



## Special Highways Committee

**Date** Monday 29 July 2013  
**Time** 10.30 am  
**Venue** Committee Room 1B, County Hall, Durham

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### Business

#### Part A

1. Apologies for Absence
2. Substitute Members
3. Declarations of Interest, if any
4. Appropriation of Belle Vue site, Consett to facilitate redevelopment as an education Academy and leisure centre - Report of Head of Spatial Policy, Planning, Assets and Environment (Pages 1 - 20)
5. Such other business, as in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

**Colette Longbottom**  
Head of Legal and Democratic Services

County Hall  
Durham  
19 July 2013

To: **The Members of the Highways Committee**

Councillor G Bleasdale (Chairman)  
Councillor C Kay (Vice-Chairman)

Councillors J Allen, B Armstrong, D Bell, H Bennett, I Geldard,  
O Gunn, D Hall, D Hicks, K Hopper, O Milburn, S Morrison,  
R Ormerod, J Robinson, J Rowlandson, P Stradling, R Todd,  
J Turnbull, M Wilkes and R Young

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**Contact: Michael Turnbull**

**Tel: 03000 269 714**

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## Special Highways Committee

29 July 2013

### Appropriation of Belle Vue site, Consett to facilitate redevelopment as an education Academy and leisure centre



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### Report of Stuart Timmiss - Head of Spatial Policy, Planning, Assets and Environment

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#### Purpose of the Report

1. To consider the appropriation of an area of land at Belle Vue, Consett to facilitate the redevelopment of the site as an education academy and leisure centre, even though this will result in the loss some open space. Appropriation in this context means transferring the allocation of the land from one purpose to another.
2. To highlight response from the public to the proposed appropriation.

#### Background

3. The site at Belle Vue ('the Site') extends over, approximately, 35.58 acres (14.4 hectares). By reference to the plan attached at appendix 1:-
  - a. the Site is shown edged red;
  - b. the existing open space area that is to be redeveloped is shown shaded blue ('the Open Space');
  - c. the public office area that is to be redeveloped is shown shaded green ('the Public Office Area'); and
  - d. the balance of the Site, which is to remain as open space, is shown shaded yellow.
4. The Site is currently used for a mix of leisure related purposes; Belle Vue leisure centre, Consett Football Club, Consett and District Rugby Club and related playing fields. The former Derwentside District Council offices (now demolished) and car parking form part of the Site.
5. The Site lies to the north of Consett town centre, bordered by Medomsley Road (B6308) to the west, Ashdale Road to the south and Villa Real Road (A691) to the north. Properties within part of the Oakdale Road residential estate, Villa Real estate and Consett Junior School adjoin the eastern boundary. The northern and eastern boundaries are lined by mature trees.
6. On 9<sup>th</sup> March 2010 outline planning consent was granted for the proposed demolition of the leisure centre, Council offices, football and rugby club facilities and for the construction of new leisure facilities and a new education academy. On 13<sup>th</sup> March 2013 reserved matters were

approved including details as to the layout, external appearance and landscaping of the Site.

7. An existing site layout plan (as at December 2009) is attached as appendix 2.
8. The Magistrates Court, the war memorial (grade 2) lying to the south west and the rugby club are to be retained as part of the proposed redevelopment. The football club is to be relocated. The other buildings will be demolished and a large building constructed, consisting of two elements; the academy building and the leisure centre. They will have separate entrances and car parks but will be linked by a large sports hall.
9. The proposed site layout plan is attached as appendix 3.
10. The redevelopment will result in some reconfiguration and loss of available open space. The buildings are to be located towards the southern end of the Site, on areas that have already largely been developed. The operational areas linked to the leisure centre and academy will need to be securely fenced to comply with educational requirements, including general health and safety and safeguarding reasons. The northern sections of the Site will include sports pitches, courts and a running track, together with some open grassland and wooded areas.
11. In developing the scheme, in so far as practicable, the loss of playing field land has been minimised, retaining much of the existing open character of the Site.

