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Governance and Resources Committee

14 July 2022

Report of Director of Regulatory Services and Director of Corporate and Community Services

STARKHOLMES ALLOTMENTS

PURPOSE OF REPORT

This report updates the Committee on the work that has been undertaken in relation to Starkholmes Allotments, following the request from Starkholmes Allotment Association to proceed with compulsory purchase action. The report explains the roles and responsibilities of the District Council and of Matlock Town Council and sets out the ways in which those two organisations are working together on this issue. A number of recommendations are also made in relation to land adjacent to the Allotment site, which had been proposed to be transferred to Matlock Town Council, but which had been paused following consideration at an earlier meeting of this Committee.

RECOMMENDATION

1. That the work undertaken to support Matlock Town Council in relation to compulsory hire of the allotment site be noted;
2. That the work undertaken to defend the appeal against the Asset of Community Value listing be noted;
3. That Council be requested to approve a supplementary revenue budget of £15,000 in 2022/23 for the costs associated with defending that Asset of Community Value decision, to be financed from the General Reserve;
4. That work to undertake a community asset transfer of the site adjacent to the Starkholmes Allotments be recommenced.

WARDS AFFECTED

Matlock St Giles

STRATEGIC LINK

The provision of land for allotments links with the District Council's priority of Place: keeping the Derbyshire Dales clean, green and safe.

1 BACKGROUND

- 1.1 At its meeting on 30 September 2021, the Governance and Resources Committee considered a request from Starkholmes Allotment Association to compulsorily purchase the allotment site under the provisions of the Small Holdings and Allotments Act 1908, as the Allotment Association had been served with notice to quit.
- 1.2 Members were concerned about the potential loss of the allotment site but were mindful of the potential financial and legal risks. Consequently they deferred making a decision and asked for additional information to be brought to the following meeting of the Committee. In the meantime further research had revealed that the District Council did not have the legal power to undertake compulsory purchase action under the 1908 Act, as the provisions of paragraph 9 of Schedule 29 of the Local Government Act 1972 specified that where an area was covered by both a district council and a parish council (which includes a town council) that power could only be used by the parish council, which in this case would be Matlock Town Council.
- 1.3 Having regard to this development, Committee resolved at its meeting on 18 November 2021 that the request to compulsorily purchase the site be declined, as the District Council did not have the statutory power to do so; and that the proposed community asset transfer of land adjacent to the site to Matlock Town Council be paused until further public consultation on the end use of that land had been completed by Matlock Town Council.
- 1.4 Since then officers from the District Council have been in discussion with officers and Members of Matlock Town Council about the issue, such that it is now possible to report on progress and make recommendations as to further action.

2 REPORT

- 2.1 Following the November 2021 meeting of this Committee, Matlock Town Council have reconsidered this issue on a number of occasions. In particular their considerations have concentrated on the possibility of initiating compulsory hiring action, as is allowed under the 1908 Act. In considering this action Matlock Town Council have engaged in dialogue with the District Council's Director of Regulatory Services and Legal Services Manager. Whilst neither of these officers have direct experience of compulsory hire, and indeed it is difficult to find any case law on this specific provision, the process for a parish or town council initiating compulsory hire action is identical to that for compulsory purchase. This process requires that the parish or town council first approaches the District Council to take the action forward on their behalf, presumably recognising the relative levels of legal expertise available to each of those organisations.
- 2.2 Matlock Town Council has now confirmed that it intends to initiate compulsory hire action and has requested that the District Council acts on its behalf. The Town Council has committed financial resources towards this action. This matter is now being progressed by the District Council's Legal Services team.
- 2.3 Members may also be aware that the Starkholmes Allotment site is currently listed as an Asset of Community Value by the District Council. The effect of such a listing is to provide time for a community group to express an interest in purchasing the site if the owner indicates that they intend to dispose of it, although it does not actually require the land owner to sell the site to a community group. Listing also has the effect of

removing permitted development rights from the site and may be considered as a material issue in relation to any application for planning permission. The land owner has previously requested that the listing be reviewed. This review has been completed and the listing was upheld. The land owner has now appealed against this decision and the matter is due to be heard by the Tribunal later this year, with the dates yet to be confirmed. The District Council is defending the appeal and officers have provided statements in support of that defence. Whilst a successful defence would not on its own prevent the eviction of the Allotment Association, it would have value in relation to the potential future use of the site.

- 2.4 In relation to the land behind Starkholmes Village Hall adjacent to the Allotments site, Matlock Town Council carried out additional public consultation to identify whether use of this land as a potential alternative allotment area would be welcomed by residents. This consultation did not identify that allotment use was an option favoured by the public and it is understood that Starkholmes Allotment Association are also not in favour of developing the site in this way. As there is no public support for this proposal it is recommended that the proposed community asset transfer of the site to Matlock Town Council now be recommenced by the District Council's Legal Services Team.

3 RISK ASSESSMENT

3.1 Legal

This report updates the Committee on the work that has been undertaken in relation to Starkholmes Allotments. In specific relation to the 4 recommendations requested by this report, 2 are nor noting, 1 is to requested authority for funds and 1 is requesting authority to reinstate an ACT.

The legal risk has been assessed as high as the defense of the ACV and the compulsory hire both require a legal process to be followed, the outcome, as this is performed in a litigious manner, always has an element of uncertainty.

3.2 Financial

All costs associated with the compulsory hire should be met by Matlock Town Council.

The costs associated with defending that Asset of Community Value decision have been estimated to be circa £15,000. There is no budgetary provision for this so it will be necessary to seek Council's approval for a supplementary revenue budget. As this is a one-off revenue cost, the use of the General Reserve as a source of financing is consistent with the criteria set out in the Council's Medium Term Financial Strategy.

The approval of the report recommendations is assessed as a low financial risk.

4 OTHER CONSIDERATIONS

- 4.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.
- 4.2 The approved Climate Change Impact Assessment Tool has been completed for this report and has identified that support for the allotment site is beneficial in terms of reducing food miles and supporting biodiversity.

5 CONTACT INFORMATION

- 5.1 Tim Braund, Director of Regulatory Services, Tel: 01629 761118, Email: tim.braund@derbyshiredales.gov.uk

6 BACKGROUND PAPERS

- 6.1 Matlock Town Council Community Consultation Starkholmes Community Open Space

7 ATTACHMENTS

None