

## **Committee: Cabinet**

**Date: 9 December 2013**

Agenda item:

Wards: The recreation ground is located in Dundonald ward

**Subject: Dundonald Recreation Ground – Appropriation of land to enable expansion of Dundonald Primary School**

Lead officers: Yvette Stanley, Director of Children Schools and Families

Chris Lee, Director of Environment and Regeneration

Lead members: Councillor Martin Whelton, Cabinet Member for Education

Councillor Andrew Judge, Cabinet Member for Environment and Sustainability

Contact officers: Tom Procter, Service Manager, Contracts and School Organisation

Doug Napier, Greenspaces Manager

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### **Recommendations:**

- A. For Cabinet to decide, for the purposes of section 122 of the Local Government Act 1972, that the open space shown in appendix 1 forming approximately 2,578 square metres of Dundonald Recreation Ground is no longer required for the purposes for which it is currently held and may be used instead for the following purposes to allow the enlargement of the Dundonald Primary School:
- B. Approximately 579 square metres (coloured green and blue) for building and outside space to transfer to become permanently part of Dundonald Primary School.
- C. Approximately 147 square metres (coloured amber) to provide a replacement two storey recreation ground pavilion which will remain under the control of the Greenspaces team for the primary purpose of changing facilities, toilets and a social space for the recreation ground but may at certain times have a more flexible use.
- D. Approximately 1,852 square metres (coloured yellow) for tennis courts and/or a multi-use sports area which will remain under the control of the Greenspaces team but the school will have exclusive use at set times as set out in a Community Use Agreement that is underpinned by a Unilateral Undertaking.

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. The expansion of Dundonald Primary School is not feasible on its existing site and the council has for some time proposed a scheme that it considers will provide improved recreation ground facilities as well as the much-needed additional school places.
- 1.2. The main basis of the council's proposal is to provide a two storey building on the recreation ground for a school extension and replacement pavilion facilities, ensuring no more building footprint than is the current position.

- 1.3. Due to the building of a non-leisure facility on the recreation ground, the transfer of 296 square metres of external space to Dundonald Primary School, and the need to clarify for the long-term the arrangements for enlarged tennis courts/multi sports area and the pavilion, it is necessary to follow a legal procedure set out in section 122 of the Local Government Act 1972 known as 'appropriation'.
- 1.4. The report sets out the specific proposal in the council's notice, the representation received, the council's legal comments in relation to this, and its conclusion when taking into account these representations.
- 1.5. Following this procedure it is recommended that appropriation proceeds but there is a need to clearly distinguish between an area of land permanently transferring to Dundonald Primary School, and the area where there is a formalising of use by the school under the overall management of the council's Greenspaces team.
- 1.6. In particular, only 579 square metres (approximately 1% of the recreation ground) is actually being transferred to the school, and when the efficiencies of a two-storey pavilion building is taken into account the only permanent loss of external space to the recreation ground is the 296 square metres (0.66% of the recreation ground) transferred to Dundonald Primary School
- 1.7. Appendix 1 and 2 of the report shows the changes in space proposed in the area of the recreation ground immediately adjacent to Dundonald School.

## **2 DETAILS**

- 2.1. The expansion of Dundonald Primary School was first proposed in autumn 2010 when the council undertook a consultation on its primary school expansion strategy with proposed schools named.
- 2.2. Dundonald School had been proposed as it meets all the key criteria for expansion. It is a popular and successful school. In its most recent Ofsted inspection (2009), it was rated outstanding and performance data since then shows it has maintained this level. The school has been heavily over-subscribed for its 30 places such that the maximum distance for a non-sibling place has decreased to barely 200 metres in recent years. Even with other recent school expansions in the local area such as Wimbledon Chase and Pelham Primary School, there are issues relating to the availability of a local school place for residents in the area around Dundonald Primary School.
- 2.3. The expansion of the school has been delayed by legal processes, but now that the restrictive covenant has been modified to enable the expansion to proceed, and the planning permission decision notice was issued on 28 November 2013, Cabinet can decide on the two remaining legal matters. The school's expansion under the Education and Inspections Act 2006 is a separate report to this Cabinet. This report relates to the Land Appropriation under section 122 of the Local Government Act 1972.
- 2.4. A summary of the scheme and its impact on land on Dundonald Recreation Ground is as follows:

- Provide a two storey new facility largely on the recreation ground, providing new pavilion facilities for the recreation ground and the extra facilities to allow Dundonald Primary School to expand from 210 to 420 statutory school places.
- Use the same amount of building footprint as existing buildings on the recreation ground as both the single storey pavilion building and a storage shed would be removed and returned to open space.
- Change the external spaces in the recreation ground, replacing the bowling green and an adjacent fenced off area which is also poorly utilised and instead provide alternative spaces that could be enjoyed by residents more widely. The bowling green was previously only used by a single bowls club with a small membership where there was capacity to accommodate them elsewhere locally. The alternative spaces include a larger children's public playground, an outside green gym, larger hard courts (three tennis courts instead of two) which will be formally used by the school during set hours only) and other fully accessible newly landscaped external space in the recreation ground. An external area of 296 square metres will be passed to the school for playground and access to the building.

**2.5. Notice published by the council**

- 2.6. To enable this the council published a notice in the Wimbledon Guardian on 3 and 10 October under section 122 of the Local Government Act 1972 with a closing date for any objections to be made in writing to the council's solicitor before 24 October 2013. The notice was also placed on noticeboards in the recreation ground. The notice and plans were advertised on the council's website and this is provided in appendix 3 to this report.
- 2.7. The notice stated the council's intention to appropriate approximately 2,578 square metres of "land laying south-east of, and adjacent to Dundonald Primary School, Dundonald Road, London SW19" on Dundonald recreation Ground for the purposes of the enlargement of Dundonald Primary School. The details of this were stipulated that "approximately 579 square metres thereof is to be appropriated for the exclusive use of the school to provide additional building and facilities. Of the remaining 1,999 square metres, 147 square metres thereof will be appropriated to provide a replacement recreation ground pavilion, and 1,852 square metres for tennis courts and/or a multi-use sports area of which the school will have exclusive use at set times".
- 2.8. Consultation responses.**
- 2.9. 329 objections and 44 representations in support were received in response to the council's notice.
- 2.10. A summary of all 373 responses is provided in appendix 5 and the actual consultation responses are available to the decision makers. There were levels of misunderstanding with regard to the council's proposal in some of the responses which are addressed in the officers' response. The most extreme was one person who stated "It will be a real shame to lose this beautiful space. I really don't want to see it turned into a block of flats."

Generally, though, the responses indicate that consultees understood the nature of the council's proposals.

- 2.11. The following objections were made regarding the perceived specific impact on the council's appropriation with regard to loss of facilities at the recreation ground:

Comments on Specific loss of facilities:

Tennis courts

- The tennis courts are used on a casual basis each week by many hundreds of people, as well as the 227 members of the Dundonald Rec Tennis Club.
- The tennis courts are packed and everyone has noticed the incredible success of the new Dundonald Tennis Club. Apart from the darkest of winter days, the courts are in almost constant use
- To take away the tennis courts on the back of the Olympics is ridiculous
- This is a significant restriction on what is now available in the area of the courts, playground and bowling green
- The planned replacement courts would be out of bounds for most of the daylight hours during term time so stopping this important activity
- Where will the Dundonald Tennis Club go?

Dundonald Tennis Club provided a detailed response which included a report dated 7 January 2013 "Dundonald Recreation Ground Tennis Courts: How the reduction in public access will affect local demand for tennis". Their response stated that 247 members use the tennis courts during week days and week ends all year round and that more than 1000 children are benefiting from their 'Olympic Legacy' programme and without full access to the courts the programme will have to stop. Their response stated that the courts are used by the club for 53 hours per week, with a breakdown as follows: Monday to Friday (8am to 6pm), coached sessions (18 hours per week), competitive matches (4 hours per week), informal games 10 hours (average). On Saturdays and Sundays they stated it was coached sessions (7 hours per week), competitive matches (6 hours per week), informal games 8 hours (average). They reported a survey of their members stating that 42% play during weekday mornings and 25% play weekday afternoons.

