
Dunstan Park – Land clawback

Committee considering report:	Executive
Date of Committee:	25 July 2024
Portfolio Member:	Councillor Iain Cottingham
Report Author:	Richard Turner
Forward Plan Ref:	EX4550

1 Purpose of the Report

- 1.1 The purpose of this report is to seek approval for West Berkshire Council (WBC) to agree the disposal of part of Dunstan Park site by Thatcham Town Council (TTC) to West Berkshire Therapy Centre (WBTC) and to forego its clawback right held within the land ownership transfer of Dunstan Park, Thatcham to Thatcham Town Council (TTC), to enable the disposal of part of the site for the development of a community hydrotherapy centre.

2 Recommendation

- 2.1 That the Executive resolves to grant delegate authority to the Service Lead for Legal and Democratic Services having consulted with the Service Director Finance to agree the disposal between TTC and WBTC and to forego its clawback right contained within the land transfer linked specifically to the disposal to the West Berkshire Therapy Centre (WBTC) for the purposes of the development of a new hydrotherapy centre on the site.

3 Implications and Impact Assessment

Implication	Commentary
Financial:	<p>The clawback is based on the land values associated with the consented site (planning) set against the original transfer value, with WBC receiving 50% of that value.</p> <p>This clawback has a value. A registered chartered RICS valuer was appointed to advise on the value of the clawback.</p> <p>Additional information is contained in appendix C – Part 2 report.</p>
Human Resource:	<p>There are no human resources implications.</p>

Dunstan Park – Land clawback

Legal:	<p>The transfer of the freehold of the open space Dunstan Park to Thatcham Town Council (TTC) on 1st April 2019 contains the following restrictions:</p> <ul style="list-style-type: none">(a) The site only be used for the purposes of public open space or any other community use;(b) 'Disposal Additional Sum' triggered and payable to WBC within 40 years if TTC disposes of its freehold interest;(c) 'Clawback Additional Sum' triggered and payable within 40 years should any planning permission be granted, the clawback being a sum which is 50% of the difference in value of the site following grant of permission.(d) Any disposition of the site is to be with the written agreement of WBC. <p>More detailed comment is within the body of the report below.</p> <p>Based on the proposals it is expected that the decision required of WBC is limited to:</p> <ul style="list-style-type: none">(c) above 'Clawback Additional Sum';(d) above – agreement for disposition.
Risk Management:	No specific risks have been identified for management.
Property:	This proposal is limited to the covenant provisions within the original land transfer. There are no further property matters identified.
Policy:	Agreeing the disposal and foregoing the clawback provisions will enable Thatcham Town Council to release the land for the purposes of the construction of a new hydrotherapy centre. This will ultimately offer community benefits which support the Council's priorities within the Council Strategy in particular Thriving Communities with a Strong Local Voice.

Dunstan Park – Land clawback

	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?	n	y	n	None identified.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?	y	n	n	Resolving to accept the recommendation would enable the land to be released for the purposes of the development of a hydrotherapy centre, benefitting the community in the Thatcham area, having a positive effect on those with a disability.
Environmental Impact:	n	n	y	The resulting final outcome will be the development of open space with the construction of a building. This will have some impact on that open space environmentally.
Health Impact:	y	n	n	The resulting creation of a hydrotherapy centre will offer a positive impact on the health of its users.
ICT Impact:	n	y	n	None identified
Digital Services Impact:	n	y	n	None identified

Dunstan Park – Land clawback

Council Strategy Priorities:	y	n	n	Agreeing the disposal and foregoing the clawback provisions will enable Thatcham Town Council to release the land for the purposes of the construction of a new hydrotherapy centre. This will ultimately offer community benefits which support the Council's priorities within the Council Strategy in particular Thriving Communities with a Strong Local Voice.
Core Business:	n	y	n	None identified
Data Impact:	n	y	n	None identified
Consultation and Engagement:	The content of the report has sought advice and/or information from: WBC Legal Services officers			

