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## **NOTICE OF EXECUTIVE DECISION TO BE MADE**

The following Executive Decisions are due to be made by the CABINET MEMBER FOR HEALTH AND WELLBEING on WEDNESDAY, 20 MARCH 2019.

1. Land At Whitebank Close, Hasland (G260L) (Pages 3 - 36)

Reports relating to the decision(s) to be taken are attached to this notice, unless they contain confidential or exempt information. A meeting will not necessarily take place when the decision is made. Please contact Democratic Services for more information.

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## **FOR PUBLICATION**

### **Land at Whitebank Close, Hasland (G260L)**

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Meeting: Cabinet Member for Health and Wellbeing

Date: 20 March, 2019

Cabinet portfolio: Cabinet Member for Health and Wellbeing

Report by: Kier

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For Publication

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#### **1.0 Purpose of report**

1.1 To seek Cabinet Member approval to appropriate the land shown on the plan in Appendix 1 of this report to enable residential development.

#### **Recommendations**

1.2 That the Cabinet Member determines whether the land shown at Appendix 1 which was vested in CBC for athletic purposes and is allocated for residential development as no longer required for such purposes.

Subject to that determination:

1.3 That the Cabinet Member considers whether or not to appropriate the land shown at Appendix 1 for planning purposes.

- 1.4 That the Cabinet Member indicates an intention to appropriate the land shown at Appendix 1 pursuant to Section 122 of the Local Government Act 1972.
- 1.5 It is recommended Cabinet Member for Health and Wellbeing authorises consultation on the intention to appropriate the land at Whitebank Close, Hasland on the terms set out in the report in accordance with Section 122 of the Local Government Act 1972.
- 1.6 That a further report be prepared and that the Cabinet Member considers any representations received and makes their final decisions on whether or not to appropriate the land.

## 2.0 **Report details**

### **Site Location and Description**

- 2.1 The site is approximately 1.5 miles from Chesterfield Town Centre, with good access onto the A617 leading to J29 of the M1 and the A61, the main arterial route through Chesterfield to Sheffield in the North and Derby in the South.
- 2.2 The property has a total site area of approximately 1.64 acres (0.66 ha), comprising a rectangular broadly level site with tennis courts built up on a platform at a higher level. It is located off a spur road leading to Whitebank Close, Hasland as shown edged red on the attached plan (Appendix 1). It fronts onto the B6039 Hasland Road.
- 2.3 The site is located in a mainly residential area.
- 2.4 The development site consists of former tennis courts, which are now derelict, hard standing and overgrown scrubland. As to the Council's retained land at Whitebank Close, this is tenanted in the main and used for seasonal football pitches and bowling green use only. The only vacant area is the Archery Field to the

rear of the site. The total site area including the development site is approximately 11.75 acres.

- 2.5 The Council's Planning Services prepared Informal Planning Guidance dated January 2017 which supported residential use, subject to obtaining planning consent on the derelict tennis court site. This was used as part of the marketing material when the land was put on the market in early 2017.
- 2.6 As part of the development, the developer will need to provide an area for car parking for the Bowls and Archery Club fields within the Council's retained land at Whitebank Close. This is a condition of the sale of the development site and has been documented in the lease to the Bowls Club. The car park, together with any demolition of the tennis court platforms, site clearance and ground treatment costs, were to be taken into account as part of the bidding process.
- 2.7 In May 2017, the Council accepted an offer to sell this site for residential development to a developer, and this was approved by Cabinet Members in July the same year (Appendix 2).
- 2.8 The appropriation of land is an internal process whereby a Council transfers the allocation of land from one purpose to another.
- 2.9 The purpose of this report therefore, is to obtain a resolution to appropriate the land from its former use to use for planning purposes specifically for the purpose of facilitating the proposed residential development.
- 2.10 The statutory power to appropriate is conferred under Section 122 of the Local Government Act 1972 . This gives statutory powers to a local authority to appropriate land for any purpose for which the authority are authorised to acquire land by agreement. The appropriation of land refers to a process whereby a local authority alters its purpose for holding that

land, provided the land is no longer required for its original purpose. The effect of the appropriation would be to free the land from its former use of athletic purposes.

