**Protecting the Foxhills Open Space from Development**

**Briefing Update & Proposal for Further Action**

# The Foxhills Open Space

The Foxhills Open Space was created as part of an agreement between Morrish Builders and Purbeck District Council completed in 1995. As part of this agreement, title for the “Green Land” was to be transferred to Purbeck District Council, with the Council having obligations for the subsequent maintenance of the land, subject to a payment from Morrish Builders of £129,249 in respect of this maintenance.

The documents reviewed to date do not include a plan of the Green Land, and so far no restrictions on future use of the Green Land have been identified, except that part of the site was already protected from development under the terms of two earlier agreements made between the owners at the time and Purbeck District Council in 1984 and 1985. This being the case, the part of the site covered by these earlier agreements, primarily the southern part where there is a footpath to Deans Drove, may need to be excluded from any further action to avoid potential legal conflicts.

Further investigation is required to confirm that the Lytchett Matravers Parish Council is able to proceed with any changes with respect to the Foxhills Open Space, e.g. without any involvement from Purbeck District Council.

# Options for Protecting the Land

Three Options have been looked at:

1. Putting in place a Deed of Dedication with the National Playing Fields Association (operating under the name Fields in Trust).
2. Designation as Local Green Space
3. Gifting the Land to a Charity such as the Woodland Trust

Sections 2.1, 2.2, and 2.3 summarise the results of the work carried out to date.

## Deed of Dedication

Deeds of Dedication have already been put in place with the National Playing Fields Associaton (NPFA) for spaces within Lytchett Matravers, notably the Recreation Ground (completed in July 2013). Using the Deed for the Recreation Ground as an example of the NPFA agreements, a range of obligations were placed on Lytchett Matravers Parish Council and the Lytchett Matravers Sports Club. These included limitations on the use of the land, limitations on sale of the land, limitations on building on the land, an obligation to maintain the land, an obligation to erect notices explaining the background to Field in Trust, and a requirement to register the restrictions on the land with the Land Registry. In return the NPFA agreed to not unreasonably withhold consent to any proposal to sell the land or build on it, subject to the conditions set out in the Deed.

Putting a further Deed of Dedication in place to provide protection against development of the Foxhills Open Space, would represent a continuation of the policy previously adopted by the Parish Council. This in itself is not sufficient to justify this option without due consideration being given to the issues.

Further considerations to be taken into account in relation to the NPFA are set out in section 3.

## Local Green Space

The National Planning Policy Framework (NPPF) includes provisions for the protection of Open Space. This includes arrangements set out in paragraphs 76 to 78 of the NPPF, under which an area of land can be designated as a Local Green Space. The relevant clauses are as follows:

*76. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them.*

*By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.*

*Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.*

*77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:*

*● where the green space is in reasonably close proximity to the community it serves;*

*● where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*

*● where the green area concerned is local in character and is not an extensive tract of land.*

*78. Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts.*

To pursue this option, the Parish Council would need to provide a list of the open spaces which we wanted to be protected to Purbeck District Council. The Council officers would then consider whether or not the Local Green Space designation or another policy mechanism could be applied to protect these spaces. Protection of the open spaces could then be achieved by including them in the Purbeck District Local Plan, or in a revision of the Lytchett Matravers Neighbourhood Plan.

## Gifting the Land to a Charity such as the Woodland Trust

If a suitable charity can be identified, whose main objective is to protect green and/or open space, then it would be expected that the charity concerned would take over the obligation to maintain the land, achieving a cost saving for the Lytchett Matravers Parish Council.

As a first step towards exploring this option, the Woodland Trust have been contacted, since the nature of the Foxhills Open Space might align with their objectives. The response received was as follows:

*“Assuming that this is a small area (under 5 acres ?) of green space that is not yet planted up as a wood, I fear that it is very unlikely that your kind offer will fit with the Woodland Trust’s current acquisition criteria. This is very much targeted at significant areas of ancient woodland under demonstrable threat or substantial woodland creation opportunities or possibly extensions to existing Woodland Trust sites. If local community ownership and management might be a possibility, we can support this through our Community Woodland Network web site -* [*https://www.woodlandtrust.org.uk/get-involved/communities/community-woodland/*](https://www.woodlandtrust.org.uk/get-involved/communities/community-woodland/) *.*

*If, in light of the above, you feel that the area might still be of interest, perhaps you could supply a site plan so we can consider the matter further.”*

It therefore looks likely that a transfer of the Foxhills Open Space to the Woodland Trust is not a viable option, based on their current strategy.

A second charity that could be approached would be the Dorset Wildlife Trust, but the space is considered to be poorly aligned with their objectives.

At this stage no further action is proposed on this option.

# The National Playing Fields Association – Fields in Trust

The National Playing Fields Association (NPFA) was founded in 1925, and received a royal charter in 1932. Since 1945 the Association has expanded its work by providing loans as well as grants, by providing technical advice and by holding conferences. In 1965 it absorbed the King George's Fields Foundation, which was founded in 1936 as part of the national memorial to George V. The NPFA obtains income from subscriptions, donations and legacies.

