

## **8. SALE OF LAND AT BLACKWELL FARM ROAD FOR AFFORDABLE HOUSING**

REPORT OF: SOLICITOR TO THE COUNCIL  
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Wards Affected: East Grinstead - Ashplats  
Key Decision: Yes  
Report to: Cabinet  
Date of meeting 11<sup>th</sup> July 2016

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### **Purpose of Report**

1. The purpose of this report is:
  - (a) in the light of the current informal use of the land at Blackwell Farm Road, East Grinstead as open space, to consider the objections to the disposal of the land received in response to the statutory advertisements.
  - (b) in the light of the considerations in (a) to decide whether to reaffirm its decision made on the 14<sup>th</sup> March 2016 to sell the land at Blackwell Farm Road to Affinity Sutton Homes for the provision of affordable housing.

### **Summary**

2. The Blackwell Farm Road Land was acquired by the Council's predecessor in 1947 to provide council housing. Between 1947 and 1974 the Blackwell Farm Estate was developed as council housing for East Grinstead. The Council disposed of its housing stock in the 1990's and the Blackwell Farm Road Land was retained by the Council as Corporate Land laid out as green space. In the meantime the Blackwell Farm Road Land has been used informally as open space. The Council has resolved to sell the land to Affinity Sutton Homes for the provision of affordable housing and the Council has advertised its intention in accordance with Section 123 of the Local Government 1972. This report is to consider objections received and to decide whether to reaffirm its earlier decision to dispose of the Blackwell Farm Road Land for the provision of affordable housing.

### **Recommendations**

3. **Cabinet are recommended to:**
  - (i) **note and consider the responses to the statutory advertisements placed in the East Grinstead Courier on 27<sup>th</sup> April and 4<sup>th</sup> May 2016 giving notice of the Council's intention to sell the land at Blackwell Farm Road, East Grinstead, West Sussex shown edged in red on the plan attached at Appendix A for the provision of affordable housing; and**
  - (ii) **to reaffirm their decision made on 14<sup>th</sup> March 2016 to sell the Blackwell Farm Road Land to Affinity Sutton Homes for the provision of affordable housing on the terms outlined in the exempt appendix to the report of 14<sup>th</sup> March 2016, notwithstanding the objections received.**

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## Background

4. By a conveyance dated 19<sup>th</sup> May 1947, the Council's statutory predecessor in title, Urban District Council for the Urban District of East Grinstead, purchased the land at Blackwell Farm Road, East Grinstead edged in red on the plan ("the Blackwell Farm Road Land") together with other land for housing purposes pursuant to an authority from the Minister of Housing.
5. Between 1947 and 1974 the land acquired in 1947 was developed by the Council for council housing within the meaning of the Housing Acts. The Blackwell Farm Road Land was left undeveloped and has been available for informal use as open space for at least that last 40 years.
6. The Council was formed on 1<sup>st</sup> April 1974 pursuant to Section 1 of the Local Government Act 1972. On the same date a statutory transfer and vesting of the land held for statutory functions took place between the old authorities that were being dissolved and the newly formed authorities. So on 1<sup>st</sup> April 1974, the land that had been conveyed to East Grinstead UDC by the 1947 Conveyance (for the purposes of providing council housing) was vested in the Council. This took place pursuant to The Local Authorities (England) (Property etc.) Order 1973 (SI 1973 No.1861).
7. On 9<sup>th</sup> November 1990, by virtue of the Housing Stock Transfer, the District Council disposed of its housing stock and the council houses that had not been sold under the right to buy scheme were transferred to Mid Sussex Housing Association Limited now Affinity Sutton Homes. The Blackwell Farm Road Land was excluded from the Housing Stock Transfer.
8. In 1994 the District Council disposed of its residuary housing stock and with the consent of the Secretary of State for Local Government and Housing the Council closed its housing revenue account and appropriated all land still held for housing purposes including the Blackwell Farm Road Land to the Council's General Corporate Fund and this being the case, the Blackwell Farm Road Land is held as Corporate Land.
9. On the 14<sup>th</sup> March 2016 Cabinet resolved to sell the Blackwell Farm Road Land to Affinity Sutton Homes for the provision of affordable housing on the terms outline in the exempt appendix to that report.

## Power to sell the land

10. The Council has a general power to dispose of land under Section 123(1) of the 1972 Act which provides that:

*"Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish."*

Although not expressly stated in Section 123, the Courts have held that when deciding whether or not to dispose of land the Council must have regard to the same considerations as they are required to have when considering an appropriation of land and therefore, the Council must be satisfied that: (a) the land is no longer required for the purpose or function for which it is held immediately before the disposal; and (b) the purpose for which they intend to dispose of the land is a purpose for which the Council is authorised by statute to acquire land by agreement.

11. The Council is the sole judge of whether or not land is still required for the purpose for which it is held before the decision to dispose of it and the Council's decision cannot be challenged in the absence of bad faith.
12. The Council has a general power to acquire land by agreement by virtue of Section 120(1) of the 1972 Act, which provides that the Council may acquire land by agreement for the purposes of any of the Council's functions under the 1972 Act or any other enactment, or for the benefit, improvement or development of their area.

The Council has a power to acquire land by agreement for housing purposes by virtue of Section 17 of the Housing Act 1985, which provides that the Council may acquire land by agreement for the erection of houses. The power extends to acquiring land for the purposes of disposing of the land to a person who intends to provide housing accommodation on the land.

The Council therefore, has the statutory powers necessary to sell the Blackwell Farm Road Land for the provision of affordable housing.

