

# EXECUTIVE BOARD DECISION



<b>REPORT OF:</b>	Executive Member for Environment & Operations, Executive Member for Finance and Governance, Executive Member for Growth and Development
<b>LEAD OFFICERS:</b>	Strategic Director of Growth & Development
<b>DATE:</b>	Thursday, 12 October 2023

<b>PORTFOLIO/S AFFECTED:</b>	Growth and Development
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<b>WARD/S AFFECTED:</b>	Blackburn South East;
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<b>KEY DECISION:</b>	N
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<b>SUBJECT: Long Lease Disposal of Land at Shadsworth to Together Housing Group</b>
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## 1. EXECUTIVE SUMMARY

- 1.1 Together Housing Group (THG) through their subsidiary Newground-Together have bid for and secured Youth Investment Fund (YIF) grant to build a new Childrens Hub in the Shadsworth area.
- 1.2 The project is supported by the Council and the location of the new building will be in a central area close to the existing Shadsworth Hub, local play area and open space.
- 1.3 A condition of the YIF grant is that the land ownership should be in the name of the grant-receiving organisation. As such, THG have requested that the Council transfer the land to THG to allow the project to proceed in the form of a long lease disposal.
- 1.4 In 2016, the Council transferred the site of the former Shadsworth community centre and adjacent land to THG, to develop the Shadsworth Hub for the provision of a new community centre facility and shops. The proposed new Childrens Hub building will be adjacent to the Shadsworth Hub.
- 1.5 Officers from the Council and THG identified the best course of action would be to grant a long lease to THG for the parcel of land which includes the park and open space adjacent to the Shadsworth Hub.
- 1.6 This will enable Newground-Together to draw down grant and commence the building of the new Childrens Hub and maintain the whole hub, park and open space for the term of the lease.

## 2. RECOMMENDATIONS

That the Executive Board:

- 2.1 Note that Newground-Together, a subsidiary of THG, has successfully secured YIF grant to build a new Childrens Hub.
- 2.2 Note that since 2016, THG have provided a community centre facility on behalf of the Council on the Shadsworth Hub site (area C hatched grey on Appendix A).
- 2.3 Note the Council's proposal to grant a lease for the adjacent land (area B hatched purple in Appendix A), which contains the park and open space to THG to build a new Childrens Hub, carry out upgrades to the park and manage and maintain the whole area for the duration of a 99 year lease.
- 2.4 Authorise officers to finalise negotiations with THG and prepare the lease for the transfer.
- 2.5 Delegate authority to conclude negotiations, including terms of any land transfer and contracts to the Growth Programme Director in consultation with the Executive Member for Growth and Development to approve the final heads of terms.
- 2.6 Authorise the Deputy Director, Legal & Governance (Monitoring Officer) to complete the necessary legal formalities.
- 2.7 Authorise the Strategic Director Growth and Development to appropriate the land off Bute Road shown hatched purple, on the attached Appendix A, from the Environment and Operations portfolio to the Growth & Development department for planning purposes pursuant to s226 Town and Country Planning Act 1990.
- 2.8 Noting that the land is construed as open space in character then such appropriation must also comply with s122(2A) of the Local Government Act 1972 and hence authorise the Deputy Director, Legal & Governance (Monitoring Officer) to advertise the proposal to appropriate accordingly.
- 2.9 Authorise the Deputy Director, Legal & Governance (Monitoring Officer) to advertise the proposal to dispose of 'open space' in accordance with the statutory process under Section 123(2A) of the Local Government Act 1972.
- 2.10 Note that in authorising the commencement of the appropriation process of the land off Bute Road, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report.
- 2.11 Authorise the Strategic Director Growth and Development for the consideration of any objections to both the appropriation proposal and 'open space' disposal.
- 2.12 Note the Council's powers under section 203 – 206 of the Housing and Planning Act 2016 to override any third party rights and easements on the land once planning permission for the planning purpose has been obtained and so where necessary to enable the planning purpose to be achieved, authorise the Strategic Director of Growth & Development to override any said third party rights or easements.
- 2.13 If the appropriation for planning purposes is approved and any third party rights and easements have been overridden, authorise the negotiation and payment of any compensation claims potentially emerging from the appropriation.

