

# **Cabinet**

## **April 2021**

### **Transfer of Pinemoor Allotments and Open Green Space to Weymouth Town Council**

#### **For Decision**

**Portfolio Holder:** Cllr T Ferrari, Economic Growth, Assets & Property

**Local Councillor(s):** Cllr T Ferrari

**Executive Director:** J Sellgren, Executive Director of Place

Report Author: Dave Thompson

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Title: Transfer of Pinemoor Allotments and Open Green Space to Weymouth Town Council

**Report Status:** Public (Part A) with Confidential/Exempt (Part B) Appendix Information Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972

**Recommendation:** That Cabinet

1. approve the appropriation of the land known as Pinemoor Allotments and Open Green Space from being held by Dorset Council under the Town and Country Planning Act 1990 to being held under the Local Government Act 1972, and
2. authorise the disposal/transfer of the land at a disposal price of one pound (which is less than best consideration) to Weymouth Town Council on terms to be agreed by the Executive Director of Place.

**Reason for Recommendation:** To promote and assist in the delivery of the proposed allotments in accordance with the provisions of the Section 106 Agreement dated 22<sup>nd</sup> May 2006, varied by a Deed dated 8<sup>th</sup> March 2012. Where there is a Town Council for an area, the responsibility for allotments lies with them. As the allotments in this area are the responsibility of Weymouth Town Council and Dorset Council has no powers to operate allotments, the allotment land needs to be transferred to Weymouth Town Council.

The prior appropriation of all of the land by Dorset Council is to enable the transfer of all of the land to Weymouth Town Council for one pound subject to covenants to future use, as required.

Ordinarily for a proposed disposal such as this a Cabinet report would not be prepared and instead the decision would be made by the Portfolio Holder under delegated powers. In this instance the Portfolio Holder is both the Dorset Council ward member and the Town Council ward member. As the proposal is for a disposal to the Town Council at an undervalue the Portfolio Holder has requested that the decision be made instead by the full Cabinet with the benefit of an officer report.

## **1 Executive Summary**

This report seeks approval from Cabinet for authority to appropriate the land known as Pinemoor Allotments and Open Green Space from being held by the Council under the Town and Country Planning Act 1990 to being held under the Local Government Act 1972, and then to proceed with the proposed transfer of all the land to Weymouth Town Council on a less than best consideration basis.

- 1.1 The creation of an allotment facility and open space was required as a result of a Section 106 Agreement, dated 22<sup>nd</sup> May 2006, as part of a residential development at Pinemoor Close, Weymouth. This Agreement was entered into by the Developer of the site and the Local Planning Authority, now Dorset Council. Under the terms of the Section 106 Agreement the Developer would provide land, create the allotments and transfer a future maintenance fund to the Council.
- 1.2 Before the works required to establish the allotments had been undertaken, the Developer went into liquidation. As a result of this, the duty to provide the allotments and associated open space passed to the Local Planning Authority.
- 1.3 Dorset Council has no statutory power to operate allotments. If the site had been in Dorset Council ownership before 1<sup>st</sup> April 2019, it would have been included in the allotment properties transferred to Weymouth Town Council for nil payment as part of the formation of Weymouth Town Council. However, as a result of protracted negotiations with the Developer's liquidator, the site was transferred to Dorset Council after 1<sup>st</sup> April 2019, together with the sum of £27,740 to fund the works required to establish and maintain the site.
- 1.4 The delivery of the proposed allotments complies with the provisions of the Section 106 agreement dated 22<sup>nd</sup> May 2006, varied by a Deed dated 8<sup>th</sup> March 2012 and is subject to agreeing final terms with the Weymouth Town Council

