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| Report to: | Cabinet | 24 May 2021 |
| Lead Cabinet Member: | Cllr Bill Handley, Lead Cabinet Member for Community Resilience, Health and Wellbeing | |
| Lead Officer: | Jeff Membery, Head of Transformation | |

Deed of Variation to Licence Agreement, Phase 1 Northstowe (for Outdoor Gym equipment located in Pioneer Park)

Executive Summary

1. Cabinet is asked to approve a Deed of Variation, further to the Licence Agreement dated 26 November 2020 which permits the Council to occupy land within Pioneer Park. This updates the Licence Plan annexed to the Agreement.
2. The revision is needed because the site topography precluded installation of the equipment at the exact location originally defined. This was identified during installation of the equipment and the Council therefore agreed a new location with the landowner at that time and this licence amendment confirms that agreement.

Key Decision

3. No

Recommendations

4. It is recommended that Cabinet agree to accept the Deed of Variation proposed by L&Q, which regularises the licenced area described in the agreement with the actual location of the outdoor gym equipment.

Reasons for Recommendations

5. The outdoor gym equipment has been well received by a majority of Northstowe residents, who are anxious to begin using the equipment which is currently closed to public use.
6. The Council installed the equipment using its permitted development rights at a location agreed by L&Q, in the most suitable position given the topography of the site.

7. The reasons for the original placement (close by other equipment, thereby offering choice to users; subject to passive surveillance; accessible to the network of open spaces; adjacent to community facilities (at Northstowe Community Wing) and within an acceptable distance of neighbouring properties) are all still met in the actual location of the equipment.

Details

8. Pioneer Park was brought forward as part of the open space requirement for Phase 1 Northstowe and is the location for the informal MUGA, Neighbourhood Equipped Area for Play (NEAP: designed for older children) and the Local Equipped Area for Play (LEAP: designed for younger children).
9. As a result of extensive work undertaken through the Healthy New Town programme, Homes England submitted a Healthy Living Youth and Play Strategy to support the delivery of open space and play provision in Phase 2. This is considered very forward thinking and crucially embraces provision for all ages and abilities with a view to encouraging residents to become and remain active throughout their life.
10. The play provision in Phase 1, although progressive, does not include elements which will be present across Phase 2 of the development; this could result in a clear distinction between the two phases, with one benefitting from distinctly superior provision to the other.
11. In an attempt to redress this balance, the Sustainable Communities team worked with L&Q and the Sport England sponsored Active New Communities project to bring forward an outdoor gym and table tennis tables to augment the provision in Pioneer Park.
12. The District Council can exercise its permitted development rights under *Part 12 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)*. The Council has the power to provide, inside or outside its area, such recreational facilities as it thinks fit... to include powers to supply buildings, equipment, supplies and assistance of any kind, acting under powers afforded by *section 19 of the Local Government (Miscellaneous Provisions) Act 1976*.
13. The site location for the Licence was agreed with L&Q's technical director in January 2020. It was anticipated installation of the equipment would take place in April 2020, but due to the Coronavirus pandemic and period of lockdown this was delayed. The park was opened at the end of October 2020.
14. The licence to occupy was signed and sealed at the end of November 2020. This allows the Council to occupy the land for a period of ten years, install the specific items of equipment and obliges the Council to independently insure and maintain

them (i.e. this area and equipment is not included in the maintenance contract that L&Q holds with Greenbelt, the company it will use to manage and maintain the majority of the open space and amenities at Northstowe).