### **Legal position**

12. Appropriation is the process whereby a Council alters the purpose(s) for holding land and buildings (if any). Section 122 of the Local Government Act 1972 ('the 1972 Act') and section 232 of the Town and Country Planning Act 1990 offer two mechanisms under which local authorities may appropriate land for planning purposes. The procedures are largely the same but for one crucial difference, whether or not the land is currently appropriated by the Council for planning purposes. Section 122 of the 1972 Act is to be used in this situation.
13. The majority of Site was acquired by Consett Urban District Council pursuant to a conveyance dated 9th May 1936. The balance of the Site (three smaller parcels) was acquired by Consett Urban District Council pursuant to conveyances dated 21st December 1922, 6<sup>th</sup> June 1955 and 9<sup>th</sup> November 1979. The Council is the owner of the Site as the statutory successor.
14. The land included in the 1936 conveyance was acquired and held for the purposes of public walks or pleasure grounds under section 164 of

the Public Health Act 1875 ('the 1875 Act'). In 1949 part of that land was appropriated for public offices which, it appears, were used in conjunction with the land acquired in 1979 for the municipal offices (now demolished). Part of the land acquired in 1955 forms the highway. The balance is recreational.

15. The Open Space and the Public Office Area are currently held for purposes within public walks or pleasure grounds and public offices. Land used for leisure purposes can be held under the relevant statutory power within the 1875 Act, as there does not appear to be a statutory purpose of 'leisure'. The intention is for the relevant land to be held for purposes for the benefit, improvement and/or development of the area pursuant to section 120(1) (b) of the 1972 Act.

### **Appropriation**

16. Appropriation is an executive function under the Local Government Act 2000. Under the Council's constitution this function has been delegated to the Head of Spatial Policy, Planning, Assets and Environment save that in relation to open space, public walks and pleasure grounds (in this case the Open Space) where objections subsist, this Committee is to provide a recommendation to the delegated officer.

17. Appropriation under Section 122 of the 1972 Act provides that:

“(1) ....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.....”

“(2A) A principal council may not appropriate under sub section (1) above any land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation to the proposed appropriate which may be made to them.”

18. The key procedural points are:
  - a. the land must belong to the Council;
  - b. the land must be no longer required for the purpose for which it is currently appropriated; and
  - c. the purpose for which the Council is appropriating must be authorised by statute.

19. The Council is the sole judge as to whether or not land is still required for the purpose for which it is held immediately before the appropriation. Its decision cannot be challenged in the absence of bad faith (*Dowty Boulton Paul v Wolverhampton Corpn (No 2)*, 1973, CA). The Open Space and the Public Offices Area are no longer required for open space purposes but are now required for the redevelopment which is for the benefit, improvement and/or development of the area pursuant to section 120(1) (b) of the 1972 Act.
20. Section 122 of the 1972 Act provides that the Council may not appropriate land constituting or forming part of an 'open space' unless they:
  - a. advertise their intention to do so for two consecutive weeks in a newspaper circulating in the local area; and
  - b. consider any objections to the proposed appropriation which may be made to them.
21. Statutory notices have been placed in the relevant newspapers and two objections have been received from Mrs A Hall and Mrs Fraser. Copies of the objection letters are attached at appendix 4. The key elements of the objections are:-
  - a. the land was provided for recreation for the people of Consett and has been well used by the objector, her family and friends for a considerable period of time;
  - b. there are larger more accessible sites available in Consett;
  - c. the sports facility was 'gifted' to the children and young people and they will be denied use of the facility in the future;
  - d. the plan was not available for inspection; and
  - e. contaminated land concerns.
22. By reference to the layout plans within appendix 2 and 3 a large proportion of the Site consists of sports facilities. As part of the redevelopment that is not, substantially, going to change on the northern, eastern and western sections. The Council has sought to integrate open space as part of the redevelopment and the benefits of the replacement multi functional leisure facility and the provision of a new academy, which will contribute to the economic, social and environmental wellbeing of the area, outweigh the loss of part of the open space. The plan enclosed at appendix 1 shows shaded yellow the open space that is to remain for the recreation of the people of Consett.
23. A lengthy consultation exercise was undertaken on site selection for the academies in Consett, Stanley and Durham City. In 2009 Cabinet

considered a report from the Corporate Director of Children and People's Services on the preferred site selection for the academy in Consett. After due consideration which included representations from local councillors and members of the public Cabinet supported the recommendation for the site to be at Belle Vue. Officers have considered the suggestion that there are larger more accessible sites available at Consett. The conclusion is that Belle Vue remains the best site for the new academy and leisure facilities.