4 Executive Summary

- 4.1 WBC transferred the freehold of the land known as Dunstan Park, Thatcham to TTC on 1st April 2019, this land being used as public open space and playground. See **appendix B** for location and site plan. Prior to this the land was held by TTC on a 99 year lease.
- 4.2 The decision to transfer the freehold title of the land included a number of covenants:
- Not at any time to use the property other than as a Public Open Space and Play Area and for any other community use for the benefit of Thatcham Town residents;
 - Pay the Disposal Additional Sum if within 40 years of the date of transfer any Disposition of the Property or any part of it is completed.
- The Disposal Additional Sum means 50% of the difference between the consideration paid at transfer and the consideration paid upon any disposition;
- Pay the Clawback Additional Sum if within 40 years of the date of transfer any Planning Permission is granted in respect of the Property.
- The Clawback Additional Sum means 50% of the difference between the value of the property following a granting of Planning Permission.
- 4.3 In addition to the covenants the disposal of the site by TTC including leases in excess of seven years requires the written permission of WBC to enable the disposal to be registered at the Land Registry by the Land Registry.

Dunstan Park – Land clawback

- 4.4 West Berkshire Therapy Centre (WBTC) a local charity providing 13,500 bookings for individual power-assisted exercise therapy session per year.

This provides support for older vulnerable adults to maintain or improve health and fitness, those with long term medical conditions and those undergoing rehabilitation.

WBTC is currently located in the Frank Hutchings building adjacent to the Dunstan Park site.

- 4.5 TTC has been approached by WBTC requesting support for the expansion of its provision through the development of a hydrotherapy pool housed within a new purpose built facility on part of the Dunstan Park site.

- 4.6 The proposal by WBTC is for the construction of a new building as an extension of the use of the Frank Hutchings building.

The building will house a 50 sq.m. heated hydrotherapy pool, with complementary accommodation including accessible changing areas, consulting rooms, reception, power assisted therapy areas and staff facilities.

- 4.7 The proposal is to provide a therapy led service to provide up to 10,000 hydrotherapy sessions per year, with 1,000 customer assessments.

There is also allowance in the timetable for non-hydrotherapy community use such as infant swimming lessons, aquarobics and sports training/recovery.

This will support a growing elderly population and support those with long term chronic conditions which will react positively to hydrotherapy treatment.

- 4.8 WBC Adult Social Care service is supportive of the services provided at the West Berkshire Therapy Centre and the plan to extend the offer, on the basis that this community resource improves people's health and wellbeing and can, in some circumstances, contribute to the reduction of care and support needs.

- 4.9 The basis of the proposal is for WBTC to take a long lease from HTC for part of the Dunstan Park site. WBTC would develop the building on the land which on completion would be owned, managed and maintained by WBTC.

- 4.10 The proposal if agreed by WBC would still require TTC to carry out its own due diligence and meet its own obligations on best value, as well as some practical elements such as the relocation of the existing play area and equipment. Based on the proposals as presented it is anticipated that the use would comply with the community requirements of the legal covenants and the Disposal Additional Sum covenant would not be triggered.

This results in the only covenant applicable in this case being the Clawback Additional Sum.

- 4.11 The Clawback Additional Sum is triggered by successful planning application for the development of the hydrotherapy centre. TTC and WBTC are to be encouraged to enact an early planning pre-application process for the development, particularly around the loss of public open space.
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Dunstan Park – Land clawback

4.12 The Clawback Additional Sum is expected to have a financial value. WBC has commissioned a registered chartered RICS valuer to consider the land values and from this the estimated sum which would be owed to WBC gaining of any planning permission.

5 Supporting Information

Introduction

5.1 The land known as Dunstan Park, located to the south side of Foxglove Way, Thatcham is used as public open space and playground.

The land is adjacent to the Frank Hutchings building and associated access and parking.

The freehold of the site was transferred from WBC to TTC on 1st April 2019, TTC having previously held a 99 year lease for the site.

See **appendix B** for location and site plan.

The transfer of the site included a number of covenants (discussed in more detail below).

5.2 Local charity West Berkshire Therapy Centre (WBTC) which already uses space in the Frank Hutchings building have for some time been seeking a suitable site to develop a hydrotherapy pool as part of their service.

5.3 TTC has been approached by WBTC with a proposal to take a long lease of 99 years for part of the Dunstan Park land for the purposes of constructing the hydrotherapy pool.

5.4 Owing to the covenants on the land WBC has assessed the proposals against each of the covenants and it is noted that one of three covenants would be triggered.

The triggering of this covenant would have a monetary value payable to WBC on achieving a successful planning application or on the implementation of a successful planning application if that planning application is made by a third party with TTC's support.

