

## **POLICY & FINANCE COMMITTEE**

**2 APRIL 2020**

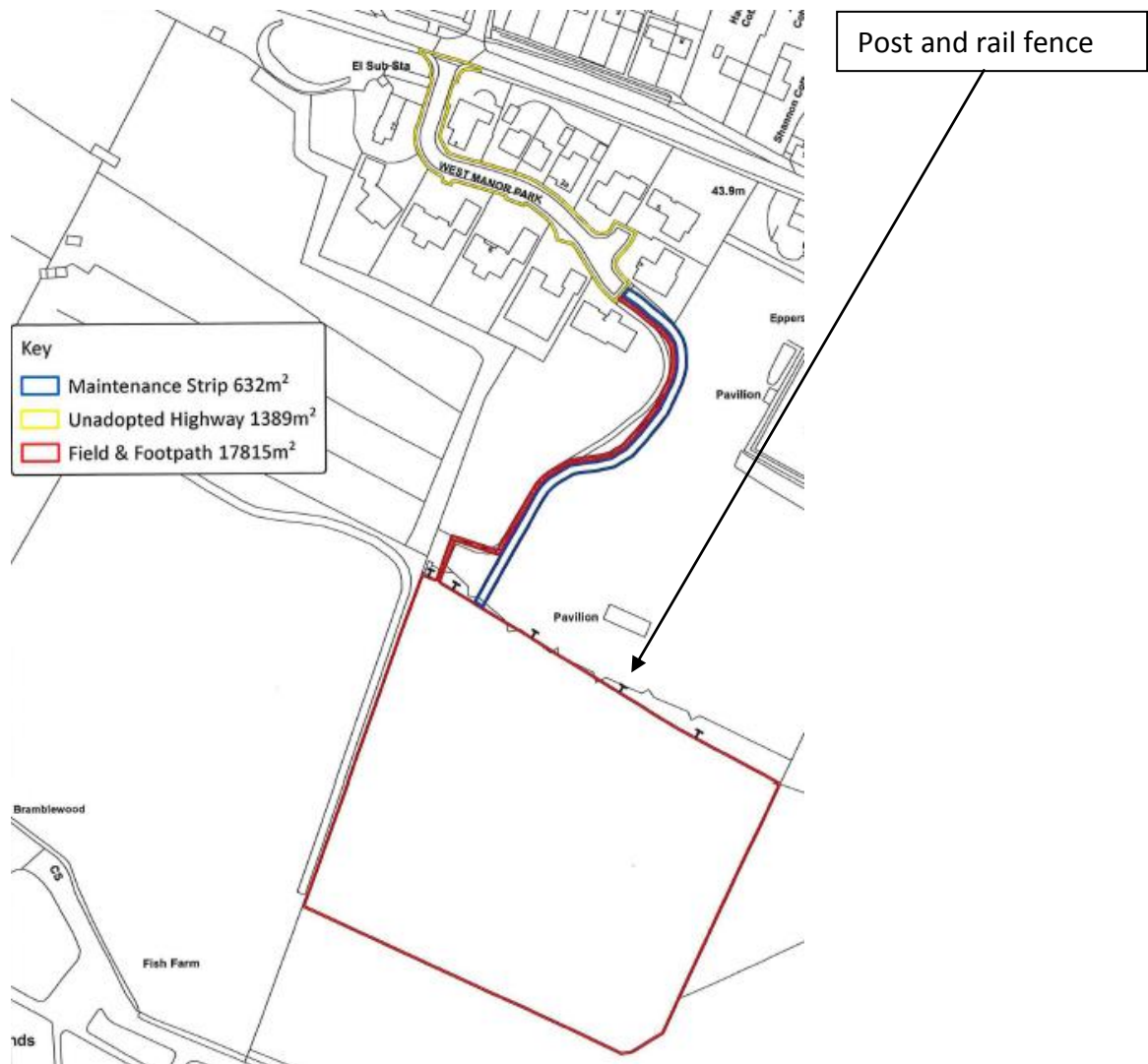
### **FOOTPATH AND ACCESS REALIGNMENT AND LEVELLING AT EPPERSTONE MANOR**

#### **1.0 Purpose of Report**

- 1.1 To update Members on progress in securing the transfer of 'Recreational' land and a footpath from a developer to the Council (and in turn to Epperstone Parish Council) following a previous breach of a legal planning obligation under S106 of the Town and Country Planning Act 1990.
- 1.2 To seek approval of additional funds to relocate fencing erected by the developer erroneously on land outside of their control.