- 2.11 Section 237 of the Town and Country Planning Act 1990 provides that where a local authority has appropriated land for planning purposes the development of the land may override any third party rights enjoyed over the land, provided the development is done in accordance with planning permission. However, statutory compensation may be payable if appropriate.
- 2.12 The relevant powers under which the Council can acquire land for planning purposes are now contained in Section 226(1) and Section 227 of the Town and Country Planning Act 1990 and can be applied when either:
- (a) The authority considers that the appropriation will facilitate the carrying out or development, re-development or improvement on or in relation to the land; or
  - (b) The land is required for a purpose which it is necessary to achieve in the interests of proper planning in the area
  - (c) In this report, appropriation is considered under Section 226 (1)(a) above.
- 2.13 A local authority must not exercise the power under paragraph (1)(a) of Section 226 unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objectives:
- (a) the promotion of the economic well-being of the area
  - (b) the promotion or improvement of the social well-being of their area
  - (c) the promotion or improvement of the environmental well-being of their area.

This is known as the application of the Section 226(1A) test.

2.14 Before it can decide whether or not to appropriate the land to planning purposes, therefore, the Council must consider the following issues:

Whether:

- The land is no longer required for the purpose for which it is currently held (the Section 122 test).
- The appropriation will facilitate the carrying out of development, redevelopment or improvement in relation to the land.
- It will contribute to the promotion of economic, social and/or environmental wellbeing of the area (the Section 226(1A) test).
- It accords with the provisions of the development land, and whether planning permission is in force and any other considerations that would be material to the determination of a planning application for the development of the land.

### 3.0 **Basis for Appropriation**

3.1 The land is no longer needed for the purposes for which it is held because it consists of mainly derelict tennis courts. The whole site was let in the mid 1950's on a 99 year lease, which was assigned to Barratts. The lease was subject to a restrictive covenant requiring the site to be used for sports and recreational facilities. It therefore became surplus to requirements for Barratts and after a period of negotiation was surrendered back to the Council in 2013 subject to the payment of s 106 monies. The monies were used to improve facilities at the site such as the sports facilities and separating services so the Club tenants are self-contained and pay for their own utilities on site. It was noted back in a report to Cabinet in 2014, facilities such as the tennis courts were 'beyond economic repair'. The Council's policy with regard to

sports pitches stresses the importance of maintaining pitches on sustainable sites such as schools, where there are changing rooms, and shower/wc facilities. This site does not have these. The remainder of the site is scrubland and hard standing currently used by the Bowls Club informally as parking and was used by the former occupants of the Archery Field. The latter have since vacated the site. Alternative parking provision for the Clubs can be provided on the Council's retained land at Whitebank Close, if this site was appropriated for planning purposes and subsequently redeveloped. The alternative parking provision site has been addressed in the Bowls Club lease within the Council's retained land. As such, although this site was vested in the Council for athletic purposes, the part shown in Appendix 1 is no longer required for this purpose.

3.2 The appropriation will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. Residential development will bring about regeneration of a brownfield site close to existing District shopping and services in Hasland, thereby making it a more sustainable location than a greenfield site. The housing produced would contribute to the Council's 5 year housing supply numbers.

3.3 **Promotion of Economic, Social and Environmental Well Being of the Area**

Housing development in accordance with the Council's Planning Brief would deliver regeneration of a derelict and mainly underused site. The sale of the land for housing would also enable improvements to the Council's retained land in the creation of new parking provision for the Clubs based here and a better surface treatment for the access road and drainage into the Council's retained land.

