



COUNCIL CABINET
21 June 2017

ITEM 11

Report of the Cabinet Member for Regeneration
and Economy

**Use of Section 106 Funding For Improvements To Leisure
Facilities in Littleover and Blagreaves**

SUMMARY

- 1.1 A sum of £333,000 was secured from developers for improvements to leisure facilities within a one-mile radius of the eastern side of Heatherton. This money is part of a Section 106 (S106) Agreement, signed in 2003, and paid to the Council in 2009. It should be spent by April 2019 or returned to the developer. Around £15,000 of the total sum was spent on improvements to paths in Sunnysdale Park in 2014/15 following approval by the Neighbourhood Board; therefore there is £318,000 remaining.
- 1.2 The money had originally been intended to be used towards implementing the long-standing "City Park" proposal in the green wedge between Moorway Lane and Oaklands Avenue. This is identified by the hatched area in Appendix 2. However, it became apparent that the S106 money on its own would not be sufficient to purchase the additional land, and that as the 2019 deadline for spending money is fast approaching, there is a need to agree alternative schemes.
- 1.3 To this end, officers were asked to draw up a list of proposed schemes in consultation with local Ward Members. The options are detailed in paragraphs 4.8 to 4.18 below.
- 1.4 Following consideration of the options set out in 4.8 to 4.18 the recommended schemes with estimated costs are:
 1. Oaklands Avenue cycle/path link including widening of path in Millennium Park (£150k including estimated legal costs).
 2. Heatherton Pond improvements (£34k)
 3. Sunnysdale Park improvements, option 1 (£49k).
 4. Millennium Park improvements, option 1 (£11k).
 5. Clemson's Park improvements (£5k).
 6. Improvements to Sunnysdale Park and Havenbault Lane play facilities (£69k)

The total estimated cost of the proposed schemes above is £318,000. The detailed design and tender stage will confirm actual costs, therefore it is proposed that schemes numbered 2 to 6 inclusive above will be delivered within an overall budget of £168,000 to ensure that project 1, Oaklands Avenue cycle/path link, can be delivered within the budget specified. If there is any budget remaining after all projects have been delivered, an additional scheme(s) may be considered under the procedure outlined in paragraph 4.5.

The general locations of the proposed schemes are shown on the plan included as

Appendix 2.

- 1.5 Due to the long standing commitment of local Ward Members to a desired City Park as well as the large sum of money involved, it is considered that the most appropriate way forward is to agree the schemes through the Scrutiny and Cabinet process.

RECOMMENDATION

- 2.1 To approve the recommended schemes outlined in paragraph 1.4 and authorise officers to implement those schemes, subject to obtaining the necessary consents identified at paragraph 9.4.
- 2.2 To amend the 2017/18 – 2019/20 Capital Programme to include the budget required for the S106 schemes at a total value of £318,000.

REASONS FOR RECOMMENDATION

- 3.1 To ensure that the £318,000 remaining from the Heatherton Section 106 Agreement is spent in a timely manner and in accordance with the agreement.
- 3.2 Implementing the S106 schemes will enhance the facilities for the local communities helping more people be more physically active.
- 3.3 The new Oaklands Avenue Cycle path link between two communities improves the access to parks and open spaces helping promote health and well-being through cycling and walking and furthers the objectives of the Council's Rights of Way Improvement Plan 2014-2017.



Derby City Council

COUNCIL CABINET
21 June 2017

Report of the Strategic Director of Communities and Place

SUPPORTING INFORMATION

- 4.1 A sum of £333,000 was secured from developers for improvements to leisure facilities within a one-mile radius of the eastern side of Heatherton. This money is part of a Section 106 (S106) Agreement, signed in 2003, for that phase of the Heatherton development. The money was paid to the Council in April 2009 when the first fifty homes had been built, in line with the Agreement. It should be spent by 1 April 2019 or returned to the developer. Around £15,000 of the total sum was spent on improvements to paths in Sunnydale Park in 2014/15 following approval by the Neighbourhood Board; therefore there is £318,000 remaining.
- 4.2 The sum of money has been earmarked for Public Open Space (POS) and had originally been intended to be used towards implementing the long-standing "City Park" proposal in the green wedge between Moorway Lane and Oaklands Avenue. This would have benefited new residents of Heatherton as well as existing residents of nearby areas. However, it became apparent that the S106 money on its own would not be sufficient to purchase the additional land, and that as the 2019 deadline for spending money is fast approaching, there is a need to agree alternative schemes.
- 4.3 Officers have therefore been asked by Leadership to develop alternative schemes in consultation with local Ward Members.
- 4.4 The S106 Agreement requires that suitable schemes must be for leisure facilities within "an area extending in all directions from the boundaries of the development site for a distance of one mile". All of the schemes meet these requirements.
- 4.5 The procedure for considering how to spend unallocated S106 money is set out in the Council's "Member's Guide". The guide indicates that Councillors and Neighbourhood Boards can influence the use of S106 money by contacting Officers with details of their proposals; Officers will then consider these in the development of the Capital Programme.
- 4.6 In this situation, and due to the long standing commitment of local Ward Members to a desired City Park as well as the large sum of money involved, it is considered that the most appropriate way forward is to agree the schemes through the Scrutiny and Cabinet process. Subsequently, approved schemes will then be set out in the S106 Quarterly Report.
- 4.7 As a result of consultation with local Ward Members the following projects have been proposed, see paragraphs 4.8 – 4.18 for details.

