

## **Hambleton District Council**

**Report To:** Cabinet

**Date:** 7 June 2022

**Subject:** **Burneston Public Open Space Change of Use**

**Portfolio Holder:** Leisure  
Councillor P R Thompson

**Wards Affected:** Bedale Ward

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### **1.0 Purpose and Background**

- 1.1 This report seeks consideration of approving a request from Burneston, Swainby with Allerthorpe and Theakston Parish Council (the "Parish Council") to convert 0.22 hectares of public open space land for use as allotments.
- 1.2 In 2005 Hambleton District Council (the "Council") purchased 1.01 hectares of land in Burneston. The land was transferred to the Council with the proviso that it be used for community recreational purposes only. There is a clawback provision contained in the transfer deed, which provides that on each and every occasion a development commences or a change of use is implemented, with the benefit of Planning Permission, the Council or its successors in title will pay to the previous owner 50% of the net development value of the land.
- 1.3 In 2005 the Council granted a 99-year lease of the land to the Parish Council. The lease provides that the land is to be used for the purposes of public open space in accordance with the Public Open Space Act 1906. This accords with the restrictions on use imposed on the Council in the transfer deed.
- 1.4 The Parish Council has requested that part of the land (0.22 hectares) is converted from public open space to use as allotments. In support of its request, the Parish Council has provided the Council with a copy of the published minutes of its meeting on 8 March 2022, where the Parish Council considered whether this parcel of land was still required by the local community as public open space.
- 1.5 Following informal consultation with residents and through its own knowledge of the site, the Parish Council decided that the parcel of land was under used as public open space and could be put to better use as allotments for the local community, of which there was a pressing demand. The adjacent landowner (who was also the owner from whom the Council purchased this land), has agreed to provide a water supply for the allotments.
- 1.6 Although the Parish Council (with local community support) has requested the change of use of the land, on the basis that it is no longer required as public open space, it is for the Council to satisfy itself that the land is no longer required for the purpose for which it was purchased and held.

- 1.7 The use of the land by the local community as allotments to grow fruit and vegetables would not require an application for change of use with the Local Planning Authority.

## **2.0 Link to Council Priorities**

- 2.1 The provision of areas for public open space, leisure and recreation supports the Council's priorities of Enhancing Health and Wellbeing and Providing a Special Place to Live.

## **3.0 Risk Assessment**

- 3.1 There are no significant risk associated with this report.

## **4.0 Financial Implications**

- 4.1 No financial Implications.

## **5.0 Legal Implications**

- 5.1 The land was originally purchased for the use of the public "as a whole". The proposed allotments would be fenced and gated and would be used by allotment holders only, thus restricting the use of this parcel of land by the general public. That said, the remaining 0.79 hectares of land would still be accessible to the general public and the location of the proposed allotments would not impact on the existing football field and equipped play area (see Appendix 1 for plan of area).
- 5.2 Planning permission is not required if allotments are being used for growing fruit and vegetables. The Parish Council has confirmed that the allotments will be used for this purpose. This means that the proposed use would not trigger the clawback provisions contained in the transfer to the Council.
- 5.3 In accordance with Section 122 of the Local Government Act 1972, the Council may appropriate for any purpose for which the Council is authorised by this or any other enactment to acquire land by agreement, any land which belongs to the Council and which is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of Section 122 shall be subject to the rights of other persons in, over or in respect of the land concerned.
- 5.4 Furthermore, the Council may not appropriate land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.
- 5.5 The lease between the Council and the Parish Council would need to be varied to permit the change of use to allotments, to secure their use for those purposes only, and to delineate the two parcels of land (i.e. open space and allotments) by reference to a plan.

5.6 In addition, to ensure the community continue to benefit from the land, the allotments should be held and managed with appropriate rules and regulations as appear to be necessary or proper for regulating the letting of allotments to the local community.

## **6.0 Equality/Diversity Issues**

6.1 Equality and diversity issues have been considered, however there are no issues associated with this report.

## **7.0 Recommendations**

7.1 It is recommended that Cabinet:

- (1) approves in principle to the land being appropriated for use as allotments as shown shaded in pink on the plan at Appendix 1 on the basis that the parcel of land is no longer required as public open space;
- (2) agrees that the intention to appropriate part of the public open space land is advertised as described in paragraph 5.4 of this report;
- (3) agrees that the Council enter into a Deed of Variation of the lease with the Parish Council in accordance with paragraph 5.3 of this report; and
- (4) delegates authority to the Director of Leisure and Communities to satisfactorily resolve any issues arising from the advertisement(s), to grant consent to the Parish Council to use the land for allotment purposes and to appropriate the land for such use, subject to suitable conditions being agreed by the Parish Council in accordance with paragraphs 5.5 and 5.6 of this report.

Steven Lister  
Director of Leisure and Communities

**Background papers:** Parish Council Minutes of 8 March 2022  
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