Playground activities

- This is a significant restriction on what is now available for the playground
- The public playground is newly renovated and used by a large number families as it is the only public playground in the immediate area. Any changes to this area will have an enormous impact on the health and well-being of the local community, especially families with young children

Impact on football and cricket matches

- Football and cricket would no longer be possible in the recreation ground

Other impact on general activities in the recreation ground

- cycling including children learning to cycle,
- keep fit including for people who cannot afford gym membership

- picnics and birthday parties
- walking including dog walking, nature walks, walking the baby and toddlers exercise
- Other sports facilities fill up this park e.g. rugby, volleyball, ultimate Frisbee
- personal training sessions and joggers,
- families enjoying the outdoors.
- enjoyment of the peace of the rose garden will be shattered if the playground is moved.

#### Bowling green

- The bowling green is a facility which has been available for over 100 years and will be a big loss to the community - an important facility for older members of the community will be removed.
- The bowling green has been increasingly used by the new bowling club despite the council no longer maintaining it.

#### Loss of pavilion facilities

- Loss of the pavilion and replacement with a much smaller facility with inferior facilities and community space on an upper floor requiring lifts and divorced from the playing areas. The pavilion is used for mum and toddler sessions and on Wednesday evenings by an orchestra

#### General comments

- There is not a blade of grass that is unused, so I cannot see how any part of the park can be appropriated. It is important for the local community to have as much open/green spaces as possible.
- There is no need for the school expansion- the demand for extra places is elsewhere
- Object as it would increase the built up feel of the Rec., impacting on the vista and tranquillity the park offers
- A recent Merton Open Spaces Assessment found that the land 'is not surplus' to requirements in the borough
- What alternative sites are in mind for when the scheme is ruled out? Why not incrementally expand on a smaller scale all the other 15 schools within a 2 mile radius of Dundonald?
- Noise nuisance
- Loss of mature trees
- Impact on conservation areas;
- likelihood of increased parking and traffic congestion will affect many locals
- Concerned that this initial land grab will be followed by further appropriations.
- The Rec is a public amenity that gives pleasure to thousands of people.
- It is used by considerably more people in the local community than the number who may benefit from any proposed school expansion.
- The area is deficient in public open space, some parts being more than 800m from a public park or garden. Many local dwellings are flats or houses with

small gardens. Consequently it should be the last open space to be reduced in size.

- The construction period will be extremely disruptive.
- Currently just enjoy sitting on a bench and contemplating nature/in the summer resting on the grass
- Object as it is a public space and it is not appropriate for the Council to take this land.

The 'Protect the Rec' group stated that there is no evidence that the land is surplus to requirements as all the evidence suggests that the public currently uses the land extensively for recreation. Their response listed evidence from LB Merton's documents including the council's planning committee report, its Open Spaces Strategy and its Sports Pitch strategy, and other sources. They stated that Merton can have no awareness of the level of use of the general use of the park or the courts as there is no mechanism for booking the courts, and suggested they had some evidence that the tennis courts were used extensively. They provided some legal advice which is contained in the legal section of the report.

44 letters of support were provided for the council's notice. Some of these responses questioned some of the claims that had been made in distribution material they had received in opposition to the council's proposal, including claiming that Dundonald Tennis Club had only formed following the council's proposal to expand Dundonald Primary School "as a front to stop the expansion". Specific reasons given for supporting the school expansion were as follows:

- It is needed to expand the school to be able to obtain a local school place
- We would like an extra tennis court that could be free from any club access to allow children in the community to play
- The community will benefit from new facilities such as a new pavilion and a new playground

### **Officers' comments on the consultation responses**

2.12. Offices' comments under the relevant headings are as follows:

#### Tennis courts

2.13. As a result of the scheme there will be an increase in the number of tennis courts from two to three courts. The courts will remain under the management of the Greenspaces team but, as part of the planning application agreement, a Community Use Agreement underpinned by a Unilateral Undertaking sets out reserved use by the school for the majority of the school day. There has been some disagreement over how this compares with the current use with some members of the community claiming that Dundonald Primary School only use the courts for 1-2 hours per day despite signs having been in the recreation ground for some years stating the courts are only available for the public outside school hours. The split in use in the Community Use Agreement is as follows:

School use shall be term-time on Monday to Friday between the hours of 08:00 and 17:00 hours except for the following times during these hours when it will be available for general public use:

Autumn term (September to December) and Spring term (January to late March/early April):  
Monday to Friday 09:00-10:00 ; Mondays, Wednesdays & Fridays 15:45-17:00

Summer term (April to July): Mondays, Wednesdays & Fridays 09:00-10:45 and 15:45-17:00; Tuesdays and Thursdays 09:00-10:00 and 13:45-15:15

- 2.14. The scheme offers an additional court for the majority of the hours that the recreation ground is open once daylight hours, evenings in the spring and summer months, school holidays and weekends are taken into account. School days are only 190 of the 365 days in the year and non-school hours are the times when there is most demand
- 2.15. The view of the Greenspaces team is that the demand for tennis courts is far greater at the weekends and in summer evenings, and there is spare capacity for tennis courts during weekdays including at John Innes Park, which is approximately 600 metres from Dundonald Recreation Ground. During the peak times of spring and summer evenings and weekends, the extra court will provide beneficial additional capacity. Some public use hours during the school day have been agreed in the Community Use Agreement to ensure that there can be some clearly advertised public use during the school day, so there can be no doubt when the general public will be able to use the courts.

#### Bowling green

- 2.16. The bowling green ceased to be maintained in autumn 2012 with the only incumbent club, Wandgas Bowling club, only having 13 members and it was not economic to continue its maintenance. The club members were offered the use of the neighbouring John Innes Park where there is spare capacity. There has been some claim that there has recently been a resurgence of interest in bowling with the establishment of a new 'Dundonald Bowling Club'. However, there is no evidence that there is any interest that is sustainable and the bowling green is no longer needed by the council to provide a viable leisure facility. Any enquiries received by the council for bowling facilities could be directed to other bowling greens in the local area where there is sufficient capacity.

#### Playground activities

- 2.17. There were some misunderstandings here. For example one person stated "If you remove public access, children won't have a playground." As a result of the scheme the playground is being moved but it will be larger so will provide an improved facility. There were representations that moving it closer to residents' gardens would create more noise but this is a planning consideration, not one for the appropriation procedure.

#### Impact on football and cricket matches

- 2.18. Some representations claimed that the appropriation would impact adversely on football and cricket matches. For example one person said "I use the Rec to play football on Sundays. If public access were removed we would have to fold the team and stop playing." However, this is a misunderstanding as none of the grass sports field is being removed or changed.

#### Other impact on general activities in the recreation ground

- 2.19. Some representations implied that a variety of activities would be impacted due to the appropriation. This included cycling, keep fit, picnics, walking including dog walking, general informal sports, and generally enjoying the outdoors including the peace of the rose garden.
- 2.20. The only loss of facility as a result of the proposed change is the loss of the bowling green which has already fallen into disuse and alternative facilities are in any event available close by. The tennis court changes are described in paragraphs 2.13 to 2.15. None of the above activities will be adversely impacted, with the one possible exception that the perimeter of the recreation ground will change with one path closed off, but another will be put into place which will open up a direct route from the rose garden to the rest of the recreation ground rather than be hidden by the existing pavilion. Consequently, there will be some loss of amenity but also some gain.

#### Loss of pavilion facilities

- 2.21. Some residents stated that the replacement pavilion will be a much smaller facility with inferior facilities and community space on an upper floor requiring lifts and divorced from the playing areas. However, others welcomed a new modern facility that would be more fit-for-purpose.
- 2.22. Although there will be a reduction from six to four changing rooms, plus officials changing area, only four are needed to be economic and the four will be a larger size to accommodate football squads whereas the six current changing rooms cannot. The council has agreed with Sport England that it will provide appropriate lockers/storage to ensure that the three football pitches will continue to have the same quantity of utilisation as now with enlarged changing facilities designed to fit a full football squad available before and after matches.
- 2.23. A social facility will be provided. While it will be on the first floor it will have a fully accessible lift and will have views directly onto the playing field so that the sports activities can be viewed. This will be especially beneficial during inclement weather.
- 2.24. Fully accessible public toilets will be provided in the pavilion facility and they would be specified to be of a robust design, thus reducing the times when they are closed compared to now.
- 2.25. On balance, the proposed replacement pavilion is therefore considered to be an enhancement compared to the current facility.

