

CABINET
12 JANUARY 2021

DEED OF DEDICATION – SPRINGFIELD PARK, DARLINGTON

**Responsible Cabinet Member –
Councillor Alan Marshall, Economy and Regeneration Portfolio**

**Responsible Director –
Ian Williams, Director of Economic Growth and Neighbourhood Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of the report is to consider a motion from Council regarding the development of a Deed of Dedication for the whole of Springfield Park.

Summary

2. At the Council meeting on 26 November 2020 it was agreed that Cabinet would consider a report on the possibility of creating a Deed of Dedication on Springfield Park, Darlington. Springfield Park is Council owned land and has been designated in the emerging Local Plan as a Local Greenspace which gives it added protection.
3. A Deed of Dedication is an added protection on the use of a piece of land and a legal agreement between Fields in Trust (FIT) and a space's landowner, in this case the Council, that they will retain it for use as a green space in perpetuity. The Deed is agreed with the landowner and sets out what they can and cannot do with a space, without needing to consult Fields in Trust.
4. There are different forms of protection for recreational land currently in use, including covenants, town and village green registration and the formal planning process. Even if a space already has one of these attached, it is recognised however, a Deed of Dedication does strengthen the protection. Springfield Park is already afforded protection as the Council is the landowner, and furthermore Cabinet passed a cabinet resolution not to allow an access road through Springfield Park to the proposed Skerningham development. It is believed that there are no other Deeds of Dedication elsewhere in Darlington and if accepted this could encourage other requests to emerge on other land interests.
5. Cabinet will be aware that a very small part of the corner of Springfield Park adjacent to the existing Thompson Street mini roundabout has been identified for highway improvement. S.106 Agreements have been completed which, at the relevant time, will result in contributions being made to enable the highway mitigation works for the A1150 which, when implemented, it is believed will have a positive impact upon traffic flow across the borough. A Deed on the whole of the site would have serious implications for that proposed highway improvement.

Options Available

6. There are two options for Members to consider:

- (a) Cabinet declines to support the application for a Deed of Dedication for Springfield Park.

OR

- (b) Officers are asked to progress work on the submission of an application for a Deed of Dedication for Springfield Park, with the Thompson Street improvement land excluded from the deed as legal obligations that have already been entered into and there is the need for important and required Highway improvements to the A1150. A further report to be brought to Cabinet for decision to be made about whether to proceed with an application.

7. Officer advice is that option 6(a) is preferred over option 6(b).

Recommendations

8. It is recommended that Cabinet declines to support the application for a Deed of Dedication for Springfield Park (for the reasons set out in paragraph 9).

Reason

9. The recommendation is supported by the following reasons:

- (a) The land has the protection of being land in public ownership and has been referenced in the local plan as public green space.
- (b) A Deed of Dedication would fetter all future considerations of the use of this land in perpetuity, including otherwise reasonable changes and development.
- (c) A deed on the whole of the site would have serious implications for legal agreements that have been entered into concerning the Thompson Street roundabout and already proposed highway improvement to the A1150.
- (d) Making such an application would potentially set a precedent that could have wider implications in other areas.
- (e) Given a previous Cabinet resolution not to allow an access road through Springfield Park to the proposed Skerningham development the use and future amenity of this land does not require additional protection through the establishment of a Deed of Dedication.

Ian Williams
Director of Economic Growth and Neighbourhood Services

Background Papers

National Playing Fields Association – Fields in Trust – Deed of Dedication

S17 Crime and Disorder	No direct impacts
Health and Well Being	No direct impacts
Carbon Impact and Climate Change	No direct impacts
Diversity	No direct impacts
Wards Affected	All
Groups Affected	All
Budget and Policy Framework	This decision does not represent a change to the budget and policy framework. Any works highlighted in the report will be met through agreed capital budgets.
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	The decision is related to the built environment and improvements to place.
Efficiency	The report has no direct impacts.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Information and Analysis

