



## North Devon Council

Report to: Strategy & Resources Committee  
Report Date: 5<sup>th</sup> July 2021  
Topic: Land at Westacott – Public Consultation Response & Decision on Land Disposal  
Report by: Head of Resources

### 1. INTRODUCTION

- 1.1. North Devon Council own the freehold of the land at Westacott, Westacott Road, Barnstaple.
- 1.2. The land is of 2.5 acres and is currently used as Public Open Space.
- 1.3. Within the North Devon and Torridge Local Plan 2011 – 2031 the land is identified as a site for a secondary access to develop BAR1.
- 1.4. The adjacent land currently has Outline Planning Consent for the development of up to 149 residential units including vehicular access across the same public open space at Westacott.
- 1.5. The owner of the adjacent land has approached the council for permission to access their site over the Council's land at Westacott in accordance with the Outline Planning Consent.
- 1.6. Negotiations with the developer have resulted in an offer for the freehold of the land.
- 1.7. In accordance to the Local Government Act 1972, in order to dispose of public open space a council is required to undertake public consultation.
- 1.8. Further to the Strategic & Resources Committee Meeting on 17<sup>th</sup> May, a public consultation process commenced on 18<sup>th</sup> May and closed on 14<sup>th</sup> June and the results of which are within this report.

## **2. RECOMMENDATIONS**

- 2.1. Members to carry out their Statutory Duty to consider the Public Consultation responses that have been submitted to the Council as set out in 4.19 and make a decision as to whether to proceed with the proposed disposal of land.
- 2.2. Subject to 2.1 the Strategy & Resources Committee authorise the Head of Resources to finalise terms to dispose of Land at Westacott for value, to include the purchase price and fee to Devon County Council to release the restrictive covenant as per the Heads of Terms.

## **3. REASONS FOR RECOMMENDATIONS**

- 3.1. Members have a statutory duty to consider the above responses that resulted from the public consultation and weigh these against the developers offer and the planning need as set out in BAR1 of the Local Plan.
- 3.2. To achieve the strategic access to BAR1 in accordance to the North Devon & Torridge Local Plan 2011 – 2031.
- 3.3. To achieve a capital receipt.
- 3.4. To achieve an enhanced provision of Public Open Space at Westacott

## **4. REPORT**

- 4.1. North Devon Council own the freehold of the land at Westacott, Westacott Road, Barnstaple. Please see the attached plan (Appendix A)
- 4.2. The land is of 2.5 acres and is currently used as Public Open Space.
- 4.3. The freehold title has a Restrictive Covenant in favour of Devon County Council which restricts development other than residential of not more than 22 dwellings and play area.
- 4.4. Within the North Devon and Torridge Local Plan 2011 – 2031 the land is identified as a site for a secondary access to BAR1

- 4.5. BAR01 is a site comprised of numerous plots of land with various owners and has been identified in the local plan to deliver 950 homes, with its main access from proposed roundabout at the Landkey junction. This land allocation contributes significantly towards delivery of the housing provided for in the adopted local plan. **Further details on BAR 1 can be seen below.**
- 4.6. The adjacent land currently has Outline Planning Consent for the development of up to 149 residential units including vehicular access, landscaping, open space, drainage and infrastructure. All matters reserved apart from access. Planning Application No 62187. Please see the attached Plan (Appendix B).
- 4.7. Within the Outline Planning Consent 62187, the Council's land is proposed to provide vehicular and pedestrian access into the development alongside public open space.
- 4.8. Within the Outline Planning Consent 62187, the developer is required to develop the road to their boundary to facilitate access to the larger part of BAR1 and achieve a comprehensive and sustainable development.
- 4.9. The owner of the adjacent land has now approached the council for permission to access their site over the Council's land at Westacott in line with the Outline Planning Consent.
- 4.10. On the 9<sup>th</sup> June 2021, the developer submitted its Reserved Matters Application. Reserved matters application (appearance, landscaping, layout & scale) for erection of 134 dwellings & associated site infrastructure (outline planning permission 62187 (residential development of up to 149 residential units including vehicular access, landscaping, open space, drainage, infrastructure & all associated development (some matters reserved) (amendments)). The status of the application is currently pending.
- 4.11. In March 2020 the Council obtained an independent valuation from Alder King. Alder King have confirmed in April 2021 that the valuation of the site remains the same. **Confidential information and is contained within Part B version of report**
- 4.12. Negotiations with the developer have resulted in an offer for the freehold. **Confidential information and is contained within Part B version of report**
- 4.13. In accordance to the Local Government Act 1972, in order to dispose of public open space the council is required to undertake public consultation which entails placing an advert in both the North Devon Journal and the Gazette for a period of 2 consecutive weeks and await a minimum of 2 weeks for responses from members of the public. That public notice period has now expired and the results are shown below at 4.19. In deciding whether to dispose of the land, the



Committee need to consider the results of the public notice, but also consider all of the other factors set out in this report.

