

Part A

Report to: Cabinet
Date of meeting: 4 July 2016
Report of: Managing Director
Title: Watford Health Campus: Farm Terrace Appropriation

1.0 **Summary**

- 1.1 This report provides an update on the Farm Terrace allotment site following the Secretary of State for Communities and Local Government's decision on 26 May 2016 to grant permission for the Council, under s8 of the Allotments Act 1925, to allow the Council to appropriate the land under s122 of the Local Government Act 1972 for planning purposes to facilitate the delivery of the Watford Health Campus scheme.
- 1.2 It also provides an overview of current progress on Watford Health Campus with particular reference to how the allotment land will facilitate, and speed up, the delivery of the scheme.

2.0 **Recommendations**

Cabinet to:

- 2.1 Following the grant of consent by the Secretary of State for Communities and Local Government under s8 of the Allotments Act 1925 for the land known as Farm Terrace allotments to be appropriated for planning purposes under s122 of the Local Government Act 1972 to enable the site to be used for the benefit of the Watford Health Campus scheme, to so appropriate the Farm Terrace allotments site as shown edged red on the attached plan (Appendix I).
- 2.2 Note and agree the recommendation to terminate the remaining 24 Farm Terrace allotments tenancies following appropriation, in line with s1(1)(d) of the Allotment Acts 1922, to enable the plans for the land to be brought forward to facilitate the delivery of Watford Health Campus.
- 2.3 Note the progress of Watford Health Campus and the importance of the allotment land to the delivery of the next phases of the project. This is particularly in relation to the West Hertfordshire Hospitals NHS Trust's emerging plans for the Watford Hospital site and the overall requirements

for appropriate infrastructure to support the new community that will be created through the Health Campus.

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Report approved by:

Manny Lewis, Managing Director

3.0 Detailed Proposal

In December 2012, Watford BC's Cabinet agreed to seek consent from the Secretary of State for Communities and Local Government under s8 of the Allotments Act 1925 to appropriate the Farm Terrace allotment land under s122 of the Local Government Act 1972 for planning purposes for the benefit of the Watford Health Campus scheme. The proposed incorporation of the land into the scheme would allow for a number of benefits to be realised including:

- providing additional space for West Hertfordshire Hospitals NHS Trust's plans for Watford Hospital,
- securing much-needed family homes and additional open community space
- improving the viability of the overall Watford Health Campus scheme which, due to the challenges and constraints of the site, faces high 'abnormal' costs arising from its topology, the levels of contamination and requirements for flood mitigation
- providing for a better designed Campus scheme to be developed of sufficient size to make a greater overall improvement for residents of West Watford
- speeding up the development of the site

Following Cabinet's approval, the Council undertook to apply for consent to appropriate in accordance with the provisions of s8 of the Allotments Act 1925 and associated government guidance.

This was granted by the Secretary of State on 26 May 2016. The decision letter is attached at Appendix II.

Following consent being received the Council can now formally appropriate the land for planning purposes under s122 of the Local Government Act 1972 and Cabinet is recommended to make that appropriation.

3.1 Timing of terminations and associated compensation

- 3.1.1 Under s 1 (1) (d) of the Allotments Act 1922, where land is let on a tenancy for use by the tenant as an allotment garden, the tenancy of the land shall not be terminable by the landlord by notice to quit or re-entry except by:

re-entry under a power in that behalf contained in or affecting the contract of the tenancy after three months' previous notice in writing to the tenant on account of the land being required by the local authority for a purpose for which it has been appropriated under any statutory provision.

- 3.1.2 All allotment tenancy agreements quote the above provision as a potential ground for termination of a tenancy.

3.1.3 Once the Council has appropriated the allotments for planning purposes under s122 of the Local Government Act 1972, the Council is able to terminate the tenancies in accordance with s1(1) (d) of the 1922 Act as quoted above.

Under section 2 of the Allotments Act 1922 and s 3 of the Allotments Act 1950 in the event that notice is served on a tenant pursuant to Section 1(1) (d) of that Act then the tenant is entitled to the following compensation:

1. cost of crops being grown on the site
2. cost of manure used on the site
3. one year's rent

3.1.4 In view of this, the Council is proposing to instruct Veolia, who manage allotments on the Council's behalf, to issue Notices to Quit to the remaining 24 tenants on the site. This would give current tenants three months on site and coincides with the end of the standard allotment growing season, which runs from 1 April to 1 October. For existing plot holders willing to relocate, there are two allotment sites within close proximity to Farm Terrace, Holywell and Brightwell, with existing capacity for 27 plots (as of June 2016) and the proposed extension of the Paddock Road allotment site will add to this (see 3.4 below).