3.4 The proposed appropriation accords with the provision of the development plan.

- 3.5 The National Planning Policy Framework (NPPF) 2012 provides the national policy context. Planning Policy for Chesterfield is set out in the Chesterfield Local Plan: Core Strategy (2013) and saved policies from the Replacement Chesterfield Borough Local Plan (2006) and in a range of Supplementary Planning Documents.
- 3.6 The Forward Planning team are currently preparing a new Local Plan that will replace the above documents. This will provide an update of the overall strategy for the borough and new site allocations looking ahead to 2036. In the Draft Local Plan, the site is allocated for housing. The relevant policies of the current development plan are identified below.
- 3.7 Policy CS1 sets out the Spatial Strategy for Chesterfield, which is based on locating new housing development where residents can walk or cycle to a range of facilities.
- 3.8 Policy CS2 identifies the Principles for Location of Development. Proposals will be assessed by the extent to which they meet the requirements of the policy. The site lies within the built up area of Chesterfield within a primarily residential area, with walking, cycling and public transport routes nearby. It is also within easy reach of Chesterfield town centre and Hasland's local centre. The site is therefore regarded as a sustainable location for new housing development.
- 3.9 Under policy CS9 Green Infrastructure and Biodiversity of the Local Plan, development that would lead to the loss of sports facilities (including former sports facilities) will only be granted where:
- i. They are identified as surplus to demand; or
  - ii. The development would result in alternative or improved provision;
  - iii. And where the site is not needed for other open space, play provision or sports facilities.

- 3.10 Chesterfield Borough Council's adopted Playing Pitch and Outdoor Sports Strategy, has assessed the adequacy of sports facilities across the Borough and sets out the priorities for the delivery of outdoor sports facilities and playing pitches up to 2026. The strategy identifies a number of key sites to be protected for the future, but for other sites that have fallen into disrepair, such as this one, concludes that:  
*"Courts on other public sites that have fallen into disrepair should not be reinstated. Any capital receipt should be reinvested into improving the sporting infrastructure in the borough".* (The Chesterfield Outdoor Sports and Playing Pitch Strategy Sept 2014, p.44).
- 3.11 The site is not in an area that has been identified by Leisure Services as deficient in other forms of open space provision, including Community Parks and Play Areas.
- 3.12 The tests set out in policy CS9 can therefore be met and the site is appropriate for redevelopment for other uses. Current work on the Local Plan follows the Informal Planning Guidance dated January 2017 which set out the planning position in detail, concluding that the tests set out in Local Plan policy CS9 can be met and the site is therefore appropriate for redevelopment for housing.
- 3.13 Policy CS18 Design, comments that proposals should respect the character and form of the site by virtue of its appearance and architectural style and have an acceptable impact on neighbour amenity.
- 3.14 Policy CS19 Historic Environment protects heritages assets and new development must preserve or enhance the historic environment wherever possible, including the settings of listed buildings. This will be an important consideration with regard to the setting of the neighbouring Bank Close House, which is a Grade II\* listed building.

- 3.15 The developer has been working with the local planning authority on a draft layout for development of this site, which has now been finalised subject to site investigations. The site investigations took place in December 2018.
- 3.16 As part of the consultation process, Sport England were approached about the potential loss of the tennis courts. The sale enables improvement of the access road to the Council's retained sports facility here and the provision of a new car park for the Bowls and Archery pitch users. The Council adopted Outdoor Sports and Playing Pitches Strategy puts more emphasis on maintaining tennis provision on sustainable sites, where there are changing rooms and toilet provision such as at school sites, which the tennis courts at Whitebank Close do not have. For these reasons, Sport England confirmed they would not object to the loss of the derelict tennis courts in February 2015.

### 3.17 Considerations

- 3.18 In considering whether the land is no longer required for athletic purposes, the Cabinet Member should be aware that any decision to sell the land is not directly relevant to any conclusion that the current use of the land is no longer required (i.e basis of the decision under Section 122).

The decision whether to appropriate for planning purposes is dependent on several factors as identified in paragraph which are as follows:

- 3.19 The land is no longer required for the purpose for which it is currently held (the Section 122 test)
- The appropriation will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land

- It will contribute to the promotion of economic, social and/or environmental wellbeing of the area (the s226(1A) test).
- It accords with the provisions of the development plan, and whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the land.

#### 4.0 Alternative Options and Reason for Rejection

These were considered in the report of July 2017 and rejected in favour of sale. Retention of the tennis courts would not be in line with the Council's adopted Outdoor Sports and Playing Pitches Strategy.