### **3. BACKGROUND**

- 3.1 Together Housing Group is undertaking a comprehensive review of their Shadsworth Housing Estate with proposals to carry out some remodelling, new-build and upgrades to the public realm. Estate transformation will provide new homes and benefit local residents.
- 3.2 Proposals include a pilot project to remodel some existing properties to provide a revised mix of house types, building of much needed family homes, public realm enhancements and improvements to the local park/play area located between Dunoon Drive and Bute Road. One of the priority projects will be to build a new Childrens Hub centre behind the Shadsworth Community Centre Hub.
- 3.3 THG through their subsidiary Newground-Together, with the support of the Council's Childrens Team, successfully bid for grant funding from the 'Youth Investment Fund' (YIF) to fund the Childrens Hub building. £800,000 of funding has been secured which, will form part of Together Housing Group's, wider £20m plan to improve community facilities, outdoor spaces, and homes in the Shadsworth area.
- 3.4 The YIF funding will pay for a new dedicated youth hub to be built. The Shadsworth Youth Hub will be a new build, located in the heart of Shadsworth estate, within the local park. It will provide a dedicated youth provision, offering universal open access, indoor multi-use flexible spaces and access to outdoor space, enabling the provision to enhance the physical, mental and social health of young people using the natural environment and park facilities.
- 3.5 THG will also be funding improvements to the park/play area to compliment the new youth hub. The new building will be operated and maintained by THG/Newground.
- 3.6 The location of the building is planned to be on Council owned land adjacent to land THG secured from the Council in 2016. This land transfer proposal included a leaseback arrangement between the Council and THG which required THG to provide a community centre facility within the new Shadsworth Hub. This was to be in the form of a 99 year lease for the new community centre facility to the Council with a back to back lease to THG to run the facility for 99 years from 2016.
- 3.7 THG are now looking to lease the land required for the new Childrens Hub building to compliment the previous lease arrangements. The land is to be leased for a period of 99 years at a peppercorn rent. The land and buildings will revert to council ownership after the lease expires.

#### **4. KEY ISSUES & RISKS**

##### **Shadsworth Childrens Hub**

- 4.1 The new Childrens Hub building is planned to be built on land currently in two ownerships, BwD and THG (area D coloured Grey on Appendix A). The grant conditions require THG to have the entire site in their ownership prior to grant drawdown to fund the building work.
- 4.2 THG, at their own cost, plan to refurbish and upgrade the adjacent park area with new equipment, revised layout and improved planting etc to complement the new Childrens Hub building. The park area/open space is again in two ownerships, BwD and THG, which makes maintenance inefficient due to conflicting maintenance timetables and costly with no efficiencies of scale.
- 4.3 Officers proposed that, as THG are the primary housing stockowner in the area and investing in the park refurbishment, they should be the sole company managing the maintenance of the full park/play area. This would ensure that future maintenance is carried out in a comprehensive

and consistent manner. Transfer of the land will also result in savings to the Council of around £400 per annum for general maintenance. This will be in addition to savings from not having to replace upgrade the park equipment or surfaces. Both parties agree that this would be the best way to manage the park and play area. The appropriate route would be to grant THG a lease for the land which compliments the existing Shadsworth Hub and Community Centre Facility (see appendix A).

- 4.4 Approval is sought for the Council to grant a 99 year lease at a peppercorn for the land which includes the park/play area still in the Council's ownership to THG. This will allow Newground-Together to build the new Childrens Hub building and manage and maintain the whole area as one. The land transferred to THG will be conditioned for continued use as a park and open space for the duration of the lease period. The attached plan, Appendix A, shows the land already transferred to THG (area C hatched grey), land to be offered to THG under a new lease (area B hatched purple) and location of new Hub building (area D shaded grey) on jointly owned land.

### **Appropriation**

- 4.5 The Council can appropriate land for any proper purpose for which it is authorised to acquire land by agreement. The general appropriation process is set out in section 122(1) of the Local Government Act 1972 (1972 Act).
- 4.6 The Council's powers to appropriate land for planning purposes is contained in s226 of the Town and Country Planning Act 1990. It is also clarified here for the avoidance of doubt that in this case the Council thinks:
- the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land (section 226(1)(a)); and
  - the proposed development and improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or part of the Borough (section 226(1)(a) and (1A)).
- 4.7 The Council should only resolve to appropriate land for another purpose if it is satisfied that the land is required for a purpose other than for which it is currently held. The land off Bute Road is identified as suitable for the development of a Childrens Hub on part of the site (area D shaded grey on Appendix A) and continued use as a park/play area for the remainder of the site (area B hatched purple on Appendix A). Any proper objection on the proposed appropriation will need to be formally considered by a subsequent formal decision. This will be in the form of an executive member approval.
- 4.8 The Council considers there could be a small chance of some informal private rights of way and other informal easements having accrued over time over the development site due to the site being 'open' for a considerable period. Where land is appropriated for planning purposes and planning permission for the planning purpose has been achieved, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. The Council has this statutory power to override easements or rights of way affecting land.

### **Disposal of Open Space**

- 4.9 As the land off Bute Road is considered to have been open to the public for use, it considers that it is best to act cautiously and deem this site suitable as one to which ought to be considered as 'open space'. A proposed disposal of open space must follow on from the process provided for under section 123(2A) of the Local Government Act 1972. This requires the Council to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, erect site notices, and consider any objections to the proposed disposal which may be made to them.

4.10 It is recommended that the council delegate authority to the Strategic Director Growth and Development in consultation with the Executive Member for Growth and Development. To consider any objections or comments raised to the proposed disposal of 'open space' at Bute Road and if appropriate approve the proposed disposal of 'open space' at Bute Road for the proposed development.