The NPFA owns nearly a hundred grounds in the country, but most of the work at local level is carried out by the County Playing Fields Associations which are affiliated to the national body. There are also a few overseas affiliated members.

The name “Fields in Trust” was adopted as an operating name of the NPFA in 2007, at which time Alison Moore-Gwyn, then chief executive, explained that “In its early years, the NPFA was solely involved in protecting community playing fields. But now our work has expanded to protecting and improving other recreation areas like kids playgrounds and leisure areas for older people. FIT more accurately reflects the type of work we are involved in.”

In considering the strength of the protection provided by the form of Deed put in place by the NPFA, factors such as the following need to be taken into account:

1. The strength of the Deed in law, including registration of the existence of the Deed on the Land Registry title for the land – at this stage no real information is available on the strength of the Deed in law. Legal advice would be needed to assess this. However, it is known that changes to Land Registry title documents to remove restrictions can be made in certain circumstances.
2. The continued existence of the counterparty organisation – Figure 1 presents information from the NPFA accounts over the last 10 years. This suggests that the organisation’s income has been extremely volatile over this period. It has recorded financial deficits in 4 out of the 10 years covered. Employee numbers have varied during this time from 9 to 20, currently standing at 17. The NPFA has benefited during the period covered by Figure 1 from 2 programmes which included activities to promote its activities. These included the Queen Elizabeth II Fields Challenge and the Centenary Fields programme to commemorate the First World War. Significant sums were received in donations and grants as a result of these programmes.
3. The motivation and ability of the counterparty organisation to enforce the Deed – Preliminary searches of publicly available information have not identified any instances of action taken by the NPFA in relation to breaches of Deeds it has put in place. Legal advice would be needed to assess this properly.

Figure 1 – NPFA Accounts 2007 to 2016

## The NPFA Deed covering the Lytchett Matravers Recreation Ground

Development of the Lytchett Matravers village centre, including improvements to existing facilities, and development of new facilities, was a key aspect of the Neighbourhood Plan adopted by referendum in 2017.

Implementation of the Neighbourhood Plan is in its early stages, and detailed plans for the village centre are not yet available. However, one area of potential concern is that the Deed of Dedication entered into with the NPFA in 2013 may impose restrictions on the development that can take place. Recent investigation has shown that the plan showing the area of land covered by the original Deed was incorrect, in that the car park was included. The NPFA have agreed that the Deed can be amended to correct this. At the same time, it is recommended that the opportunity is taken to explore whether the boundary of the area of land covered by the Deed can be moved to ensure that there is sufficient space for any new buildings to be developed on the car park. It is possible that the NPFA may be more willing to consider such changes if a Deed for the Foxhills Open Space is negotiated at the same time.

It should be noted that the Lytchett Matravers Sports Club is a party to the NPFA Deed, and will therefore need to be involved in making any changes to it.

Enquiries have also revealed that restrictions on use of the Recreation Ground were put in place in 1964 when the land was originally transferred to the Parish Council by a member of the Dillon-Trenchard family. These restrictions are set out as covenants put in place in 1964 to provide protection to the owner of “The Shooting Box” (who had previously acquired that property from the Dillon-Trenchard family in 1961). These restrictions are potentially in conflict with the NPFA Deed of Dedication, and indeed with any further development on the site.

# Preliminary Recommendations and Proposal for Further Action

Taken in isolation, and based on the information available, it is considered that the first two options identified above are both viable (putting in place a further Deed of Dedication with the NPFA, and designating the Foxhills Open Space as Local Green Space). However, it is recommended that the first of these is considered as the preferred option because of the potential for using the addition of the Foxhills Open Space to secure NPFA agreement to changes to the Deed of Dedication completed for the Recreation Ground in 2013.

The following actions need to be completed before a final proposal can be submitted for consideration by the Parish Council:

1. The preparation of outline proposals for development of the village centre, to determine whether any movement of the boundary used to delineate the area covered by the NPFA Deed of Protection for the Recreation Ground is required.
2. A discussion with the NPFA to secure agreement in principle that the boundary of the area covered by the Deed of Dedication for the Recreation Ground can be moved to accommodate the Parish Council’s plans for development of the village centre.
3. A proper review of the documents put in place in 1964 for transfer of the Recreation Ground from a member of the Dillon-Trenchard family to the Parish Council to check the restrictions that were put in place in favour of the owner of “The Shooting Box”. The Land Registry title documents for the Recreation Ground may also record these restrictions. This review needs to consider the impact of these restrictions, if any, on the NPFA Deed of Dedication for the Recreation Ground put in place in 2013, together with the impact on any future development proposed on the Recreation Ground by the Parish Council.
4. A review of the Section 106 agreement for the Foxhills Open Space, together with associated documents, to identify any restrictions on action by the Parish Council in relation to the land.
5. The preparation of draft terms for a possible Deed of Dedication for the Foxhills Open Space, including for example the extent of the area to be protected and the allowable future uses for the land.