4.8 Oaklands Avenue cycle/path link (budget cost £150k)

This project relates to land not currently within the Council's control or ownership so will require the exercise of statutory powers to enable this proposal to be implemented.

The intention is to create a cycle/path link between Oaklands Avenue to the Millennium Park along an existing private track which would provide a direct and safe link connecting with the network of Parks and Open Spaces in the area, including Millennium Park, Griffe Field, King George Fifth Fields and Clemson's Park, thereby encouraging physical activity and access to and use of areas of green space. This link is identified in the Council's Rights of Way Improvement Plan 2014-2017 as one of eight proposed cycleway and footway priorities for the City (Section 4.8, Scheme 2 of the Plan).

The existing private track provides access to farm land and to a derelict property known as Prize Farm, although the track appears to have been closed and neglected for a number of years. There are plans by the current owner of Prize Farm to refurbish that property. The owner of the track itself however cannot be traced.

In order to implement the project, the Council will need to acquire rights over the land. This could be achieved either by way of a Compulsory Purchase Order (CPO) or by formalising the track as a highway maintainable at public expense by means of a Public Path Creation Order (Section 26 Highways Act 1980). The latter is the preferred option that Officers currently intend to pursue, as it potentially is likely to be the quicker and least expensive option for achieving the objective resulting in the creation of a bridleway. This will enable cyclists and walkers to use the proposed route although it also entitles horse riders to use that part of the way. Both options (the Public Path Creation Order and the CPO) have been budgeted for in terms of the costs likely to arise. It is important to note that both options are also potentially subject to the final approval of the Secretary of State, however most expenditure of the project involves the construction costs which will not be incurred unless and until the necessary rights over the land have been secured.

4.9 Heatherton Pond (budget cost £34k)

Works to include the creation of a new car park (subject to gaining the appropriate planning consent) for anglers and disabled users of the pond off Moorway Lane, the provision of new fishing points for disabled anglers, new picnic benches and habitat improvement to the pond margins.

4.10 Sunnydale Park, option 1 (budget cost £49k)

Improvements include re-surfacing of the existing path through the wood and re-surfacing existing stone paths with tarmac.

4.11 Sunnydale Park, option 2 (budget cost £55k)

This project includes the path resurfacing works as outlined in section 4.10 above. In addition it includes the installation of land drainage around the existing play area and re-dressing existing stone paths within the play area.

4.12 Millennium Park, option 1 (budget cost £11k)

Creation of a small wildlife pond, including marginal planting for wildlife and interpretation boards.

4.13 Millennium Park, option 2 (budget cost £18k)

This project is an enhanced version of the project outlined in 4.12 above.

4.14 Clemson's Park (budget cost £5k)

Improving the park for wildlife to include the creation of a meadow and habitat improvements.

4.15 Improvements to Havenbault Lane and Sunnydale Park play facilities (budget cost £69k)

Proposed in this project is equipment for older children which is currently lacking at Havenbault Lane play area and a newly located play area for toddlers at Sunnydale Park. The current play area at Sunnydale Park is quite secluded and floods in wet weather; furthermore existing equipment offers limited play value and is low quality. The aim therefore is to locate a new play area, in a better drained and visible location. Local consultation will be carried out using proposed designs prior to both schemes being implemented.

4.16 Briars Lane footpath/ cycle path (budget cost £5k)

Localised improvements to footpath drainage.

4.17 Improvements to play facilities (budget cost £26k)

Provision of play or outdoor gym equipment in the Heatherton area and to be determined following subsequent community consultation led by local Ward Members.

4.18 A summary and total costs of the above projects is as follows:

1. Oaklands Avenue cycle/path link including widening of path in Millennium Park (£150k including estimated legal costs).
2. Heatherton Pond improvements (£34k)
3. Sunnysdale Park improvements, option 1 (£49k).
4. Sunnysdale Park improvements, option 2 (£55k).
5. Millennium Park improvements, option 1 (£11k).
6. Millennium Park improvements, option 2 (£18k).
7. Clemson's Park improvements (£5k).
8. Improvements to Sunnysdale Park and Havenbault Lane play facilities (£69k)
9. Briar's Lane footpath / cycle path (£5k).
10. Improvements to other play facilities (£26k)

Due to different options being proposed for two of the sites above and a requirement to ensure that the total budget available is not exceeded it is necessary to agree a final project list which is proposed in paragraph 1.4.

4.19 When the schemes are agreed, the detailed design and tender process will be commenced with the intention of the schemes being included on the capital programme for implementation in 2017/18 and 2018/19.