#### 5.0 Financial Implications ( Capital and Revenue)

5.1 The appropriation of the land itself does not have any direct capital implications with regard to expenditure but it will enable the land to be disposed of and developed more quickly, which will benefit the Council's Capital Programme. The land is classed as a General Fund asset, and will therefore generate a General Fund capital receipt which should be used to support the Capital Receipt Programme. This was previously approved in July 2017. The site provides no rental income for the Council because of its condition. There will be ongoing maintenance liabilities for the Council if the site is retained.

5.2 The purchaser agrees to pay 1% of the agreed sale price towards the Council's legal costs in preparing the draft documentation.

#### 6.0 Legal Implications

6.1 Section 122 of the Local Government Act 1972 authorises the Council to appropriate any land which belongs to the Council to another use/purpose which is no longer

required for the purpose for which it is held immediately before the appropriation. However, the appropriation is subject to the rights of other persons in, over or in respect of the land concerned. Where the land concerned is currently held for public open space, notice of the proposed appropriation needs to be advertised in two consecutive editions of a local newspaper for comments from the public to be obtained and considered. Section 237 of the Town and Country Planning Act 1990 prevents any third party rights in land acquired or appropriated by the Council for planning purposes (subject to payment of compensation) from prohibiting/stopping any development of that land for which planning permission is in place.

- 6.2 The playing fields off Whitebank Close were vested in the Council in the 1920's for athletic purposes. The sale of part of this site will mean that the Council maintains over 10 acres of playing fields at this location and therefore complies with its covenant to maintain sports and leisure facilities at this site.
- 6.3 A lease of the land was surrendered back to the Council by BDW Trading in August 2013, on the basis that a Section 106 Planning Obligation contribution paid to the Council in respect of development of the company's other site in the borough were properly spent on improving the sports facilities here. The monies have been accounted for and used to improve services to the separate interests on the fields. It is recommended the land is appropriated prior to disposal.
- 6.4 As it was part of the open space here, the proposal will need to be advertised in the local press and any comments considered. This can run concurrently with the appropriation process.

We do not consider the following to have any implications on sale:

- Communications
- Human resources/people management
- Information assurance and data protection
- Equality, diversity and human rights

The site is in poor condition in terms of its surface, and the tennis courts have been derelict for several years.

## 6.5 Risk Management

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
Council does not proceed with sale.	H	L	Site properly marketed to obtain best value and regeneration of the area.	L	L
Site left in existing use. Developer does not proceed and appropriation subject to challenge.	L	L	Consider underbidder's offer. Little chance of letting with use by Bowls Club and condition of surface. Advertised for two consecutive weeks along with advert for open space and consider any comments.	L	L

- 7.1 That the Cabinet Member determines whether the land shown at Appendix 1 which was vested in CBC for athletic purposes and is allocated for residential development as no longer required for such purposes.
- 7.2 Subject to that determination:  
That the Cabinet Member considers whether or not to appropriate the land shown at Appendix 1 for planning purposes.
- 7.3 That the Cabinet Member indicates an intention to appropriate the land shown at Appendix 1 pursuant to Section 122 of the Local Government Act 1972.
- 7.4 It is recommended Cabinet Member for Health and Wellbeing authorises consultation on the intention to appropriate the land at Whitebank Close, Hasland on the terms set out in the report in accordance with Section 122 of the Local Government Act 1972.
- 7.5 That a further report be prepared and that the Cabinet Member considers any representations received and makes their final decisions on whether or not to appropriate the land.

## **8 Reasons for recommendations**

- 8.1 To secure regeneration of the site for residential purposes, improve the facilities on the Council's retained land and secure a capital receipt for the Council in line with the previous Cabinet approval.