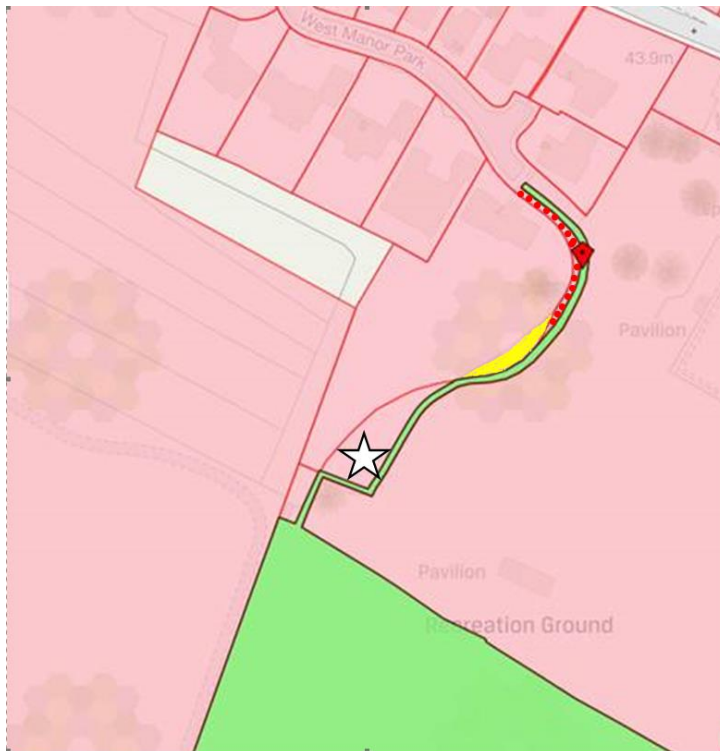
#### **2.0 Background Information**

- 2.1 In December 2008, planning permission (application no 08/01841/FULM) was approved for the construction of twelve new dwellings with access road on land South West of Epperstone Manor. This development is complete and known as West Manor Park. The site was subject of a S106 Agreement dated 23 December 2008 and included the following obligations:
  - an obligation to transfer an area of Recreational Land of 1.913 hectares to the Council (including a post and rail fence along the north boundary of the field);
  - an obligation to the construct a footpath in a location and to a specification agreed by the Council (including a maintenance strip), and to transfer the footpath to the Council.
  - an obligation to maintain a right of access adjacent to the footpath
- 2.2 The transfer (as amended through a Deed of Partial Release under Sections 106 and 106A of the Town and Country Planning Act 1990) of the Recreational Land and footpath to the District Council was completed and registered on 3 August 2018. The only matter which appeared to be outstanding at this time related to the provision of the post and rail fence along the northern boundary of the Recreational Land. The area of Recreational Land including location of the post and rail fence and footpath route (including maintenance strip) are illustrated in Figure 1 below.



*Figure 1: Extract of plan in transfer Deed which shows existing route of path on the OS Base, the proposed route in red and the maintenance strip in blue.*

- 2.3 It was soon realised that the metal estate fencing erected to demarcate the footpath (shown red above) was 1) on land which did not match the land registry ownership boundary for the developer and 2) did not match exactly the approved line of the footpath. The correct route was pegged out in May 2019 by the Council. The ownership position is demonstrated below:



*Figure 2: Extract from Land Registry Plan showing current Council ownership in green, land in neighbours ownership in yellow and EDL land subject of land swap in red hatched area.*

- 2.4 The red hatched area above has very recently been registered as within the ownership of the developer (EDL). The developer will be advised that it is in their interests for this land to be transferred to the Council under the terms of the S106 and land transfer agreements previously signed. This will be requested on the basis that there are no physical works for the developer to do. The footpath and fencing is already installed and this is simply a matter of a land transfer.
- 2.5 There remains an issue with respect to the yellow land in that this is technically within the registered ownership of a neighbouring dwelling. The owner has made clear that they wish the fence and footpath to be relocated.
- 2.6 The Council has sought to pursue the developer to relocate the footpath in order to match 1) the approved position and 2) the ownership. This has included an offer by the Council to instruct contractors to do the works, with the developer then covering the costs. Despite attempts there remains no progress.
- 2.7 The Council have been informed of an unresolved legal ownership dispute between the neighbouring owner and EDL in relation to a triangular section of land marked by a star in Figure 3. Despite this, legal advice on this matter states that the Council is entitled to erect a fence on the land within its ownership, and could do that at any time.

### **3.0 Proposals**

- 3.1 It has always been the intention for the District Council to transfer the 'recreational land' and footpath to the Parish Council as soon as this matter is resolved. The Parish Council reasonably wishes to have the land transferred to them when the legal titles are correct and formalised, for both the footpath and maintenance access strip. This includes their provision on site in their correct alignment.