#### **4.14. DCC RESTRICTIVE COVENANT & OFFER**

4.14.1. The Council's freehold title has a Restrictive Covenant in favour of Devon County Council which restricts development other than residential of not more than 22 dwellings and play area.

4.14.2. Negotiations on the release of the restricted covenant have taken place with Devon County Council (DCC) based on the valuation from Alder King.

**Confidential information and is contained within Part B version of report**

#### **4.15 ALTERNATIVE SECONDARY ACCESS**

4.15.1 Policy BAR01 envisaged that there might be other options for provision for secondary access. The developers have looked to see if they could secure an alternative access to their site by utilising the adjacent industrial estate at Castle Park Road however this has proved to be unsuccessful to date.

4.15.2 This alternative access involves private land owners and is therefore outside of the control of NDC's land ownership and also has other constraints, not least the fact that it would pass through a flood zone and therefore subject to a sequential test and would also be using roads that are unsuitable to the County Council.

**4.15.3 Members can only consider the access route before them but in doing so need to understand the impact of their decision**

#### **4.16 DETAILS OF CURRENT OPEN SPACE PROVISION AGAINST PROVISION WITHIN PLANNING APP 62187 AS PROVIDED BY PLANNING**

4.16.1 The public open space strategy of Planning Application 62187 is based on the creation of a hilltop park meeting the informal recreational needs of the development and **an improved public park in compensation for the loss of the area** to be used for the access to provide:

- a) minimum of 10 pieces of play equipment plus associated infrastructure;
  - b) a MUGA
- c) informal pitch area to be upgraded to provide a junior pitch (7v7 mini-soccer, which is used for local league junior football. The pitch measurements would be 55 x 37 metres (2035 m<sup>2</sup>). A minimum of 2m run off is required around the pitch) with suitable pitch drainage, line markings and goal posts (12ft wide x 6ft high)
- d) off-site open space contribution of £59,850 in respect of Built Recreation Facilities

**4.16.2** The Parks Team have required the developer to provide a scheme which retains and replaces and upgrades the existing provision as well as providing for the needs of new residents. The plans show that 1400sqm of the existing park will be taken up by the road. An equivalent amount of informal open space will be replaced around the site of the proposed MUGA. Additional informal open space will be provided in the form of a hill top park.

**4.16.3** The scheme is policy compliant in respect of equipped play providing additional play equipment (5 to replace the existing which is nearing the end of its useful life and 5 to serve the needs of new residents) and the provision of a MUGA to meet the needs of older children. The Parks Team have considered the best location for a sports pitch and would wish to see the existing informal kick around area upgraded to a Junior Pitch. They consider that the improvements to drainage and the realignment would allow this pitch to be used by 7 aside teams for league events. As with all schemes an off-site contribution would be sought towards Built Recreation facilities. This could potentially be directed to the delivery of facilities required by the wider allocation. Policy BAR01 3(e) requires a neighbourhood hub that forms a focus to meet the community's needs and offers complementary services and facilities rather than replacing those available elsewhere in the town centre. The scheme could provide a financial contribution to such facilities if so required.

**4.16.4** A summary of provision is set out below:

	Existing SQ M	Land lost to road	Policy Compliant	Proposed
Existing Park	10,117 sqm	1,400 sqm		8717 sq m
Informal Open Space			9975 sqm +1400 sqm = 11375 sq m	11800 sq m
Pitch	1,500 sqm		4788 sq m +1,500 sq m = 6288 sq m	3278 sq m plus drainage and enhancement
Equipped play	377 sqm		774 sq m + 377 sq m = 1151 sq m	1700 sq m
MUGA	none		774 sq m	1150 sq m
Built Recreation			Off - site provision	£59,859
<b>TOTAL SQ M</b>	<b>11,994 SQ M</b>			<b>26,645 SQ M</b>

Please see Appendix D for the proposed layout of the Open Space.



The hill top park will be enclosed by a landscaped belt and the attenuation areas have not been included within the open space calculations but will provide biodiversity and ecological interest as habitat areas.