24. As noted above there will be a leisure facility of the Site; a modern replacement of the current facility for use by the children and young people of Consett, together with a new academy.
25. As part of the planning process a Contamination Land Risk Assessment Report dated January 2012 and a Contaminated Land Remediation Report dated January 2013 were prepared by TPS external consultants and the necessary remediation will be carried out, as appropriate, as part of the development process.
26. It is unfortunate if Mrs Fraser was unable to inspect the plan; it was available for inspection in Assets.
27. It is considered that the objectors' representations do not undermine the justification for appropriation of the Open Space or which should lead to the Council not proceeding with the appropriation. If further objections are received before the end of the statutory consultation period (26<sup>th</sup> July) this Committee will be appropriately advised either by an addendum report or verbally at the Committee.

### **Recommendations and reasons**

This Committee is requested to consider the objection to the proposed appropriation and recommend to the Head of Spatial Policy, Planning, Assets and Environment whether or not the appropriation should proceed.

### **Background papers**

Appendix 1 – Appropriation plan

Appendix 2 – Existing layout (Archila Architects F3004.1008/CA/OP/001)

Appendix 3 – Proposed layout (AWP Landscape Master plan 2540.01 Rev P1-02)

Appendix 4 – Objection letters from Mrs Hall and Mrs Fraser

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<b>Contact:</b>	<b>Louise Kelly</b>	<b>Tel: 03000269671</b>
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**Appendix 1: Implications**

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**Finance – N/A**

**Staffing - N/A**

**Equality and Diversity - N/A**

**Accommodation - N/A**

**Crime and Disorder - N/A**

**Human Rights - N/A**

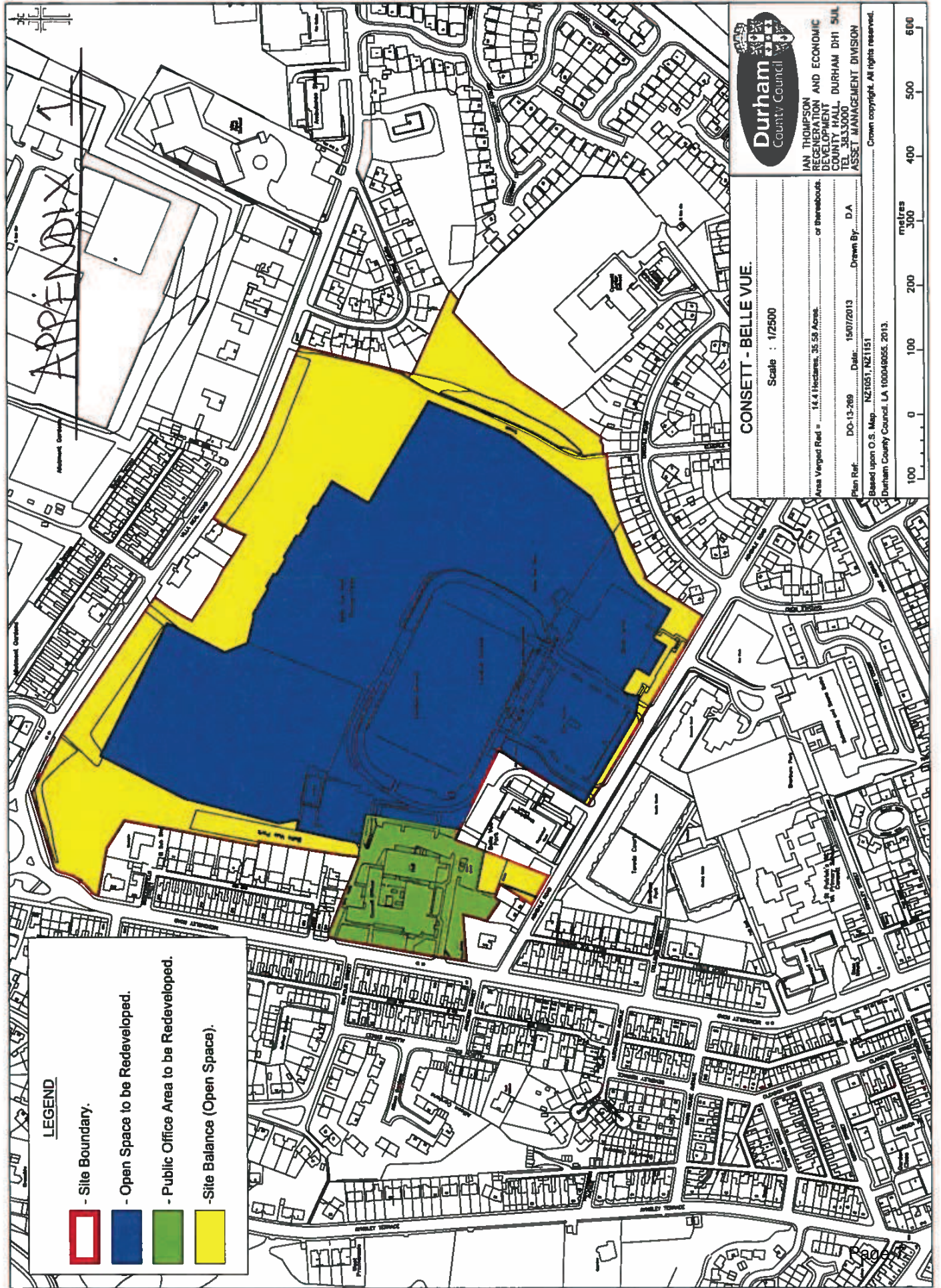
**Consultation** - Councillors Temple, Watson, Foster and Johnson have been consulted and have submitted no comments on the proposals.

