



<b>REPORT OF:</b>	HEAD OF PROPERTY
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	10th November 2016
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR NATALIE BRAMHALL

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	Tattenhams

<b>SUBJECT:</b>	<b>APPROPRIATION OF BUILDING AT TATTENHAM WAY RECREATION GROUND TO ENABLE REDEVELOPMENT AS A CAFÉ AND WC.</b>
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**RECOMMENDATION:**

The Executive resolves with immediate effect to appropriate a building at the Tattenham Way recreation ground that is held by the Borough Council for Planning Purposes (environmental improvement by retaining of open space) to other Planning Purposes in accordance with appropriation of land under section 122 of the Local Government Act 1972. The building is shown for identification purposes only edged red on the plan attached at **Annex 1** to this report.

**REASONS FOR RECOMMENDATIONS:**

The premises comprise an underused toilet block at Tattenham Way recreation ground that is proposed to be converted to a café with WC. This will provide an enhanced facility for the users of the recreation ground and an additional rental income stream for the Council.

However, the land is currently held by the Council under the Town & Country Planning Act 1990 as open space land and must be appropriated before it can be let to a third party.

The Executive has authority to make the above resolution.

**EXECUTIVE SUMMARY:**

**The intention is to appropriate the underused toilet block of 55m<sup>2</sup> which is located on the western side of Tattenham Way recreation ground.**

**Following an expression of interest from a small catering business in converting the block into part café, part WC, the opportunity was put out to tender and the successful applicant has now obtained planning consent for the conversion.**

**This would support the Council's policies within the Corporate Plan in relation to**

**the reuse of underused facilities, bringing forward existing assets for redevelopment, producing a new income source, encouraging more use of recreation grounds and the growth of existing businesses to assist the economy.**

## **STATUTORY POWERS**

1. The appropriation of land forming part of an open space is dealt with under section 122 of the Local Government Act 1972.
2. Appropriation of land is an Executive function under Section 9D of the Local Government Act 2000.

## **BACKGROUND**

3. The toilet block at Tattenham Way recreation ground has been locked and not been accessible to the general public for some time, with only the allotment holders nearby having a key.
4. Following an application from a local catering business, an opportunity was advertised inviting tenders for the conversion of the building into a café with WC. The successful applicant has subsequently obtained planning consent for a change of use of the park building to this use.
5. The block is currently dilapidated and underused and the applicant will convert the existing building at their own expense. The WC will remain available for the use of the general public and allotment holders.
6. The land is currently held by the Council as Open Space land, which is inconsistent with its proposed use. In accordance with Section 122 of the Local Government Act 1972 the Council has advertised that they intend to appropriate the open space for two consecutive weeks in the Surrey Mirror and received no objections to the proposed appropriation.
7. The improvements to the building and the enhancement of facilities at Tattenham Way recreation ground are considered to be of significant value to the local residents. Furthermore, the current building does not contribute to the amenity of the recreation ground.
8. Therefore, it is considered that the requirements to justify appropriation have been met and it is recommended that the Executive confirms that the land in question is no longer required for the purposes for which it is being held at present and resolves to appropriate the land.

## **LEGAL IMPLICATIONS & POWERS OF APPROPRIATION**

9. The planning purpose for which the land is currently held by the Council is as an open space for the promotion or improvement of economic, social or environmental well-being of the residents.
10. The Council has the power to acquire and hold property for various statutory purposes to perform its functions. In order to use land for a purpose other than the one for which it was acquired the land must be "appropriated" for a different use. Appropriation is a statutory process which allows the Council to reallocate property within its ownership from one use to another.

11. It is entirely within the Council's discretion to decide that a certain parcel of land or a certain property that has been acquired or held for one purpose should now be used or appropriated for another purpose. The Council is the sole judge of whether or not the land is still required for the purpose for which it is held and its decision cannot be challenged in the absence of bad faith.
12. Section 122 LGA 1972 provides that the Council may appropriate for any purpose for which the Council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.
13. The key procedural points are that:
  - The land must already belong to the Council and
  - The land must be no longer required for the purpose for which it is currently appropriated.
14. The authority is the sole judge of whether or not the land is still required for the purpose for which it is held immediately before the appropriation and its decision cannot be challenged in the absence of bad faith.
15. However, to enable appropriation of an open space land, Section 122 of the Act prescribes that a notice must be given of the intention to do so. Such notice must be advertised for two consecutive weeks in a local newspaper. Any objections must then be considered.
16. The improvements to open space in terms of the provision of a café as well as WC facilities to both the allotment holders and the general public are considered to be of greater value to the local residents than the retention of the existing WC.

### **Consultation**

17. Case Law confirmed that the decision as to whether land is no longer required for a particular purpose is one for the local authority to make and cannot be challenged as long as it is made in good faith. However, the local authority is required to consider objections to its view on whether land is required for its present planning purpose as well as objections to its view that it should be appropriated for a new planning purpose.
18. A Notice was published in the Surrey Mirror on 4th August 2016 and 11th August 2016 identifying the area proposed to be appropriated under Section 232 of the Act with a deadline for any objection to be submitted by 19th August 2016.