TTC is seeking that WBC forego its covenant (clawback) right and the associated financial receipt, to enable the development to progress.

5.5 In addition to the covenants, the transfer also requires that any future disposal by TTC requires the written permission of WBC. This report seeks that permission.

Background

5.6 West Berkshire Therapy Centre (WBTC) a local charity providing 13,500 bookings for individual power-assisted exercise therapy session per year.

This provides support for older vulnerable adults to maintain or improve health and fitness, those with long term medical conditions and those undergoing rehabilitation.

Dunstan Park – Land clawback

WBTC is currently located in the Frank Hutchings building adjacent to the Dunstan Park site.

- 5.7 WBTC is currently located in the Frank Hutchings building currently offering 13,500 bookings for power-assisted exercise therapy sessions each year.

Demand has been identified to expand this to offering hydrotherapy sessions. This demand is both based on the experience already gained by WBTC, supported by data from the Office of National Statistics (ONS) which shows that the current 4,200 residents of Thatcham (circa 16%) which are over 65 years of age will double by 2024. Additionally Thatcham current has 3,800 residents who are disabled, 65% of which are over the age of 65.

- 5.8 NHS information provides additional insight into the demand with a significant number of patients having long term illnesses and conditions which would benefit from hydrotherapy sessions. WBC Adult Social Care service is supportive of the services provided at the West Berkshire Therapy Centre and the plan to extend the offer, on the basis that this community resource improves people's health and wellbeing and can, in some circumstances, contribute to the reduction of care and support needs.
- 5.9 This report centres around the restrictive covenants contained within the freehold transfer of the land between WBC and TTC.

The transfer of 1st April 2019 has the following covenants:

- (a) Not at any time to use the Property other than as a Public Open Space and Play Area and for any other community use for the benefit of Thatcham Town residents;
 - (b) Other use of the property will trigger Disposal Additional Sum, this being 50% of the difference between the consideration paid by TTC to WBC and the consideration paid upon any disposition of the Property;
 - (c) A planning consent is successfully achieved on the property will trigger Clawback Additional Sum, this being 50% of the difference between the value of the property at transfer and the value of the consented land value.
- 5.10 Following discussion with WBC legal Services, specifically with regard to the interpretation of the covenants, the following forms the basis of this report:

- (a) The future use of the land developed by WBTC will not continue as Public Open Space or Play Area. Even though the use at least in part will benefit the Thatcham community, it is felt the covenant is relevant.
- (b) 'Disposition' in the transfer specifically relates to the disposal of the freehold, although it is viewed the spirit of this covenant would include a 99 year lease being of sufficient length.

Even with the 'Disposal Additional Sum' covenant triggered the disposal between WBC and TTC will result in a £nil value to this covenant.

- (c) Successful planning consent for the proposal by WBTC on the property would trigger the Clawback Additional Sum, payable on successfully receiving planning
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Dunstan Park – Land clawback

consent for the development or on implementation of a successful planning permission if that application was made by a third party with the support of the TTC.

- 5.11 In addition, the transfer also requires TTC, on any disposal of the Site, to procure that the person to whom the disposal has been made enters into a deed of covenant with WBC that they will comply with covenants made in the transfer in the same terms as those given by the Town Council in the transfer. This applies to any disposal and the proposed lease to the Hydrotherapy Centre would be caught by this requirement.
- 5.12 There is also a restriction on the title which restricts the registration of any disposition, which would include leases of more than 7 years, transfers of the freehold, easements etc, without the written consent of WBC. This restriction most likely relates to the obligation that any disponent must enter into a deed of covenant, and without that written consent the Land Registry would be unable to register the Hydrotherapy Centre's lease.
- 5.13 This report seeks to obtain:
- (a) Approval for TTC to proceed with the disposal by way of a 99 year lease to WBTC;
 - (b) approval to forego the Clawback Additional Sum and the estimated payment owed to WBC by TTC.

Proposals

- 5.14 WBTC is seeking to develop part of the Dunstan Park open space for the purposes of the construction of a hydrotherapy centre.
- 5.15 The hydrotherapy building is expected to be located adjacent to and linked to the Frank Hutchings building to compliment the services already provided.
- The new facility will provide a 50 sq.m. pool that can accommodate twelve disabled clients at a time, as well as supporting accommodation including, consulting room, therapy rooms, and reception.
- 5.16 The expectation is that the hydrotherapy pool will offer 10,000 hydrotherapy sessions per year, with 1,000 customer assessments.