4.16.5 Condition 22 of planning permission 62187 requires:

(22) Prior to the laying out/construction of the areas of public open space precise details shall be submitted to and agreed in writing by the Local Planning Authority. This shall include where applicable to that phase:

- a) the precise design, position and layout of the LEAP including surface treatment, play equipment (minimum of 10 pieces), seating, signage and means of enclosure
- b) the precise planting schedule, means of enclosure of the areas, position of seats, dog bins and signage of informal open space
- c) the design of the MUGA including surface treatment, seating, signage and means of enclosure (if provided on site)
- d) the works to upgrade the sports pitch.

The works shall thereafter be carried out as agreed and completed on site in accordance with the terms of the "Construction Phasing Plan" and terms of the Section 106 agreement unless otherwise agreed in writing by the Local Planning Authority

Reason:

To ensure that the public open space is provided with facilities that will encourage informal recreational use. To ensure that the design of the LEAP, including the works of enclosure and surface materials address the requirements of sports and recreation for the target audience.

The Construction Phasing Plan is also required by condition and gives the Authority control over when facilities will be provided on site. The s106 also controls delivery and would allow the Authority to require the early provision of the works within the existing Park. The MUGA and hill top park would be provided as infrastructure.

## **4.17 NORTH DEVON AND TORRIDGE LOCAL PLAN**

**4.17.1** The Council adopted the Torridge and North Devon Local Plan relatively recently in October 2018. Adoption followed extensive consultation and engagement with the public and partners over other general policies and specific land allocations. As part of that process and to ensure that the plan could be accepted as being sound, the council had to show that allocated sites were sustainable and were deliverable.

**4.17.2** The land owned by the developer, along with further land to the east, forms part of a strategic housing site allocated within the council's adopted Local Plan under BAR01. The adopted allocation policy seeks to secure a comprehensive, sustainable, high quality, mixed use development that includes: 950 dwellings, 5 hectares of land for economic development; a neighbourhood hub to include an

additional 420 place primary school, open space and recreation and sports facilities; a new park and change facility.

- 4.17.3** Allocation BAR01 states that the transport and connectivity strategy for the site will provide improvements at the Landkey junction on the A361 and will also provide a vehicular link between the development and Westacott Road. Pedestrian and cycle links were also envisaged to allow for sustainable transport choices.
- 4.17.4** Paragraph 10.17 of the Council's adopted Local Plan states that the purpose of the secondary access is to improve links between Whiddon Valley and the Link Road and alleviate congestion at the Rose Lane roundabout. It was also to facilitate a new bus route between Landkey and Whiddon Valley and improve public transport to the centre of Barnstaple.
- 4.17.5** The options for a secondary access within the adopted policy included both the Castle Park Road route referred to earlier and the route through the open space now under discussion.
- 4.17.6** The remaining land with BAR01 to the east has a undetermined application (65448) for 820 homes, and for some of the facilities set out above including a neighbourhood hub, a smaller quantum of employment uses, plus open space and infrastructure. The main access is shown off the A361 at a new roundabout at Landkey.
- 4.17.7** In order to ensure that his strategic extension is integrated with Whiddon Valley as required by the adopted policy, a road connection is required to ensure that a bus facility can be planned as well as comprehensive footpath and cycleways. This is proposed to be via the secondary access through the existing park. Without this access the development would become a cul-de-sac served by a single point of access. The route through the park will also allow commercial businesses at Whiddon Valley an emergency route out should the roundabout at Tesco fail. These were key aspirations of the council through adoption of its local plan.
- 4.17.8** When taking the decision, members must therefore consider the impact on the development and on the wider strategic extension, in particular on the sustainability of that development if the links to the town centre, Whiddon Valley etc cannot be created and on the delivery of the council's own adopted strategic policies.
- 4.17.9** Members will be familiar with the issues around the 5 year housing land supply and the requirement on councils to show a continuous supply of housing. At the time of the adoption of the Local Plan the council were able to show that the allocated sites and other sites coming forward provided that required supply. The council is not currently in that position

and is therefore vulnerable to what might be called “hostile” planning applications. This is because if the council can not show a 5 year housing land supply, it is considered that many of its strategic policies set out in the Local Plan are out of date. In that situation, applications are judged against the national sustainability test and not against our own locally adopted policies.

**4.17.10** If a secondary access is not provided, the outline consent 62187 will not be implementable until such time as the wider allocation is developed, simply because there will be no access. That will have an impact on the councils ability to re-establish a 5 year housing land supply.