**Procurement - N/A**

**Disability Discrimination Act -**

**Legal Implications** – The appropriation must fulfil the requirements of Section 122 of the Local Government Act 1972.





**LEGEND**

- Site Boundary.
- Open Space to be Redeveloped.
- Public Office Area to be Redeveloped.
- Site Balance (Open Space).



**Durham County Council**  
 IAN THOMPSON  
 RECREATION AND ECONOMIC  
 DEVELOPMENT  
 COUNTY HALL DURHAM DH1 5UL  
 TEL 3833000  
 ASSET MANAGEMENT DIVISION

**CONSETT - BELLE VUE.**

Scale : 1:72500

Area Varped Ref to 1:4.4 (Heads), 35.58 Acres.  
 or thereabouts.  
 Plan Ref: DC-13-289 Date: 15/07/2013 Drawn By: D.A.  
 NZ1051, NZ1151

Based upon O.S. Map. Durham County Council. LA 100048055. 2013.  
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APPENDIX 1









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# APPENDIX 4

Glenesk



C Longbottom  
Head of Legal and Democratic Services  
County Hall Durham

5<sup>th</sup> June 2013

Dear Sirs,

I wish to put in my objections for the appropriation of 20.54 acres of open space at Belle Vue Playing Fields, Consett, County Durham.

The open space which was listed for recreation for the people of Consett, has been well used by me, family, friends and the people of Derwentside for over 50 years and I along with many others think it is criminal to just take away this lovely well used site when we have so many larger more accessible sites available in Consett.

Yours truly,

Ann Hall (Mrs)



# APPENDIX 4

Jean E Fraser



C.Longbottom  
Head of Legal and Democratic Services  
County Hall  
DURHAM

*Tuesday 9<sup>th</sup> July*

Dear Sir/Madam,

## Notice of Appropriation Belle Vue, CONSETT

I am saddened that as one of the children and young people to whom the gift of this land was made at a ceremony at the new sports stadium, that today's children and young people are to be denied this facility in the future.

However I have concerns, given the strongly welcoming reaction expressed by very senior members of the family, at the time of this ceremony, that a positive use for the land which they had considered to be useless due to it previous use, had been found. Whilst recognising that great advances have been made in the use of contaminated land, I am aware that it may be possible there may still be issues relating to this area which are not in the public realm.

I had hoped to have access to both historical documents and council minutes, held by the Records Office, from the time that this decision to gift the land was made, to seek a clearer picture for the possible reasons for my elders concerns, to date this has not been possible.  
*nor were plans available when I called at County Hall.*

Consequently I seek assurance that if this area is to be developed that stringent contamination controls will be put in place, and monitored, and that any adverse historical use has been examined and addressed prior to any work being undertaken.

