**APPENDIX A**

**THREE RIVERS DISTRICT COUNCIL**

**APPROPRIATION AND DISPOSAL REPORT**

1. resolutions
   1. To recommend that the Council resolves:
      1. to authorise the appropriation of the land at **Former Tennis Courts, land west of the Oxhey Pavilion** (the **Site**) within Oxhey Playing Fields for planning purposes (as shown on the plan at **Appendix A** which is owned freehold by the Council) having first considered any objections received to the same under the provisions of Section 122 of the Local Government Act 1972 to enable the Council to override third party rights and easements pursuant to Section 203 of the Housing and Planning Act 2016;
      2. to authorise the disposal of the Site as public open space pursuant to s.233 of the Town and Country Planning Act 1990 by virtue of a lease for 20 years to the 14th Watford Scout group having first considered any objections received to the same; and
      3. that the consideration of any objections be delegated to the Chief Executive in consultation with the Chair of Policy & Resources Committee (**P&RC**).
      4. That in doing so the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 contained in paragraph 4 of this report so far as they might be applicable in deciding whether or not to authorise the appropriation and resolves the following With regard to Article 1 of Protocol 1 it is considered that in balancing the rights of the individuals who are affected by the appropriation against the benefit to the community of proceeding with the appropriation, the appropriation resulting in the interference with the individuals rights is justified in the interests of providing the relocation of an essential community use for a scouting facility.
2. Background and purpose of report
   1. The 14th Watford Scout group currently use a site on Oxhey Drive. That building has reached the end of its occupational life. That site is currently the subject of a planning application to facilitate the relocation of an existing town centre car repair and sales business. That relocation is required to vacate a key area of Station Approach which is to be part of the comprehensive regeneration approved by planning permission 06/0005/FUL for the South Oxhey Initiative and is subject to an ongoing CPO process.
   2. The Site sits within a much larger area of public open space, being part of the wider Green Belt, and is owned freehold by the Council. The proposed Scout hut within the Site is to be built on part (15m by 35m) of a wider hard surfaced area that was created to provide tennis courts. Since its creation, however, use of the courts has ceased, whilst a skate park has been positioned in the centre of the court area. The Council's maintenance team has confirmed that the land is no longer used as the tarmac surface is failing, resulting in a growth of weeds that have to be strimmed back on a regular basis.
   3. The Council is proposing to grant a lease to the Scouts of the Site for 20 years on completion of the construction of the new building on standard commercial leasing terms with a peppercorn rent. The application for planning permission comprising "c*onstruction of new single storey purpose built Scout hut, with setting out of wider site for associated activity, along with landscaping*" is due for determination on 15th December 2016.
   4. The construction cost of the new building will be wholly met by the Scouts from the proceeds of the reverse premium payable by the Council in respect of the surrender by the Scouts of their rights over the site of their existing Scout Hut.
   5. The Site is subject to certain rights, one of which is a restrictive covenant in favour of what was the London Residuary Body (**LRB**) to restrict the use of the Site, and wider area known as Oxhey Playing Fields as open space (as defined in section 290 of the Town and Country Planning Act 1990). This is a contractual restriction. The Council is in discussion with the London Borough of Bromley as statutory successor to LRB to seek a deed of modification and consent to release the Site from the restriction. This was done in 1998 in connection with an adjoining area of land for a bowls club. Whilst those discussions continue with LB Bromley, and in order to protect the Council against any other known or unknown third party rights, it is proposed to appropriate the Site for planning purposes to facilitate the construction of the replacement Scout hut and works to the wider site including landscaping.
   6. In addition to the contractual restriction the fact that the land is held as open space on a statutory basis means that the Council cannot appropriate or dispose of the land without following a statutory process.
   7. The purpose of this report is to seek authority to firstly appropriate the land for planning purposes and also to authorise the disposal of the Site which is open space by way of the grant of a lease for 20 years.
3. **APPROPRIATION**
   1. The Council can appropriate land for any purpose for which it is authorised to acquire land by agreement. The appropriation process is set out in the Local Government Act 1972 (**1972 Act**). Section 122(1) of the 1972 Act provides:

*Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned.*

* 1. The Council is a principal Council and so must follow the process set out in Section 122 of the 1972 Act. The P&RC should only resolve and recommend that the Council appropriate land for another purpose if it is satisfied that the Site is no longer required for the purpose for which it is held. Whilst the Council currently holds the Site as open space, it is required for a replacement scout hut. It should therefore be appropriated for planning purposes prior to its disposal to the Scout Association.
  2. The Council will advertise its proposed appropriation of the Site for planning purposes in accordance with s.122 of the 1972 Act. That advertisement will be published in the press during December 2016 together with erection of the necessary site notice.
  3. Objections are to be in writing addressed to the Chief Executive of the Council.
  4. There are private rights of way and other easements over the Site. Where land is appropriated for planning purposes, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. This has been in force since July 2016 and has replaced what was section 237 of The Town & Country Planning Act 1990. The Council has this statutory power to override easements, rights of way and restrictive covenants affecting land. Section 203 authorises the overriding of any private rights (such as restrictive covenants and including rights of light) affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person deriving title from it. That being so, statutory undertakers are exempt from the provisions of Section 203 such that their rights cannot be overridden.
  5. The ability to interfere with these rights is important in the context of enabling the development to proceed. Whilst the power exists to override such rights it does not prevent such rights being compensated. Section 203 of the Housing and Planning Act 2016 provides that compensation will be payable to those parties whose interests have been affected by the appropriation. The Council only anticipates that any claim would arise from London Borough of Bromley but only in the event that agreement is not reached. The likely compensation is expected to be minimal.

1. **Disposal of open space land** 
   1. As already noted, the Site is held by the Council as public open space.
   2. Where land which is held as public open space but has been appropriated for planning purposes there is a similar restriction on its disposal. That disposal needs to be first advertised. It will be advertised and site notices erected in the same manner as the proposed appropriation.
   3. Objections will be considered by the Chief Executive of the Council in consultation with the Executive Committee of the Council.
2. Human Rights and equalities
   1. The Human Rights Act 1998 (**HRA**) came into force on 2 October 2000.
   2. Provisions of the HRA which are relevant in relation to the proposed appropriation are:
      1. The European Convention on Human Rights (the **Convention**) is an international treaty signed under the auspices of the Council of Europe. Whilst the United Kingdom was instrumental in drafting the Convention it was never incorporated into United Kingdom law.
      2. The HRA still does not incorporate the Convention into United Kingdom law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.
      3. The main article of the Convention which is of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.
      4. In appropriating land an authority must show that the appropriation is justified in the public interest.
   3. Article 1 of Protocol 1 provides that:
      1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
      2. No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.
      3. However, the above rules shall not prevent a State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest.
      4. The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is an important factor in considering the balance between the two.
      5. With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.
   4. In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:
      1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
      2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
      3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
   5. The Council carried out an equality impact analysis on 28th November 2016. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the Scheme would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.