15. The equipment was installed at the beginning of January 2021 by contractors, “The Great Outdoor Gym Company”. A Council officer was present along with the Site Director for L&Q.
16. The site topography precluded installation of the equipment at the location originally defined in the licence plan – the most suitable location was agreed on site.
17. L&Q’s site director, provided further information on 15 March, following a site visit; measurements taken on site revealed the table tennis tables to be located 16.16m from the perimeter fence which also bounds the last property on Villa Road (although the distance from the closest table tennis table to the façade of the property was over 25 m). The location plan in the licence agreement placed the tables at a distance of 24 m from the park boundary.
18. The outdoor gym installation is set 6.5m from the path as opposed to the 3m offset indicated by the licence location plan. This offset was required to avoid installing on a slope. The Council later conducted a site survey to confirm this.
19. Although the installation of the equipment was generally well received by residents, householders in some neighbouring properties raised concerns.
20. The engagement activity undertaken (in partnership with Active New Communities) when plans to bring forward an outdoor gym and table tennis tables were being developed, could not have involved the residents that now live next to the park – the houses were not built or occupied at that time.
21. The original licence plan sited both outdoor gym and table tennis tables beyond a 30 metre radius of the neighbouring properties. However, the actual location means the table tennis tables were installed closer to homes.
22. The location of the outdoor gym corresponds with the recommendations made in the Sport England’s Active Design publication (October 2015), being close by other equipment, thereby extending choice to users of all ages; accessible to the network of open spaces via high quality walking and cycling routes and adjacent to community facilities at Northstowe Community Wing.
23. In response to the concerns raised by residents, the Council took the decision to remove the table tennis tables whilst their location was reconsidered. Views from all residents were invited to inform the eventual re-siting of the tables, to be received by the end of May. Officers are continuing to engage with residents,

community groups, Longstanton Parish Council and Northstowe Town Council regarding this issue. The removal of the tables took place 22/23 April 2021.

24. The outdoor gym remains in situ, although the Council chose not to open it to public use until the Deed of Variation had been discussed at Cabinet, and if agreed by members, the agreement completed. The Outdoor Gym has been actively maintained under the direction of Council officers as per the terms of the existing licence agreement.
25. L&Q have given their express assurance to the Council that we have their consent to use and maintain the land on which the equipment is located. A revised plan has been prepared to reflect the actual location of the Outdoor Gym. L&Q have offered a Deed of Variation to formalise the actual location they agreed with the Council, see Appendix A – Deed of Variation and Appendix B, the Licence Plan (referred to as Appendix 1, The Plan, in the Deed of Variation).

Options

26. Cabinet could
 - (a) agree to accept the Deed of Variation proposed by L&Q, which regularises the licenced area described in the agreement with the actual location of the outdoor gym equipment.
 - (b) direct officers to identify and agree an alternative location for the outdoor gym; requiring further public engagement and Deed of Variation with L&Q and agree accordingly.
 - (c) refuse to enter into the Deed of Variation as proposed, giving reasons.

Implications

27. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered:

Financial

28. If Cabinet agrees this Deed of Variation, it neither adds to nor reduces the financial implications of the original agreement with respect to the Outdoor Gym.
29. However, there would be costs associated with separately negotiating an additional licence agreement with L&Q if the table tennis tables that have been

removed from the original licence agreement are relocated elsewhere on L&Q's land.

30. If Cabinet refuses to enter into the Deed of Variation Council would need to consider removal of the equipment and associated costs.

Legal

The Deed of Variation has been drafted with input from 3C Legal and approved by L&Q.

Staffing

31. There are no staffing implications.

Risks/Opportunities

32. The Council has an opportunity to exhibit its capacity to listen and respond to the concerns expressed by residents.

Health & Wellbeing

33. On formalising the licence agreement, the Council would open the outdoor gym, supporting the health and wellbeing of the Northstowe community and being of particular value as the community emerges from lockdown.

Consultation responses

34. The location of this equipment on Pioneer Park was chosen following engagement with the community. The reaction from the majority of residents has been welcoming of the outdoor gym equipment. No further consultation has been undertaken regarding the location of this equipment although residents' views are being sought, by the end of May, on the preferred location for re-location of the table tennis tables.

Alignment with Council Priority Areas

Housing that is truly affordable for everyone to live in

35. Conserving the outdoor gym within Phase 1 Northstowe by agreeing this Deed of Variation supports the provision of homes in high quality environments, providing access to amenities to support health and wellbeing irrespective of income or tenure.

Being green to our core

36. By agreeing the Deed of Variation and conserving the location of the outdoor gym in this central and well-connected site, residents will be enabled to access high quality provision within easy walking and cycling access of their homes.

A modern and caring Council

37. The Deed of Variation conserves the location of the outdoor gym at a location close to the that identified in the original licence agreement, whilst responding to the concerns expressed by residents with respect to the location of the table tennis tables, which have been removed pending further engagement with the community prior to re-siting.

Appendices

Appendix A: proposed Deed of Variation

Appendix B: Licence Plan

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