Yours sincerely,

  
Jean E. Fraser

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## HIGHWAYS COMMITTEE

29<sup>TH</sup> July 2013

**Appropriation of Belle Vue site, Consett to facilitate redevelopment as an education Academy and leisure centre**



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### **Addendum Report of Stuart Timmiss - Head of Spatial Policy, Planning, Assets and Environment**

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#### **Purpose of the Report**

1. To update Members on objections that have been received and to clarify the Committee's role.

#### **Objections**

2. On 24<sup>th</sup> July a joint objection was received from Councillor Owen Temple and Councillor Alex Watson. A copy of the joint objection is attached at appendix 5.
3. The key elements of the objection are:-
  - a. that the Site is not surplus to requirements; and
  - b. no alternatives have been provided to the public who use the Site for recreational purposes.
4. Section 122 of the Local Government Act 1972 Act ('the 1972 Act') provides that a 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....."**
5. The issue of 'no longer required' is a question for the Council, acting in good faith, to decide. Russell LJ in the Court of Appeal in *Dowty Boulton Paul v Wolverhampton Corporation (No 2) 1976* said:-

*'I would construe the words 'not required' in the section to mean not needed in the public interest in the locality for the original purposes.....that question, it is plain to me, involves matters both of degree and or comparative needs, as to which there can be no question that the local authority is better qualified than the court to judge, assuming it to be acting bona fide and not upon a view that no reasonable a local authority could possibly take'.*
6. The Council is the sole judge as to whether or not land is still required for the purpose for which it is held immediately before the appropriation.

7. The Council has a vision of bringing together the two facilities, the Academy and the leisure centre, for mutual benefit. The existing facilities are in a poor condition and in need of renewal. After a lengthy consultation exercise the Council concluded that Belle Vue is the most appropriate site.
8. There will be a reduction in the amount of publicly accessible open space but the proposed development will provide an enhanced provision, in line with Sports England's requirements, which outweighs the loss. Outside the secure fence line of the Academy there will be an open access area, mini football/5-aside pitches and perimeter trim trail which will improve what is currently a fairly sterile open space area.
9. There will be a reconfiguration of the current use of the Site resulting in the retention of an element of public open space use and the substantial enhancement of sports and leisure facilities for the benefit of the wider community; the development will offer unrivalled facilities for students and for the wider Consett community.
10. As well as existing open space in the Consett area, including the nearby Consett Park, the amalgamation of the existing schools will release a range of other playing pitches on the existing Blackfyne and Moorside school sites for wider community use. The future of these school sites in terms of development potential is yet unknown but the retention of an element of playing fields could be factored into any future development options.

### **Constitution**

11. After consultation with the Monitoring Officer as the Highways Committee is a non-executive body the role of the Committee is to provide a recommendation to the Executive. The Chief Officer will make the final determination on the appropriation.

### **Recommendations and reasons**

This Committee is requested to consider all of the objections to the proposed appropriation and recommend to the Chief Officer whether or not the appropriation should proceed.

### **Background papers**

Appendix 5 – Objection from Councillor O Temple and Councillor A Watson

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<b>Contact:</b>	<b>Louise Kelly</b>	<b>Tel: 03000269671</b>
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**Appendix 1: Implications**

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**Finance – N/A**

**Staffing - N/A**

**Equality and Diversity - N/A**

**Accommodation - N/A**

**Crime and Disorder - N/A**

**Human Rights - N/A**

**Consultation** - Councillors Temple, Watson, Foster and Johnson have been consulted. Councillor Foster and Johnson have submitted no comments on the proposals. Councillors Temple and Watson have submitted an objection.

**Procurement - N/A**

**Disability Discrimination Act -**

**Legal Implications** – The appropriation must fulfil the requirements of Section 122 of the Local Government Act 1972.

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Making a difference where you live

As councillors for the Consett North Division we oppose, as we have always opposed, the appropriation of land held at Belle Vue Consett for the benefit and enjoyment of the general public, for any other purpose. No case has been made as to why the land is no longer required by the public for its use as public walks and pleasure grounds, or alternatives provided to the users whose existence has been proven and accepted both at Public Inquiry and in Court.

The land is not surplus to requirement for its original use, and it will therefore be improper for the Highways Committee to agree to its appropriation for other uses.

Councillor Owen Temple

Councillor Alex Watson

24/07/2013

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