It is also anticipated that this will also be supplemented by non-hydrotherapy users such as infant swimming lessons, aquarobics and sports training/recovery.

6 Other options considered

- 6.1 This decision is restricted to the agreement for TTC to sell to WBTC and foregoing of the Clawback Additional Sum contained within the land transfer to TTC and so simply the alternative option is a 'do nothing' option.

In the absence of formal approval of WBC for the land to be disposed of by TTC to WBTC, the lease could not be registered with Land Registry. Additionally without WBC agreement to forego the clawback covenant, any planning consent would trigger a required payment to WBC.

7 Conclusion

- 7.1 There is opportunity for both TTC as land owner and WBC as the beneficiary of restrictive covenants on the land title to support the development of a hydrotherapy centre at Dunstan Park benefitting the local community.
- 7.2 The decision for WBC is limited to agreeing the disposal by way of a 99 year lease to WBTC and to forego its right to the clawback covenant in the land transfer to TTC.

8 Appendices

- 8.1 Appendix A – Equalities Impact Assessment
- 8.2 Appendix B – Site location plan
- 8.3 Appendix C – Part 2 report

Background Papers:

None

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Scrutiny Commission or associated Committees, Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only

Wards affected: Thatcham North East

Officer details:

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Appendix A

Equality Impact Assessment (EqIA) - Stage One

What is the proposed decision that you are asking the Executive to make:	To agree the disposal of part of the site to WBTC by TTC and forego the land clawback to enable the disposal of part of the land for the development of a hydrotherapy centre.
Summary of relevant legislation:	s.123 Local Government Act 1972
Does the proposed decision conflict with any of the Council’s priorities for improvement? <ul style="list-style-type: none"> • Ensure our vulnerable children and adults achieve better outcomes • Support everyone to reach their full potential • Support businesses to start develop and thrive in West Berkshire • Develop local infrastructure including housing to support and grow the local economy Maintain a green district • Ensure sustainable services through innovation and partnerships 	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please indicate which priority and provide an explanation
Name of Budget Holder:	n/a
Name of Service/Directorate:	Finance and Property, Resources Dir.
Name of assessor:	Richard Turner
Date of assessment:	15 May 2024
Version and release date (if applicable):	n/a

Is this a ?		Is this policy, strategy, function or service ... ?	
Policy	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	New or proposed	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Strategy	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Already exists and is being reviewed	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Function	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Is changing	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Service	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

(1) What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To agree land disposal by TTC and forego a covenant to enable the development of a hydrotherapy centre.
Objectives:	To seek approval to forego covenant to enable land use to progress.
Outcomes:	Ultimately the provision (by external organisation) of a hydrotherapy centre in Thatcham.
Benefits:	Final outcome will bring community health benefits.

(2) Which groups might be affected and how? Is it positively or negatively and what sources of information have been used to determine this?		
<i>(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation)</i>		
Group Affected	What might be the effect?	Information to support this
Age	n/a	
Disability	Improved local facilities	New hydrotherapy pool to achieve 10,000 sessions per year.
Gender Reassignment	n/a	
Marriage and Civil Partnership	n/a	
Pregnancy and Maternity	n/a	
Race	n/a	
Religion or Belief	n/a	
Sex	n/a	
Sexual Orientation	n/a	
Further Comments:		

(3) Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<p>Please provide an explanation for your answer: The decision will enable progression of the disposal of land by Thatcham Town Council. That decision in itself does not create inequality.</p>	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<p>Please provide an explanation for your answer: The decision if approved would result in a positive impact rather than negative.</p>	

If your answers to question 2 have identified potential adverse impacts and you have answered ‘yes’ to either of the sections at question 3, or you are unsure about the impact, then you should carry out a EqlA 2.

If an EqlA 2 is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the EqlA guidance and template – <http://intranet/index.aspx?articleid=32255>.

(4) Identify next steps as appropriate:	
EqlA Stage 2 required	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Owner of EqlA Stage Two:	
Timescale for EqlA Stage Two:	

Name: Richard Turner

Date: 15 May 2024

Please now forward this completed form to Pamela Voss, Equality and Diversity Officer (pamela.voss@westberks.gov.uk), for publication on the WBC website.

Dunstan Park site plan/location

Location Plan