3.1.5 Whilst the 1922 and 1950 Acts set a minimum level of compensation for these circumstances, in July 2014, Cabinet agreed a more substantial compensation package for Farm Terrace allotment tenants. This set out the total amount payable as: £1,000 for those giving up a tenancy altogether or £750 for those moving a tenancy to another site plus help with the move.

The Secretary of State's decision letter notes this compensation and comments:

the Secretary of State has also taken into account the Council's commitment to provide a compensation package and to provide assistance to plot holders to bring replacement plots up to standard and move larger items to the new site (para 67)

It is recommended that the same levels of compensation be offered for the remaining 24 allotment holders (the above amounts include the statutory requirements for compensation) depending on whether they wish to give up or move and the compensation payment would be made at the end of the notice period (subject to there being full compliance with the notice served) or earlier by agreement.

3.2 **Watford Health Campus: update on progress**

3.2.1 Since Cabinet agreed to seek the Secretary of State's consent to the appropriation of the Farm Terrace allotment land in December 2012, a significant amount of progress has been made on the delivery of the Health Campus. This includes:

- **Watford Health Campus road**
The construction of the new road is progressing well. It is scheduled to finish on time and be opened in autumn 2016. This new road is critical infrastructure for the Health Campus as it provides improved and faster access to Watford Hospital. It also facilitates access to other parts of the Health Campus site thus bringing forward new zones for development.
- **Industrial Zone South**
Planning approval has been secured for the zone known as Industrial Zone South and construction work will start on site this summer. Marketing for the new industrial units has been underway since early 2016 and completion is programmed for summer 2017.
- **Watford Health Campus Compulsory Purchase Order**
The Secretary of State confirmed the Watford Health Campus Compulsory Purchase Order (CPO) on 21 January 2016. The CPO includes 26.5 hectares of land encompassing the Health Campus Site but does not include the allotment land. In confirming the CPO, the Secretary of State's view was that:

the proposed purpose of the Order including the facilitating of the delivery of the Watford Health Campus, will significantly contribute to the achievement of the promotion of improvement of the economic, social and environmental wellbeing of the area. (DL10)

- **Riverside / Willow residential**
These areas will deliver the majority of the new homes on the site. Architects have been appointed to work on the design of these residential areas and work is also underway on feasibility with the aim to submit planning applications in the first half of 2017 and completion of Phase 1 by summer 2020.

3.3 Watford Health Campus: next phases and requirement for Farm Terrace land

- 3.3.1 At the heart of the Watford Health Campus is the Central zone. This area is critical to ensuring successful place making and will strengthen the connection between the public spaces within the scheme and the people who live, work and visit the new development. It will deliver retail units, leisure/community facilities, shared public spaces and some residential. Together this will create a vibrant 'hub' at the centre of the Health Campus, which will provide the facilities and activity needed to create a strong sense of place that is so important to building a successful new community. This area is shown on the attached masterplan (Appendix III) as zone 3.

3.3.2 Whilst work has progressed across a number of areas within the Health Campus as set out above, the Central zone remains challenging without the inclusion of the allotment land into the overall scheme. Being able to access the land from October this year would enable facilities, including current Hospital visitor parking, to decant to the site and allow for speedier delivery of the Central zone phase. It also enables plans for both residential units and a new school to start to come forward. These outcomes will also improve the viability of the Health Campus scheme.

3.3.3 Prior to any temporary or permanent use, a full ground investigation would need to be carried out as understanding the land condition is critical to determining its future use beyond the 40% allocated to the Trust. Additionally, the Health Campus partners would want to commission a topographical survey of the site and undertake works to prepare the levels of the zone for any development. These investigations and preparatory works will take a number of months and so the earlier access is available, the less risk of delay in the project is incurred. Accordingly, it is proposed that appropriate work will start on the allotment site during the notice period in consultation with allotment holders.

3.4 **Paddock Road allotments and other alternative allotment sites**

3.4.1 The Secretary of State's decision also means that the council can now progress the provision of additional allotments at Paddock Road. These new plots will be made available to any displaced allotment holders who wish to take tenancies on the new site. Works will be undertaken through to spring 2017, which means they will be available for the start of the 2017 growing season.

3.4.2 As well as the extension to the Paddock Road allotments, which will ensure the amount of allotment space available to Watford residents remains at the same level following the appropriation of the Farm Terrace site, any vacant plots at other sites will be made available to Farm Terrace tenants. This includes Brightwell and Holywell sites (currently 27 plots), which are situated in west Watford within walking distance of Farm Terrace and vacancies at the existing Paddock Road site (currently 34 plots).