#### **4.18 UPDATE ON WESTACOTT HIF**

- 4.18.1 Members will recall that NDC were successful in securing Housing infrastructure Fund monies to help deliver the ‘Landkey’ roundabout, which forms the primary access to BAR 1. The HIF is a loan and not a grant. Initially NDC were awarded up to £2.6 million towards this scheme. There were stringent conditions attached to the fund including the need to secure the repayment mechanism in advance of the draw down of any monies and to ensure compliance with State Aid (now Subsidy Control).
- 4.18.2 A contract was entered into between NDC and Homes England (HE) but Officers were unable to secure the repayment mechanism as the additional conditions and risk associated with the required contracts were considered too onerous for all parties.
- 4.18.3 Instead, officers have negotiated an amended contract with HE, which secures HIF that matches what Barwood Land would have contributed towards the provision of the ‘Landkey’ roundabout (£1.55 million). The repayment mechanism from Barwood land will be an uplift in the provision of affordable housing secured in the S106 Agreement to the value of that contribution. The amended contract between HE and NDC is agreed subject to State Aid/Subsidy Control compliance. There is a draft funding agreement between NDC and DCC, which would see the transfer of funds from NDC to DCC to deliver the roundabout and discussions are ongoing between NDC Planners and Barwood Land to secure the required uplift in affordable housing.

The first draw down of the HIF monies is currently scheduled for July 2021

#### **4.19 PUBLIC NOTICE**

- 4.19.1 Under s123 of the Local Government Act 1972 the Council has the power to dispose of land held by them but this is limited by subsection (2A) That the council may not dispose of Open Space unless before disposing of the land they cause notice of their intention to do so 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.

4.19.2 On the 17<sup>th</sup> May the Strategy & Resources Committee resolved to undertake a public consultation to obtain the public's view of the potential disposal of the park.

4.19.3 The public consultation has now concluded, the responses of which are as follows:

4.19.4 **93** letters and emails of objections. A spreadsheet detailing the points raised can be seen in Appendix E.

The reasons for objection include but not limited to:

- Overlooking the park
- Creating a rat run
- Pollution
- Contradiction to Council's Environmental Policy
- Detrimental to property sale values
- Danger to children walking to school
- Noise of traffic
- Loss of Green Space
- Air pollution
- Destruction of wildlife habitat

4.19.5 A survey was created for the community by the local County Councillor, please see Appendix F1 & F2.

**481** surveys were submitted to the Council.

The survey asked the residents the following 2 questions:

Do you agree with the use of part of Westacott Park as an access road?

Should the Council sell Westacott Park for an access road and upgraded play area?

All of the 481 surveys received had the same response which was **NO & NO** to the above questions.

4.19.6 **1** email of approval stating existing park is tired and limited, gaining an improved area, MUGA and large space overall is a major positive.

- 4.20 Although 84% of the responses were responses to the standardised community survey, there is clearly significant opposition to a disposal. Members should however consider the reasons for opposition put forward and not simply consider the overall numbers.
- 4.21 Many of the issues raised by the responses are issues that were taken into account both as part of the process for allocating the site and identifying this route as a potential secondary access, and also dealt with as part of the decision to grant outline consent with a secondary route through the open space.
- 4.22 This report also sets out other considerations that need to be taken into account as part of the decision making process.
- 4.23 Members have a statutory duty to consider the above responses that resulted from the public consultation and weigh these against the developers offer and the planning need as set out in BAR1 of the Local Plan.
- 4.24 There have been nearly 600 responses, with only 1 in favour, which is strong opposition to the disposal. 84% of these are responses to a community survey and not individual contacts with individual stories. The individual responses reflect concerns on the extra noise and pollution from a new road, and the loss of the play area and green space. Many of the issues raised by the consultation responses would have been issues dealt with as part of the original allocation and the planning application and would therefore have already been considered by the council is adopting the Local Plan and approving the application. Responses raising concerns about the loss of open space need to be balanced against the provision of replacement open space set out above.

## **15. RESOURCE IMPLICATIONS**

- a. Legal Services - Conveyance
- b. Financial Implications – set out above

## **16. EQUALITIES ASSESSMENT**

An Equalities Assessment has been produced as a result of this report.

## **17. CONSTITUTIONAL CONTEXT**

- a. Article of Part 3 Annexe 1 paragraph: 7.12
- b. Referred or delegated power?: N

## **18. STATEMENT OF CONFIDENTIALITY**

- a. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.



## **19. BACKGROUND PAPERS**

- a. The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

## **20. STATEMENT OF INTERNAL ADVICE**

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Natalie Hayes, Estates Officer