OTHER OPTIONS CONSIDERED

5.1 Paragraphs 4.8 to 4.18 above provide details of options considered.

5.2 In addition, Heatherton Community Association requested an unspecified amount of funding from the £318,000 available towards extension proposals for Heatherton Community Centre. Estimated costs of the whole extension were around £300,000 - £350,000 with the extension itself being said to be the most important part with an estimated cost of around £150,000. However the schemes proposed in this report were preferred by local Ward Members because the provision of outdoor recreation facilities had always been the ambition of the Council via the original City Park proposal. It should however be noted that the Council has earmarked £53,219 for the development of Heatherton Community Centre from an alternative Section 106 Agreement specifically relevant to community centre provision.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director Equality officer Risk Management officer Health and safety officer Planning Policy officer	Stephen Teasdale, Planning and Highway Solicitor Amanda Fletcher, Head of Finance David Cox, Head of HR Philip Derbyshire, Head of Property Design and Maintenance Claire Davenport, Director of Leisure, Culture & Tourism Ann Webster, Lead on Equality and Diversity Richard Boneham, Head of Governance and Assurance Chris Newbold, Senior Health and Safety Adviser Andy Waterhouse, Spatial Planning Group Manager
For more information contact: Background papers: List of appendices:	Duncan Cowie 01332 641572 duncan.cowie@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Location plan of proposed schemes

IMPLICATIONS

Financial and Value for Money

- 1.1 The estimated capital costs of the proposed schemes are shown in paragraph 1.4. All schemes will be designed to ensure value for money. The schemes do not require additional revenue budget provision as the schemes will be designed in a way that ensures the on-going costs are no more than current costs.

Legal

- 2.1 Section 106 of the Town and Country Planning Act 1990 enables local planning authorities to secure planning obligations, including financial contributions, from developers to regulate development and offset its impact. The spending of monies received will be subject to the terms of the respective agreement.
- 2.2 All schemes other than the Oaklands Avenue cycle/path link are to be carried out on land within the control/ownership of the Council.
- 2.3 The Oaklands Avenue cycle/path link will require securing rights over the existing private way, the owner of which cannot be traced. The current options for securing such are either by way of a Compulsory Purchase Order (CPO) to acquire the land and then to dedicate it as highway or by way of a Public Path Creation Order (section 26 Highways Act 1980) which would create a public footpath or a bridleway. In both cases the path would become the responsibility of the Council to construct and then to subsequently maintain.

Both options have been budgeted for in terms of the costs involved, which may include costs to compensate persons with interests in the land acquired under the CPO or affected by the Public Path Creation Order.

The Public Path Creation Order is likely to be the quicker and cheaper options and is considered by officers currently as the preferred option that they intend to pursue if the recommendation in this report to commit funding to the Oaklands Avenue cycle/path link is approved.

A Public Path Creation Order will be subject to the Secretary of State's approval if there are objections to the order. The CPO is however subject to the Secretary of State's approval whether or not there are objections.

Personnel

- 3.1 None arising from this report.

IT

- 4.1 None arising from this report.

Equalities Impact

- 5.1 Schemes will be designed to be inclusive. For example, the proposals for Heatherton Pond include specific measures to benefit disabled anglers and detailed design proposals will consider how play area improvements will be accessible for disabled children and their carers.

Health and Safety

- 6.1 The schemes will be designed and managed to meet health and safety requirements.

Environmental Sustainability

- 7.1 Improved facilities will improve the quality and accessibility of the open spaces, therefore encouraging greater levels of physical activity.
- 7.2 The Oaklands Avenue cycle/path scheme allows the creation of a vital pedestrian and cycle link between two communities improving access to parks and open spaces and promoting health and well-being through cycling and walking.

Property and Asset Management

- 8.1 All schemes will be affordable in terms of long term maintenance.
- 8.2 The schemes include the creation of an additional asset i.e. the proposed new link path from Oaklands Avenue subject to a successful Path Creation Order process.

Risk Management

- 9.1 The detailed design and tender process may result in higher or lower costs than currently estimated for the individual schemes, however it is expected that the overall budget with a built in contingency is adequate.
- 9.2 The proposed Public Path Creation Order for the new link path from Oaklands Avenue creates an extended asset with the Council being responsible for its maintenance and liabilities, mitigated by the proposed quality of path construction.
- 9.3 Any objections to the proposed Public Path Creation Order would be referred to the Secretary of State and therefore could risk delaying implementation of the project beyond the expiry of the deadline for spending the funding. Estimated costs for an extended process involving a submission to the Secretary of State have been built into the project funding estimate in addition to the overall budget contingency. If the existing deadline cannot be achieved due to a legal process, an alternative

project(s) will be proposed that can be delivered within the deadline.

- 9.4 Before the Heatherton Pond car park scheme can progress it is subject to planning consent being granted and the Oaklands Avenue scheme is subject to a successful Path Creation Order process.

Corporate objectives and priorities for change

- 10.1 The proposed schemes support the following Council priority outcomes:

- Enabling individuals and communities
- Promoting health and wellbeing
- Making the most of our assets.
- More people being more physically active.