3.5 **The test for appropriation**

3.5.1 Under s122 of the Local Government Act 1972 the Council may appropriate the allotment land for any purpose for which it is authorised by any Act to acquire land by agreement (such as for planning purposes) if it is no longer required for the purpose for which it is held immediately before the appropriation. In relation to s122 the courts have held:

- Whether land is still or is no longer required for a particular purpose, meaning no longer needed in the public interest of the locality for that purpose, is a question for the local authority.
- Section 122 is concerned with relative needs or uses for which public land has been or may be put. It does not require it to fall into disuse before the authority may appropriate it for some other purpose.

- An authority is entitled when exercising its appropriation power to seek to strike the balance between comparative local (public interest) needs: between the need for one use of the land and another with the wider community interests at heart. It is for it to keep under review the needs of the locality and is entitled to take a broad view of local needs.

3.5.2 The grant by the Secretary of State of consent to appropriate the allotment land does not oblige the Council to appropriate the land now or in the future, nor does it remove the need for the Council to consider the merits of appropriation afresh.

3.5.3 In deciding whether the land is no longer required in the public interest as allotment land, the Council is entitled to compare the two needs in issue: the need it currently fulfils for allotment land and the need to incorporate the land in the Watford Health Campus so as to achieve the benefits referred to in the Secretary of State's decision letter and summarised above. For the reasons set out in this report it is the view of officers that the need now to incorporate the land in the Watford Health Campus scheme clearly outweighs the need to retain the land as allotment land and justifies both the appropriation of the land for planning purposes and the termination of the remaining tenancies.

4.0 **IMPLICATIONS**

4.1 **Finance**

The cost of compensation and the development of new allotments at Paddock Road have already been considered by Cabinet and are factored into the capital & revenue budgets.

4.2 **Legal**

4.2.1 The legal implications are contained within the body of the report

4.3 **Equalities**

4.3.1 An Equality Impact Assessment was undertaken to support the council's decision to request the Secretary of State for Communities and Local Government to consent to the appropriation of the Farm Terrace allotments under the Local Government Act 1972. This assessment has been updated over the last four years as the Health Campus scheme has developed and in response to the changes in the tenants on the site. See Appendix IV.

4.3.2 The Secretary of State considered both the public sector equality duty and the Human Rights of current allotment holders under Article 1 of the First Protocol.

The Secretary of State was of the view:

that the Scheme's negative impacts on the elderly or disabled plot holders are being adequately mitigated by the accessible alternative provision close by and the other measures outlined above. (para 68)

In terms of Human Rights the Secretary of State's decision letter notes:

Having taken into account the rights of the current plot holders under Article 1 of the First Protocol and having balanced this against the wider public interest, the Secretary of State considers that the interference with the allotments holders rights is justified by the advantages to the wider public interest by proceeding with the Scheme as a whole (para 65)

- 4.3.3 Notwithstanding the conclusions of the Secretary of State, it is for the Council observe the public sector equality duty and to consider how the proposed appropriation and termination of tenancies might affect persons with protected characteristics (in particular, the elderly and disabled). It is also for the Council to consider whether the interference with the allotment holders Human Rights is justified. In the view of officers, the proposals outlined above are likely to mitigate to a great extent the adverse impacts of the appropriation of the allotment land and the termination of tenancies. The public benefits of incorporating the allotment land in the Health Campus Scheme also outweigh any interference with the allotment holders' rights under Article 1 of the First Protocol to the Convention.

4.4.1

Potential Risk	Likelihood	Impact	Overall I score	Mitigation
Failure to appropriate the land for inclusion in the Watford Health Campus scheme following approval of Secretary of State at a time that supports successful delivery	1	4	4	Robust report to Cabinet outlining the benefits to the scheme
Failure to provide suitable alternative plots for those allotment holders who wish to relocate	1	4	4	Sufficient plots are available at current sites within the borough. New allotment plots at Paddock Road will be available for the start of the growing season in April 2017
Failure to use the allotment land when it becomes vacant due to lack of sufficient forward planning	1	4	4	Watford Health Campus partners to develop initial plans for use of site in preparation for October 2016

Appendices

- I. Outline of Farm Terrace allotment site
- II. Secretary of State for the Department of Communities and Local Government's decision letter – 26 May 2016
- III. Watford Health Campus masterplan showing development zones
- IV. Watford Health Campus. Farm Terrace Equality Impact Analysis - updated