#### General comments from residents

- 2.26. The general comments made were development control matters rather than land appropriation. Some respondents recognised the extra facilities as a result of the reconfiguration with a specific picnic area and an outside green fitness gym. The need for the school expansion is covered in another report for this Cabinet meeting
- 2.27. With regard to council documents stated as evidence in the representation from the 'Protect the Rec' group, documents quoted also support the council's proposal :
- the Playing Pitch Strategy states: "There is little latent demand for bowls in the borough.. .."there is little competitive use of the



Dundonald green, and the retention of this green may be difficult to justify in terms of value for money.” (p.113).

- the Playing Pitch Strategy states that the changing rooms at Dundonald are acknowledged by teams to be poor
- The Playing Pitch Strategy states that gym is the overall favourite sport in the borough, thus supporting the changes to provide a free ‘green gym’ for people of all ages to provide a benefit for healthy living.

2.28. Prior to completion of this report, the council received a Petition from Dundonald Rec Sport Committee with over 400 signatures to “Save Dundonald Rec Pavilion and Tennis Courts”. The Petition states “As players of football/cricket /tennis/bowls and/or a user of the pavilion in Dundonald Recreation Ground, we call on Merton Council to abandon its plans to appropriate the sports pavilion, tennis courts and bowling green land. Merton Council is planning to remove 2,578 square metres of land in Dundonald Rec from public use, including the sports pavilion (the changing rooms and toilets) land, the tennis courts and bowling green. The entire area will be transferred to the nearby school, therefore no longer part of the public Recreation Ground. This appropriation would have a detrimental effect on the sporting activities of thousands of sport players. It would particularly endanger the Olympic Legacy programme run by Dundonald Rec tennis club (registered tennis charity) for the benefit of children and young players. Dundonald Rec Sport Committee (DSC) has been formed to represent and protect the interests of all the teams and other users of Dundonald Rec's sporting facilities. DSC aims to ensure that Merton Council delivers a good standard of public sports facilities, fully accessible to all users”.

2.29. Officers’ view is that the statement accompanying the petition does not accurately reflect the proposal from the council including the wording in the published notice. This is because the only area of land that will permanently become part of Dundonald Primary School is approximately 579 square metres as shown coloured green and blue on the plan appended to Appendix 1 of this report, which can be compared with the existing detailed in Appendix 2. It is also considered that some of the details provided in this report will clarify some of the misunderstandings that appear in the wording of the petition.

## **Legal considerations.**

### Judicial review

2.30. A judicial review has been brought by the chair of the group Protect Dundonald Rec challenging the council’s decisions “to lock the entrances to the bowling green area and to erect two signs on Dundonald Recreation Ground, on the perimeter of the bowling green area and on the perimeter of the tennis court area”. The council has lodged summary grounds of opposition to the claim and a decision of the Administrative Court is awaited as to whether permission should be granted for the claim to proceed

### Legal matters raised in representations

- 2.31. In their response to the council's notice the 'Protect the Rec' campaign group claimed that there is no provision in the Local Government Act for a countervailing factor to allow the Council to consider whether the land is required more for something else. If it is required for its current use then it would be unreasonable to appropriate and such a decision would be challenged in court or through the LGO. They claim that the legal test for appropriation is whether the land is not needed, in the public interest of the locality, as public open space. In other words, it has to be in the community interest for the public open space to be lost: there is no provision for the appropriating authority to consider whether an alternative use is more in the public interest than the proven existing use. Such a consideration would therefore be irrelevant to the decision. They suggested that appropriation cannot be used to over-ride the public rights where the public objects and that Cabinet should therefore be advised that appropriation is not legally permissible.
- 2.32. A procedural complaint from another representation stated that the (land appropriation) consultation started on 3 October, the last day for responses to the previous (education law) consultation on the principle of expanding Dundonald School. This means that the Council had no intention of assessing or publishing the responses to the September consultation. In fact, the council decided that they were separate legal processes that could overlap but to avoid confusion on how to treat representations, the land appropriation consultation started immediately after the education consultation.
- 2.33. A further procedural complaint was that the council notice wasn't sufficiently clear on what was the exact last day for responses. However, all responses were included to ensure there was no doubt.
- Legal officers' advice
- 2.34. The advice of the Head of Legal Services is as follows: Section 122 of the Local Government Act 1972 provides that "the Council may appropriate for any purpose which the Council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation".
- 2.35. The key procedural points are;
1. The land must already belong to the Council;
  2. The land must be no longer required for the purpose for which it is currently appropriated; and
  3. The purpose for which the Council is appropriating must be authorised by statute.
- 2.36. The case of *Dowty Boulton Paul v Wolverhampton Corporation* (1973) established that the local authority is the sole judge of whether or not the land in question is not required for the purpose for which it is held immediately before the appropriation and its decision cannot be challenged in the absence of bad faith.
- 2.37. As with most administrative decisions made by public authorities, the decision to appropriate land is subject to challenge by judicial review. If