### **Objections**

19. There were no objections.

## **OPTIONS**

20. There are two options:

- (a) Do not appropriate the land for a new planning purpose. If the Council considers that the land is still required for the planning purpose for which it is being held at present (an open space occupied by a WC) then it should not appropriate it for new planning purposes. This option is not recommended.
- (b) Decide that the land in question is no longer required for the planning purposes for which it is being held at present (as an open space occupied by a WC) and confirm the appropriation of the land for new planning purposes. It is considered that this will facilitate redevelopment of the site and further other Corporate Plan objectives. This is the recommended option.

## **FINANCIAL IMPLICATIONS**

- 21. There are no financial implications directly arising as a result of these proposals, as all the conversion works will be carried out by the applicant.
- 22. However, disposal of the site will result in rental income.

## **EQUALITIES IMPLICATIONS**

- 23. There are no equalities implications arising as a result of these proposals.

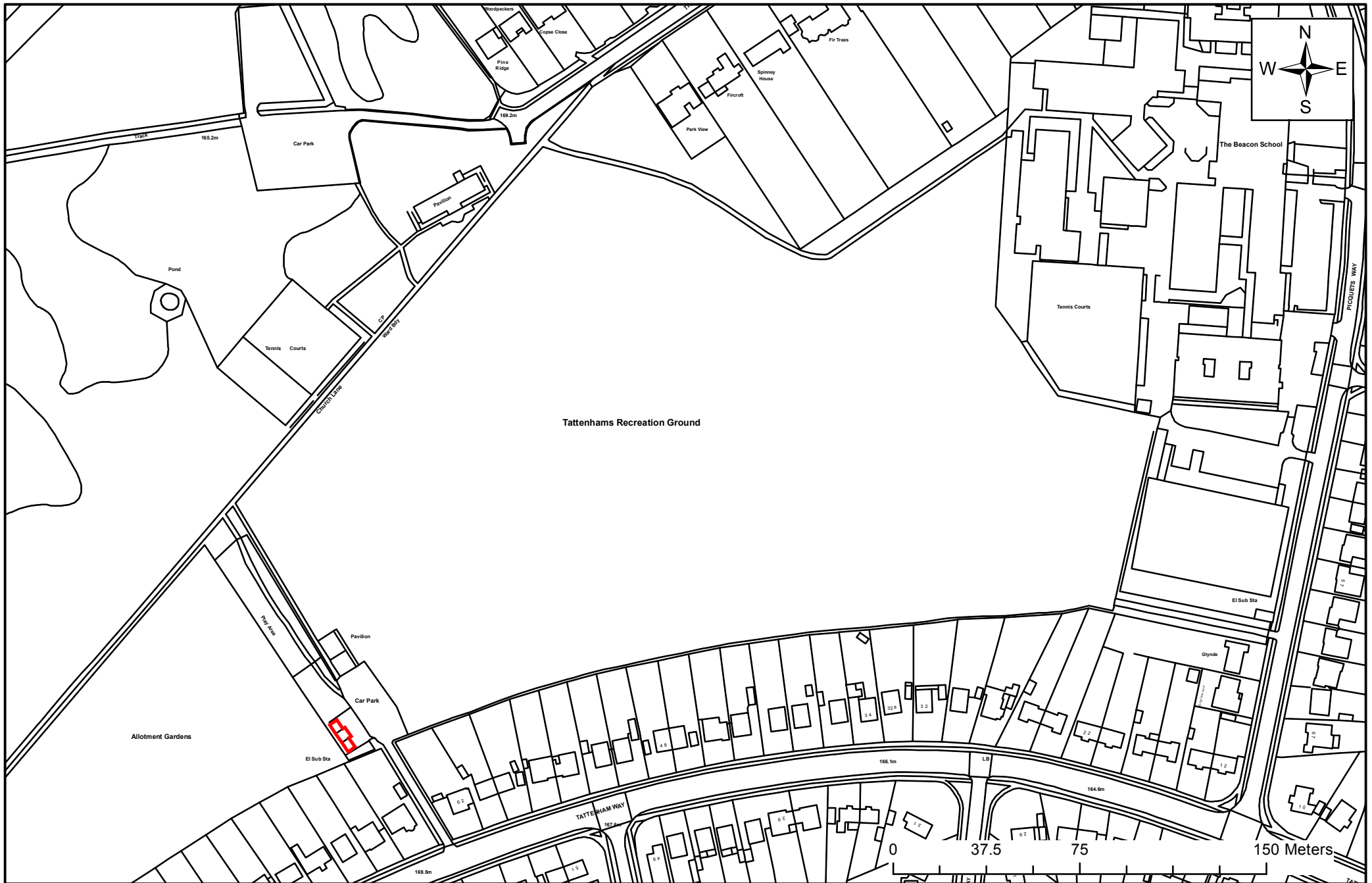
## **OTHER IMPLICATIONS**

- 24. None

## **CONSULTATION**

- 25. The Executive Members for Regeneration and Property and officers in Legal have received verbal or written briefings about this matter.

**Background Papers:** Plan of Tattenham Way recreation ground showing toilet block edged red.



Toilet Block at Tattenhams Recreation Ground, Tattenham Way, Burgh Heath

Scale: 1:2,000

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