- 1.5 Heads of Terms were agreed with the Town Council and have received their Finance Committee approval with the agreement expected to be ratified on 7th April 2021. Subject to Weymouth Town Council's approval, transfer of the site is expected to take place in late April 2021 with the allotments being opened by the Town Council shortly thereafter, subject to any Covid 19 restrictions-should this not be in the exec summary)The Transfer would end any management responsibility of the site for Dorset Council and on completion of the transfer DC will no longer have an interest in the site or any ongoing maintenance liability.
- 1.6 Upon completion Weymouth Town Council will receive the balance of the sum received (£22,740) being the commuted sum under the Section106 Agreement specifically for the future maintenance of the site. To protect Dorset Council from an action against it to secure the proper use of the commuted sum, Dorset Council will impose covenants on Weymouth Town Council to use the commuted sum for such maintenance, with an indemnity and suitable clauses for recovery of the sum in the proposed transfer deed or another document, should there be default or a misspend of the commuted sum.
- 1.7 The Transfer will require the land to be used as allotments and open space. It is intended that Dorset Council will impose a covenant to use the land as public open space with allotments enforceable under Section 33 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.8 Dorset Council is finalising the allotments preparation work and clearance of scrub overseen by the Council's Senior Ecologist. 7 allotments will be created together with car parking and public open space.

## **2 Financial Implications**

- 2.1 Officers propose that the sale price for the site should follow the terms agreed between Dorset Council and Weymouth Town Council for other allotment transfers at the time of the creation of the Town Council i.e. £1. This would mean a purchase price at below the market price range of the property. A market valuation is currently being prepared which will take into account the restrictive covenants and other conditions imposed by Dorset Council on the transfer.
- 2.2 As a general rule, a Council cannot dispose of its land for less than the best price that can reasonably be obtained. However in instances where land used for amenity, community or recreational purposes is transferred to Parish or Town Councils, then, provided the land is held by the Council under the provisions of the Local Government Act 1972, the land can in certain prescribed circumstances be transferred at less than best consideration.

- 2.3 The specific provisions enabling a transfer at less than best consideration are contained in Circular 06/03 The Local Government Act 1972: General Consent (England) 2003. The provisions in the Circular enable Councils to use wellbeing powers to transfer assets at less than best consideration providing the Councils follow the procedures set out in the Circular and associated guidance. Market valuations have to be obtained for the asset, taking into account any conditions.
- 2.4 The site, having been acquired under the s106 Agreement (a planning agreement), is held by Dorset Council under the provisions of the Town and Country Planning Act 1990, which does not permit disposal at less than best consideration without express consent from the Secretary of State. To overcome this restriction, Dorset Council wishes to appropriate the site from being held under the Town and Country Planning Act 1990, to the Local Government Act 1972 (the appropriate holding Act for land for amenity, community and recreational purposes) in order to be able to transfer the site to Weymouth Town Council at less than best consideration
- 2.5 Where land includes areas of open space (as with this site), the legislation requires that the proposals for appropriation and for disposal are first publicly advertised in the local press. This has been done, the consultation period has ended and no objections have been received. A copy of the advertisements is shown at Appendix D.

### **3 Well-being and Health Implications**

- 3.1 The site will provide public access to much needed open space in the local area. Walking and cycling to the site will be encouraged, promoting physical exercise.
- 3.2 Evidence from a study published in the Journal of Public Health in 2016 suggests that gardening on allotments improves general health, aids recovery from stress, increases life satisfaction, promotes social contact and provides opportunities for low to moderate–high intensity physical activity, all of which promote mental well-being. The Study concludes that “allotment gardening can play a key role in promoting mental well-being and could be used as a preventative health measure.

### **4 Climate implications**

- 4.1 The use of Allotments accords with the Council’s Climate Change Strategy. The allotment plots will encourage the production of food at a local scale, thus reducing food miles. The site will also support pollinations due to the

cultivation of flowering plants at varying times of the year. Pollinators are a key aspect of the ecological system.

4.2 Users will be encouraged to walk or cycle to the site.

4.3 The dedication of the open space will provide for Carbon sequestration as that element of the site will not be cultivated and maintained as grassland.

## **5 Other Implications**

5.1 Weymouth Town Council will be the operating entity.

## **6 Risk Assessment**

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Low  
Residual Risk: Low

## **7 Equalities Impact Assessment**

7.1 The decision to dispose of the site would have no impact upon persons with protected characteristics and would benefit residents with disabilities, the site being designed to cater for disability use.

## **8 Appendices**

Appendix A: Location Plan

Appendix B: Site Plan

Appendix C: Heads of Terms – (Not for publication by virtue of paragraph 3 of Schedule 12A, Part 1 of The Local Government Act 1972, as amended).

Appendix D: copy of public notice in the local newspaper

## **9 Background Papers**

None.

### **Footnote:**

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.