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10. The Council recognises that the parks and green spaces within the borough are highly valued by local residents and this is why the Council has always sought to provide high quality open space. The Council has previously through the Planning Process allocated areas of open space to seek to maximise the use and where possible secure external funding.
11. In the mid-2000s Fields in Trust looked at strengthening such allocations nationally and developed a unique instrument called a "Deed of Dedication". A Deed of Dedication is an added protection of use of a piece of land and a legal agreement between Fields in Trust (FIT) and a space's landowner, in this case the Council, that they will retain it for use as a green space in perpetuity. The Deed is agreed with the landowner and sets out what they can and can't do with a space, without needing to consult Fields in Trust.
12. If a Deed of Dedication is considered Fields in Trust will work with the Council to draw up an agreement that provides sufficient protection, but which takes account of local circumstances. It is for this reason that each Deed will often be unique to the specific space. The Deed does have a certain level of flexibility built into it which will allow for certain changes to the use of part of the identified land.
13. Members need to be aware of the longer-term implications of the scheme before making any decision to dedicate Springfield Park as a FIT space. The template deed of dedication issued by the National Playing Fields Association is attached as **Appendix 1** to this report, however in summary the main restrictions that such a dedication would place on the land are as follows:-

- (a) Not to use the land or permit the land to be used for any purpose other than as a public playing field and recreation ground.
 - (b) Not to dispose of the land without the consent of FIT (this includes applying to place a formal restriction on the Council's title at the Land Registry to prevent disposal without their consent). This consent will not be unreasonably withheld by FIT provided that the Council replaces or agrees to replace the Property with a piece of freehold land approved by FIT which is of equivalent or better quality than the Property, with equivalent or better facilities than the Property, of the same or greater dimensions than the Property, in the same catchment area as the Property, and as accessible to the public as the Property (the Replacement Site) and applies such of the proceeds of any sale of the Property as are necessary to do so. A new deed of dedication would be required for the Replacement Site.
 - (c) Not to erect, allow, permit or suffer any buildings, structures or alterations on the Property, the use of which is outside the permitted uses without the consent of FIT.
 - (d) Not to grant, allow, suffer or permit the erection of any buildings, structures or alterations on the Property that would result in the total structural and building footprint of such buildings or structures to exceed twenty per cent of the total square footage of the Property.
 - (e) To maintain the Property and to have regard to any advice given by FIT on the management and running of the Property.
 - (f) To place notices on the Property provided by FIT relating to its FIT protection, giving recognition of any future possible financial support.
 - (g) Once completed the restriction within the Deed is registered with the Land Registry, meaning any check that is made on the land will highlight the protection that is on it and prevent disposal, generally meaning sale or lease, without the consent of Fields in Trust. A Deed can either be charitable or non-charitable. If it is the former then both Fields in Trust and charity law will ensure the protection, whilst if it is the latter then Fields in Trust will ensure the protection.
14. The above implications need to be carefully considered and may be pertinent to parts of Springfield Park given the planned highway improvements (designed but not yet implemented) to the Thompson Street roundabout.
15. Highway improvement schemes are identified and delivered across the Borough to provide benefit for all residents and highway users. Some of these schemes require additional land to deliver the improvement scheme. The roundabout at Thompson Street is currently configured as a mini-roundabout and a larger roundabout scheme has been identified to improve traffic flow generally and to mitigate traffic growth from previously approved developments. To enlarge the roundabout will necessitate widening of the highway into the park southern extremes of the park area.

16. The Council has considered and approved two planning applications for developments to the rear of The White Horse and contributions have been agreed towards the improvement scheme at Thompson Street Roundabout. The improvement scheme is deemed necessary to mitigate the additional traffic generated by the two developments on the existing mini roundabout. Planning permission was only granted on condition that these works be carried out and S.106 Agreements have been completed in these terms.
17. Therefore, a deed of dedication across the whole of Springfield Park would seriously impact on the ability to deliver a scheme that benefits all road users and has been identified necessary to enable two approved planning applications.

Financial Considerations

18. Any costs associated with enacting a Deed of Dedication will be funded from existing resources within Economic Growth.

Legal Implications

19. It is considered that this potentially leaves the Council open to challenge in two ways:
 - (a) The plain public law position i.e. that any member of the public could insist that the Council complies with Agreements that it has entered, unless there is good reason not to;
 - (b) The planning position, that persons affected by the development proposals previously approved (unless we can identify other highway mitigations) could challenge the original planning permissions on grounds that the Council hasn't insisted on the Thompson street improvement. To that extent, re-use of highways monies would have to be in support of proposals that alleviate the harm that the initial highways proposals were meant to address and would require the agreement of the developers.