- 3.2 The maintenance strip follows the same route as the footpath, albeit this involves access rights only over the developers land. The site of this strip was not transferred to the Council but the Council does have a legally binding right of way granted by the 2018 Transfer. The topography of the land slopes in a north to south direction and the land adjacent to the existing route of the footpath is currently uneven and unsafe for vehicles. As such, this land also needs levelling so that it is fit for purpose in advance of the Parish Council accepting the transfer.
- 3.3 Quotes for the cost of the works have been sought from three separate contractors. One out of the three responded and has provided the 3 alternative quotes as set out in Figure 3 below:

Quote 1	Quote 2	Quote 3
Land relelling	Land relelling	Land relelling
200 metres of metal estate fencing in black	200 metres of wooden post and rail fencing	Remove all existing metal estate fencing. 320m post and rail fencing part on existing and part on new alignment.
<b>£12,212 + VAT</b>	<b>£5,681.25 +VAT</b>	<b>£9,050 + VAT</b>

*Figure 3: Quotes received from contractor*

- 3.4 The cost of approximately 200 metres of metal estate fencing in black (measured by the contractor on site) on an alignment which takes the footpath outside of the adjoining neighbour's ownership and to level out the maintenance access track route would be £12,212 + VAT. The contractor has confirmed that the supplier for the fencing would be the fencing company that originally erected the metal estate fencing on site. They have also been contacted directly albeit they stated that they are unable to quote for works which involve any land relelling.
- 3.5 It should be noted that the transfer states that the fencing should be in accordance with the specification prescribed in the transfer i.e. timber post and rail rather than the metal estate fencing. It should be noted that Quote 2 is not desirable due to the visual jarring that would be created by a part metal estate and part post and rail fence. Quote 3 to replace the existing metal fencing in its entirety with post and rail fencing whilst a greater operation in terms of the scale of the works required, would be marginally cheaper. However, the Parish Council have confirmed that they would like the fencing to remain as metal estate fencing as opposed to wooden post and rail fencing. It is agreed that this form of fencing is appropriate to the site's historic setting. It is therefore recommended that appropriate budget be made available for Quote 1 works.
- 3.6 The quote assumes that all existing fencing in the neighbouring resident's ownership (indicated by Figure 2 above) would be left in situ albeit some of this fencing could be feasibly relocated (by agreement with the affected neighbour). This could reduce the overall cost of the works. It is also envisaged that existing fencing located on EPL land on entry into the site from West Manor Park (shown by the red marker in Figure 3) would also be left in situ as this land is likely to be subject of a land swap detailed at 2.4 above.

3.7 The land levelling works also poses an issue in relation to whether excess earth would be removed from site (which could generate additional costs). Earth can be spread onto the path and maintenance strip provided the contractor doesn't cause an obstruction. The contractor will need to be advised on this issue accordingly.

3.8 Should Members agree to the proposal that the Council undertakes the works to relocate the fence line it is intended that we will pursue recovery of costs from the developer. The developer will be able to reasonably argue costs for a 'post and rail fence' as opposed to 'metal estate railings' or indeed may decide to dissolve the company on the basis that the development is complete. This should not deter legal attempts for full cost recovery.

#### **4.0 Equalities Implications**

4.1 There are no direct equalities implications arising from this report.

#### **5.0 Financial Implications (FIN19-20/4947)**

5.1 The budget will be required in the Financial Year of 2020-21. The Financial Year of 2019-20 realised 'Planning Application Income' significantly exceed its estimated budget in excess of £350k, therefore; we can move this one off cost of £12,220 of this additional income to the Management Carry Forwards at year end and we can draw this down in the new financial year of 2020-21 when required. This has been added to the Management Carry Forward Requests in anticipation of approval.

#### **6.0 Community Plan – Alignment to Objectives**

6.1 The completion of the works would contribute to the achievement of Objective 9 'Improve the health and wellbeing of local residents, with a particular focus on developing the best use of community recreation and leisure facilities in order to narrow the gap in healthy life expectancy and other health outcomes'.

#### **7.0 Comments of Director**

7.1 Securing the Recreational Land and footpath for transfer to the Parish Council, alongside, securing a right of maintenance access which sits adjacent to the footpath has been a long held aspiration. The landswap described at paragraph 2.4 above and relocation of the fence from the yellow land at figure 2 above represents the last barrier to being able to have the Recreational Land and footpath transfer to the Parish Council. I therefore welcome the proposals, notwithstanding my regret that this will require additional financing from this Council to achieve. I welcome the very clear intention to recover all costs from the developer.

#### **8.0 RECOMMENDATIONS that:**

(a) the Business Manager - Legal Services ask Epperstone Developments Limited's solicitor to enter into a land swap in respect of the land detailed at paragraph 2.4 of the report [shown with red marker/ red hatched area in Figure 2] and that completion is concluded as soon as is practicable;

(b) delegated authority be given to Director – Planning & Growth to commission contractors to install a fence along an appropriate route, having regard to ownership issues above

(paragraphs 2.4 to 2.7 of the report) and confirmation from the Business Manager - Legal Services that such issues have been legally resolved to mitigate risk to the Council;

(c) a budget of up to £12,212 + VAT be set up in 2020/21 to cover the cost of the works to implement (b) above; and

(d) authorisation be granted to the Business Manager - Legal Services to recover all such reasonable costs from the developer.

#### **Reason for Recommendations**

To enable the future transfer of the land and footpath to Epperstone Parish Council and to ensure that the community can continue to use the footpath and recreational land.

#### **Background Papers**

Nil.

For further information please contact Helen Marriott on Ext 5793.

**Matt Lamb**

**Director – Planning & Growth**