13. Section 123(2A) of the Local Government Act 1972 Act provides that:

*"A principal council may not dispose under subsection (1) above any land consisting or forming part of an open space unless before disposing of 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 disposal which may be made to them."*

Open space means "any land laid out as the public garden, or used for the purposes of public recreation, or land which is a disused burial ground" and includes land used informally by local inhabitants for recreation, although not formally laid out and not dedicated under the Open Spaces Act 1906.

The Council is therefore required to give notice of their intention to dispose of the Blackwell Farm Road Land to Affinity Sutton Homes for the provisions of affordable housing and to consider objections to the Council's view that the land is no longer required for its present purpose. The issue for the Council is whether the land is required for its present purpose and not just the issue of whether land not so required, should be disposed of for the provision of affordable housing.

### **Section 123 Advertisements and Objections**

14. As the Blackwell Farm Road Land has been laid out as a green space and used informally, as open space, by the local inhabitants of East Grinstead since at least 1974, the Council has treated the land as "de facto open space" and has caused notice of its intention to dispose of the Blackwell Farm Road Land for affordable housing to be advertised in two consecutive weeks in the East Grinstead Courier, being a newspaper circulating in the area in which the Blackwell Farm Road Land is situated namely, on 27<sup>th</sup> April and 4<sup>th</sup> May 2016 inviting members of the public who may object to the disposal to make their objections known to the Council by 27<sup>th</sup> May 2016.

15. The Council has received ten letters of objection in response to the statutory advertisements published on 27<sup>th</sup> April and 4<sup>th</sup> May 2016. The majority of the objections raised centre around planning issues mainly concerned with traffic congestion, which fail to address the issue of whether the Blackwell Farm Road Land should be retained for its present purpose. Copies of the letters of objections are annexed to this report in Appendix B and Cabinet must consider the objections contained in each of them. The following points set out in italics below are most pertinent to the issue of whether the land is “*no longer required for the purpose for which it is currently held*”, which is corporate land used informally as an open space:

Letter dated 24<sup>th</sup> May 2016 received 26<sup>th</sup> May 2016 from a private individual:

*“I understood that this piece of land was registered as a preserved open site and could not be developed in the way that you are planning. It is planned to be replaced by an estate of small houses adjacent to the road? WHY.”*

*“In the Spring it is a wonderful sight with the Trees in full bloom and the carpet of Daffodils welcoming visitors to the Town. I have been unable to speak, at the present time, to the Town Mayor who in his year (1980’s), in office, got this passed, and find out more about this order. I will be in touch.”*

*“if MSDC have been able to authorise the destruction of an open space in our Town, what is the future of King Georges Field and East Court, and all the other spaces on the town estates.”*

*“I appeal to the Mid Sussex District Council to withdraw the project planned for this site and let it stay as an amenity for the residents to enjoy as it was originally intended.”*

Letter received 26<sup>th</sup> May 2016 from a private individual:

*“I also disagree with this development because a large green open space which people use for walking their dogs or kids playing will be replaced with more concrete.”*

*“That land isn’t just used by people, wildlife also are attracted to that area, from birds, foxes and even the animals you can’t see like larvae and beetles ..... we live in a society where the concrete jungle just keeps on growing and in the future all we will have are memories of green.”*

## **Conclusions**

16. The first issue for Cabinet is whether the Blackwell Farm Road Land, which has been used as de facto open space since at least 1971, is no longer needed for use as informal open space.
17. The suggestion that the Blackwell Farm Road Land is registered as a preserved open site and could not be developed is not correct and the land is not afforded any special protection other than to the extent that it has been used as de-facto open space and the Council’s legal obligation to publicise its intention to sell and to consider objections to that intention.

18. Given that there is other amenity land within the vicinity of the Blackwell Farm Road Land, which is available for informal recreation some of which has received significant capital investment to provide year round recreational use and given that only 10 objections have been received with only 2 of the objectors citing or alluding to the loss of amenity space, which is a relatively small number of objectors given the population of East Grinstead, it would not be unreasonable for Cabinet to conclude that the Blackwell Farm Road Land is surplus to open space needs and to dispose of the land for the provision of affordable housing, if Cabinet is minded to do so.
19. The second issue for Cabinet is whether the Blackwell Farm Road Land is needed for the provision of affordable housing.
20. Given that outline planning permission under planning reference DM/15/1492 for affordable housing has been approved by the Planning Committee, it would be reasonable for Cabinet to conclude that the Blackwell Farm Road Land is required for development or for the implementation of planning permission and ought to be disposed of for the provision of affordable housing.

### **Policy Context**

21. A good affordable housing scheme on this site would contribute to the Council's aim to achieve opportunities and quality of life for all.

### **Other Options Considered**

22. These are set out in the report to Cabinet of 14<sup>th</sup> March 2016 and have not changed.

### **Financial Implications**

23. Any capital receipt received would be placed in the Council's reserves.
24. The purchaser will be required to meet the Council's Surveyor's fees, Legal fees and costs and any stamp duty land tax or other costs arising from this transaction.

### **Risk Management Implications**

25. As with any other decision concerning the exercise of statutory power, there is a risk of judicial review. Provided that the Cabinet gives due consideration to the objections received and makes its decision in good faith and for the proper reasons the risk of judicial review is small.

### **Equality and Customer Service Implications**

26. Developing an affordable housing scheme on this site would help meet local housing needs at a time when affordable rented housing is increasingly difficult to deliver.

### **Other Material Implications**

27. All legal implications of this report are set out in the report.

### **Background Papers**

Cabinet Report of 14<sup>th</sup> March 2016 and Council files.