private rights or alleged town and village green rights are to be overridden the Council must be especially careful. The council must be able to demonstrate the purpose for the appropriation and that it has taken all the relevant considerations into account and not taken any irrelevant considerations into account. In particular, the Council must consider, having regard to the proposed new facilities for park users, and in the light of the representations made following the consultation exercise, whether that part of Dundonald Recreation Ground to which the proposed appropriation relates, is no longer required for the purposes for which it is presently held.

- 2.38. The Council's decision must be based on the available evidence and be rational in the sense that it cannot be said that no reasonable local authority could, on the evidence before it, have arrived at that decision: *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223).
- 2.39. The proposal to appropriate must be the subject of a comprehensive report and decision record or minute. The minutes should show that the land is not currently appropriated for planning purposes and the Council intends to formally appropriate the land under s.122 of the Local Government Act 1972 or that the land is currently held for planning purposes and the Council intends to appropriate the land for alternative planning purposes.
- 2.40. As s.122 is being utilised the minutes must record any resolution that the land is no longer required for the purpose for which it is currently appropriated. In addition, the advertisements in accordance with s.122 (A) in respect of open space must give clear information and refer to the intended appropriation, and the Council's minutes must then record that any objections received have been duly considered.

#### **Concluding officers' comments**

- 2.41. The representation period demonstrated strong feelings from members of the community against the land appropriation proposal, but also there were, unusually for such a process, a strong minority of people who made representations that the council should pursue its proposal.
- 2.42. The view of the Greenspaces manager was that retaining the bowling green was no longer a reasonable or sustainable use of council funding, hence the decision to cease to maintain the facility from autumn 2012. It is now a poorly used isolated space compared to the recreation ground, and the proposal provides spaces that can be enjoyed by residents more widely. This includes a larger children's public playground, an outside green gym, three instead of two tennis courts (to be used by the school during the majority of school hours only) and other outside external space to enjoy.
- 2.43. As well as the above, the original purpose for the proposal is that the council will be able to offer residents an additional 210 local school places in an area of significant demand at one of its most popular and successful primary schools, rated as 'Outstanding' by Ofsted.
- 2.44. The legal considerations above demonstrate that it is for the council to decide when it is appropriate to decide an area should change its use from open space to other purposes under the appropriation procedure, and

attempts by some members of the local community to demonstrate that the general park is well used is not the sole consideration.

- 2.45. The proportion of space in relation to the recreation ground also needs to be considered. The headline is that this is approximately 2,578 square metres of Dundonald Recreation Ground (the total recreation ground is approximately 45,000 square metres so this is just under 5%. However, the detail of this 2,578 square metres is as follows:
- a) Approximately 579 square metres of footprint for building and outside space to transfer to become permanently part of Dundonald Primary School.
  - b) Approximately 147 square metres of footprint to provide a replacement two storey recreation ground pavilion which will remain under the control of the Greenspaces team for the primary purpose of changing facilities, toilets and a social space for the recreation ground but may at certain times have a more flexible use.
  - c) Approximately 1,852 square metres of footprint for tennis courts and/or a multi-use sports area which will remain under the control of the Greenspaces team but the school will have exclusive use at set times.
- 2.46. Therefore the only area permanently transferring from the management of Greenspaces is 579 square metres (approximately 1%), and it is open to debate regarding whether the remainder is simply formalising current practices. The consultation demonstrated differences of opinion regarding current use of the tennis courts, and whether recent more intensive use by Dundonald Tennis Club in the months leading to the appropriation notice would be sustained.
- 2.47. When the area of the tennis courts is not included, the actual loss of open space is even less than 1% since, because the new pavilion is two storey and more compact, the building footprint on the recreation ground will be no more than it is currently so the only loss is the 296 square metres of external space that is being transferred to the school. This represents just 0.66% of the recreation ground. The improved layout leads officers to conclude that the new position is an enhancement.
- 2.48. There is a need for the council to demonstrate to the local community that the loss is not the entire 2,578 square metres, and to ensure that public use of the tennis courts is protected. For this reason, as part of the planning permission the council is providing a Unilateral Undertaking to ensure sufficient public use of the tennis courts/multi-use sports area and the pavilion is enshrined in a legal agreement.

