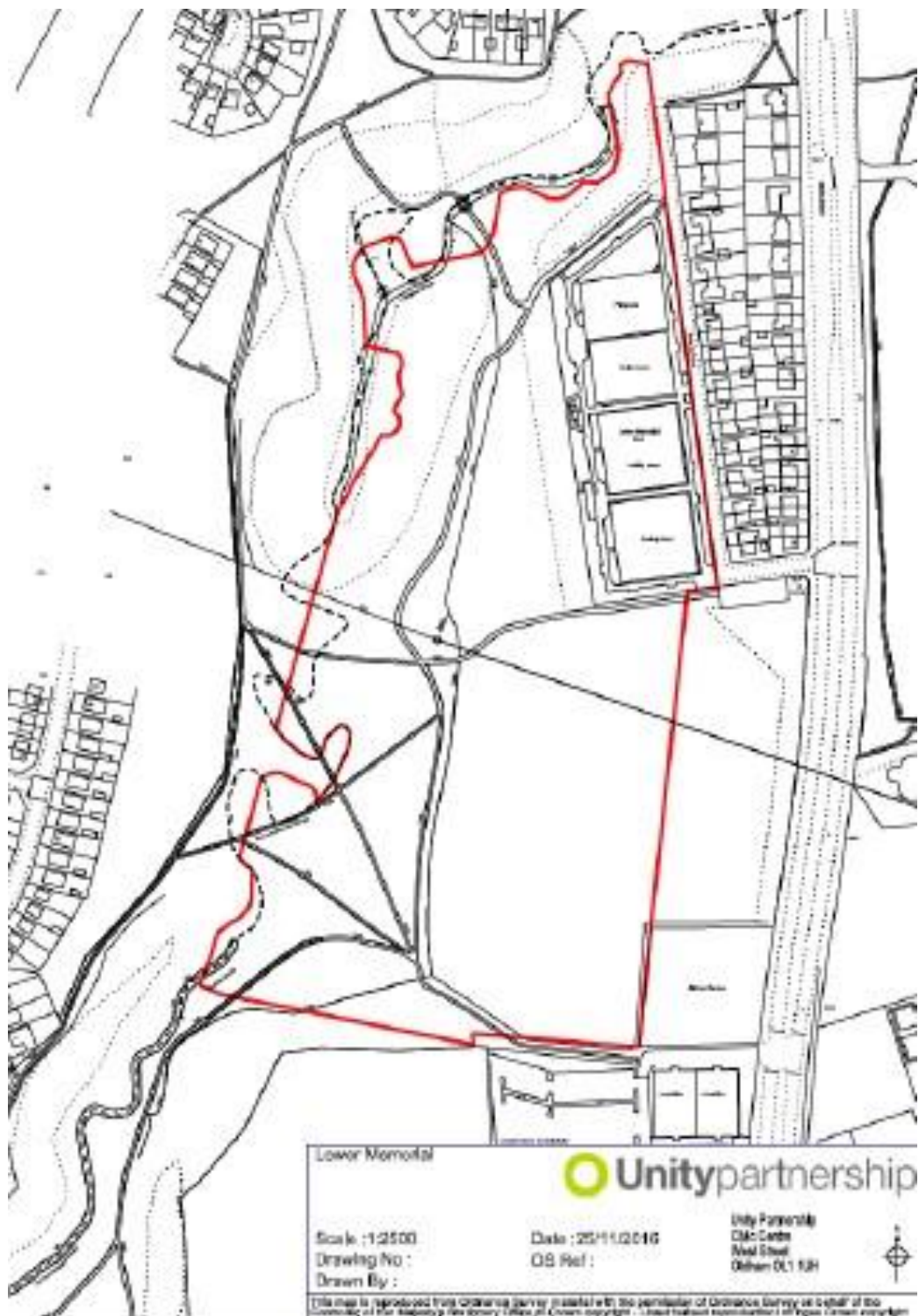
15 **Key Decision Reference**

15.1 Not applicable.

16 **Appendices**

16. Appendix 1 – Plan of Lower Memorial Park trust Land
Appendix 2 – Plan showing land requested by the Friends Group (red edged).

Appendix 1 – Memorial Trust Land



Appendix 2 – Plan showing land requested by the Friends Group (edged red).