### **Decision information**

<b>Key decision number</b>	Non-key 123
<b>Wards affected</b>	St Leonards
<b>Links to Council Plan</b>	Improve the quality of life for

<b>priorities</b>	local people. To provide value-for-money services.
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### Document information

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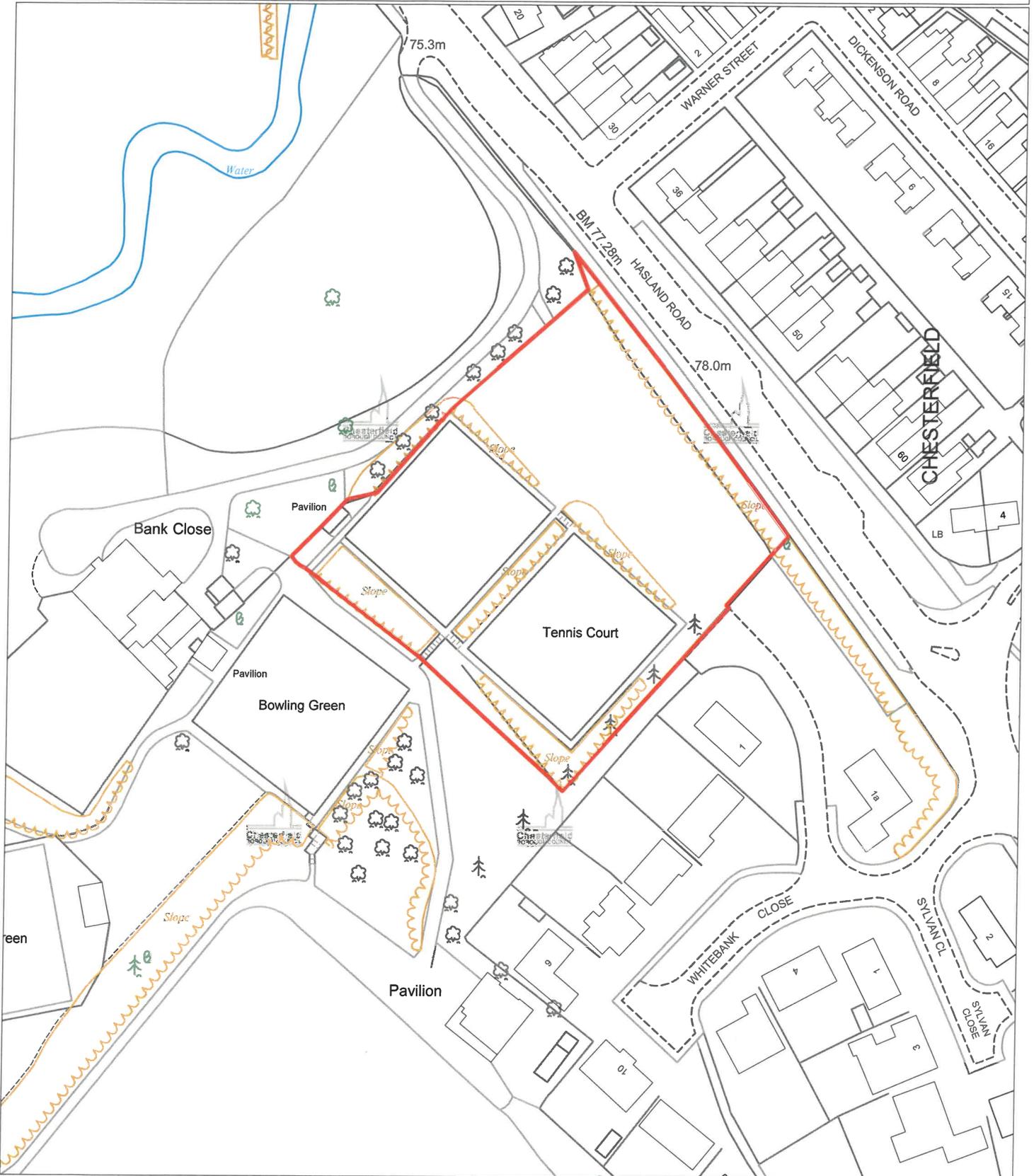
### **Background documents**

These are unpublished works which have been relied on to a material extent when the report was prepared.

*This must be made available to the public for up to 4 years.*

### **Appendices to the report**

Appendix 1	Site Plan
Appendix 2	Report on Land at Whitebank Close dated July 2017 – not for publication
Appendix 3	Results of Tender- not for publication



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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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