### **3 ALTERNATIVE OPTIONS**

- 3.1. There is a statutory requirement to provide sufficient school places and the area has been identified as having a shortfall in the provision of places. The alternative is then to expand alternative schools or provide a new school site. Dundonald School was chosen as part of the council's school expansion strategy on the basis of the following criteria: Educational standards, parental preference, smaller schools expand where feasible,

location, physical constraints of existing school sites, value for money and affordability and diversity including balance of faith and non-faith provision

- 3.2. All alternative schools that could be expanded in the local area have already been expanded yet there are still significant issues for residents around Dundonald Primary School to obtain a local school place. Attempts to find a viable site for a new primary school in the local area have not proved possible by either the council or a Free School provider.

## **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. The consultation process is set out in the main body of this report

## **5 TIMETABLE**

- 5.1. The proposal is for Dundonald School to provide 60 reception year places from September 2015, and to commence construction to enable this timetable.
- 5.2. There is a requirement to spend the DfE grant allocated to the project in the 2013/14 and 2014/15 financial years .

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. The capital cost of the schemes and funding was agreed by council as part of the capital programme in March 2013 and has been facilitated by a DfE grant of £2.01 million under the Targeted Basic Need Fund.
- 6.2. The revenue impact to operate the larger schools will be funded through the Dedicated Schools Grant, which increases on the basis of additional pupils, although there is a delay in receiving the funding for the additional pupils and it is not retrospective. This is the position whichever school is expanded
- 6.3. The proposal has property management implications that are covered in the main body of the report.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. Section 122 of the Local Government Act 1972 provides that the Council may appropriate for any purpose which the Council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.
- 7.2. Full legal and statutory implications of the appropriation of part of Dundonald Recreation Ground and the procedures involved are set out in paragraphs 2.39 – 2.40 of this report.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. The Equality Act 2010 introduced a new Public Sector Equality Duty ,which came into effect in April 2011.This covers eight ‘protected characteristics’(age, disability ,gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation). It establishes a general duty on public bodies to have ‘due regard’ in carrying out its functions to the need to:
- eliminate unlawful discrimination, harassment and victimisation:

- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it ;and
  - foster good relations between people who share a protected characteristic and those who do not.
- 8.2. In making any decision the decision maker should have due regard to the above duty.
- 8.3. An equalities impact assessment is included as appendix 4 to this report
- 9 CRIME AND DISORDER IMPLICATIONS**
- 9.1. No specific implications
- 10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**
- 10.1. Some of the legal issues in relation to this scheme are highlighted in the main body of the report.
- 10.2. Health and safety would be considered carefully in the development of the project to ensure there will be a clear separation between pupils, teachers, parents, recreational ground users and construction work, while ensuring the school and recreation ground can continue to function appropriately during the works
- 11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**
- Appendix 1 – Plan of areas showing the proposed appropriation areas
  - Appendix 2 – Plan of existing areas
  - Appendix 3 – Appropriation notice and accompanying plans published on council’s website
  - Appendix 4 – Equalities Impact Assessment
  - Appendix 5 - Summary of all 374 responses to the appropriation notice
- 12 BACKGROUND PAPERS**
- 12.1. The full 374 responses are available to the decision makers
- 12.2. Cabinet paper 19 September 2011 on Dundonald School expansion
- 12.3. Cabinet paper 11 November 2013 on School Places Strategy