## **5. POLICY IMPLICATIONS**

- 5.1 There are no new policy implications as the granting of the lease for the park and play area to THG will require the facilities to be improved and retained as a park and play area for the duration of the lease.
- 5.2 A small portion of the site will be used to build a new Childrens Hub which is supported by the Council's Childrens Department.
- 5.3 Disposal of the site by long lease will be in accordance with the Council's Disposal Policy.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 No new funding is required for this report, there will be a net benefit to the Council through the reduction of POS maintenance cost for the park/play area to be leased to THG.
- 6.2 The Council and THG are also looking at other POS areas managed by both parties across the borough to see if there are opportunities for either party to exchange pos/land with a view to streamlining operations for maintenance. This could offer up more cost saving opportunities to the Council in the near future.
- 6.3 Transfer of the land will result in savings to the Council of around £400 per annum for general maintenance. This will be in addition to savings from not having to replace or upgrade the play area equipment or surfaces.

## **7. LEGAL IMPLICATIONS**

- 7.1 The lease disposal of the site will provide a suitable outcome that will benefit local residents in as much as the park/play area will be managed and maintained by one party rather than two parties carrying out works at incongruous times.
- 7.2 The Council will look to safeguard its interests in ensuring that the land is retained as a park/play area for the duration of the lease.
- 7.3 The Council should be seeking to achieve best consideration reasonably obtainable for the site, unless the Council can apply the exemptions permitted by Government Circular. Although the Council has a general power of competence pursuant to s1 of the Localism Act 2011 to do anything that individuals can legally do, the Local Government Act 1972 and General Disposal Consent (England) 2003 to seek Best Consideration still applies and so this must be minded when the Council makes any decision to sell via any process, including an informal tender process.
- 7.4 To the extent that the land to be disposed of is considered to be "open space" then s123 (2A) of the Act shall apply. This requires the Council to advertise the proposal twice over 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. It is noted that for a number of years the Council has put up signage which has allowed the land to be used under licence for casual pastimes as indicated by signs posted at various access points to the land. Any rights of access under this licence will be withdrawn and will overall assist the Council to illustrate that a potential village green application is inappropriate.

- 7.5 “open space” is defined in section 336(1) of the Town and Country Planning Act 1990 as: “any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground” (emphasis added). And it is the conclusion in the body of the report that much of the site is reasonably likely to fall into that category to the extent that it would be prudent for the Council to treat it as such. While there is case law on such matters, it may be sufficient to only look at the plain English language meaning of the phrase in this case.
- 7.6 Section 122(1) of the 1972 Act states: “Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and 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 this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned.”
- 7.7 This appropriation process is a helpful avenue for the Council where agreement cannot be reached or the beneficiaries of any (possible) rights are unknown. Section 203 authorises the overriding of any private rights affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person authorised by that authority. The ability to interfere with these (possible) rights is important in the context of enabling any development to proceed. The power to override such rights does not prevent such rights being compensated.
- 7.8 Section 122(2) of the 1972 Act requires the Council, prior to any appropriation of land comprising open space, to advertise the proposal twice over 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.

## **8. RESOURCE IMPLICATIONS**

- 8.1 The Growth team will lead on managing the transaction and detailed negotiations for the transfer of the site to THG. Legal resources will be required to prepare Heads of Terms and new lease for the land.
- 8.2 Additional support may be required from the Environment team to agree future maintenance conditions for the park/play area.

## **9. EQUALITY AND HEALTH IMPLICATIONS**

- 9.1 Provisions of the HRA which are relevant in relation to the proposed appropriation are:
- (1) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe.
  - (2) The HRA still does not incorporate the Convention into UK law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.

- (3) The main article of the Convention, which is of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.
- (4) In appropriating land an authority must show that the appropriation is justified in the public interest.

9.2 Article 1 of Protocol 1 provides that:

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
- (2) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.
- (3) However, the above rules shall not prevent a State enforcing such laws, as it deems necessary to control the use of property in accordance with the general interest.
- (4) The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is a relevant factor in considering the balance.
- (5) With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.

9.3 In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

- (1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

9.4 The Council has carried out an equality impact analysis checklist. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the proposed appropriation would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

## 10. CONSULTATIONS

The Council is working closely with Together Housing who are carrying out an extensive programme of regeneration in their Shadsworth Housing estate.

THG proposals include new build, remodelling and improvements to the environment. Proposals to upgrade the park and play area have been shared with residents, members and stakeholders.

THG have carried out a number of consultation events to inform residents on proposals to regenerate the Shadsworth Housing estate.

Further consultation will be carried out with local residents during the planning process.

#### **11. STATEMENT OF COMPLIANCE**

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

#### **12. DECLARATION OF INTEREST**

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

<b>VERSION:</b>	<b>1</b>
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<b>CONTACT OFFICER:</b>	<b>Subhan Ali, Helen Holland</b>
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<b>DATE:</b>	12 <sup>th</sup> October 2023
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<b>BACKGROUND PAPER:</b>	Appendix A – Shadsworth Community Hub Plan
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