



CABINET

18 January 2017

Subject Heading:

Appropriation of Land for Planning purposes & Open Space Processes Relating to Various Potential Disposal Sites

Cabinet Member:

Councillor Roger Ramsey, Cabinet Member for Value and Leader of the Council

CMT Lead:

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Policy context:

This report deals with a statutory process

Financial summary:

No significant financial impact. The costs of appropriation processes are being met from existing budgets

Is this a Key Decision?

No

When should this matter be reviewed?

Not Applicable

Reviewing OSC:

Overview &Scrutiny Board

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for	[x]
People will be safe, in their homes and in the community	[x]
Residents will be proud to live in Havering	[x]

SUMMARY

- 1.1 On 16 December 2015 Cabinet authority was given to the disposal of the freehold interest in a number of sites currently owned by the Council.
- 1.2 The statutory process governing these activities requires the proposal to be publicly advertised and for any objections to be duly considered. Therefore in connection with these disposals, authority was also given by Cabinet to formally advertise the proposed disposal of open space and the appropriation of disposal sites for planning purposes.
- 1.3 This report describes the background to these proposals, sets out the responses received to the relevant public notices and provides an analysis of these responses for consideration by Members.

RECOMMENDATIONS

- 2.1 That, having considered the responses received as a result of the public notices, Cabinet approval is given to proceed with:
 - (a) The disposal of the following sites, for which authorisation for disposal in principle has been provided by Cabinet on 16 December 2015 pursuant to section 123 of the Local Government Act 1972. Plans of the sites are attached at Appendix 1 of this report.
 - a. Priory Road – land adjacent to 112 Priory Road
 - b. Rainham Road – land adjacent to 1 Bretons Cottages
 - c. Rainham Road – land between 8 & 9 Bretons Cottages
 - d. Tweed Way – land adjacent to the social hall
 - (b) The appropriation for planning purposes of the following sites as shown in a Cabinet Decision dated 16 December 2015 and as attached in Appendix 1
 - a. Priory Road – land adjacent to 112 Priory Road
 - b. Rainham Road – land adjacent to 1 Bretons Cottages
 - c. Rainham Road – land between 8 & 9 Bretons Cottages
 - d. Tweed Way – land adjacent to social hall
- 2.2 That the Head of Property - in consultation with the Director of Legal & Governance, oneSource - will as a result of this decision and in accordance with the authority given to him by the decision of Cabinet on 16 December 2015, deal with all matters arising including the appropriation for planning purposes and thereafter the completion of the disposals.
- 2.3 That, having considered the responses received as a result of the public notices, no further action will be taken in relation to the disposal or

appropriation of the following sites (Appendix 2) which will now be retained in their current form:

- e. Hitchin Close Land (formerly referred to as land adjoining former Whitworth Centre, Harold Hill)
- f. Hubbards Chase Land

REPORT DETAIL

- 3.1 The Council owns the freehold interest in the various sites that are subject to this report. The sites have been identified for disposal.
- 3.2 The principle of disposal of the sites was approved by Cabinet on 16 December 2015. The approval authorised the commencement of the relevant disposal and appropriation processes. Plans showing the extent of each site referred to in Recommendations 2.1 (a) and 2.1 (b) and 2.3 are attached to this report as Appendices 1 and 2.
- 3.3 The Council is authorised to dispose of any land that it owns but where such land can be regarded as open space (defined under section 336(1) of the Town and Country Planning Act 1990 as “any land laid out as a public garden or used for the purposes of public recreation...”) the Council must advertise its intention to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated and consider any objections which may be made to them.
- 3.4 Furthermore, all Council owned land is held for a particular purpose as the Council has the power to acquire and hold land for various statutory purposes to perform its functions. In order to hold land for a purpose other than one at the time it was acquired the land must be appropriated for a different purpose. Appropriation is a statutory process that allows the Council, following consultation to change the purpose for which it holds property in its ownership from one purpose to another. As a decision has been made by Cabinet to dispose of these sites for development (subject to obtaining the usual development consents) the relevant purpose for holding sites is now required to be changed to that of for planning purposes pending disposal.
- 3.5 The Council is authorised to appropriate land that it owns for planning purposes under Section 122 of the Local Government Act 1972 which, subject to a number of provisions, allows “a principle Council to appropriate land which belongs to the Council and is no longer required for the purpose for which it was held immediately before the appropriation....”
- 3.6 When the appropriation is in respect of open space the Council is required under Section 122 (2A) of the Local Government Act 1972 to advertise its intention to do so for two consecutive weeks in a newspaper circulating in

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the area in which the land is situated and consider any objections which may be made to them.

- 3.7 By formally appropriating the land for planning purposes the Council or any other person may – subject to Section 241 of the Town & Country Planning Act 1990 – develop the land in accordance with a planning permission.
- 3.8 The Council should only propose to appropriate land for planning purposes if it has an intention to see the land used for development which promotes or improves the economic, social or environmental wellbeing of its area and believes that the appropriation is needed in order to facilitate or achieve any of these aims. In each case, the Council does intend to see the land used for development, subject to securing planning and any other relevant authorisations. The reasons for these proposed disposals were set out in the 16 December 2015 Cabinet report including the continuing need to generate capital receipts from the disposal of assets in order to pursue capital projects. The review and identification of new disposal and capital receipt opportunities make an essential contribution to the funding of the Council's capital programme.
- 3.9 The decision to initiate the process of proposed appropriation and disposal of open space was confirmed on 16 December 2015. Public notices were placed in the Romford Recorder on 24 June 2016 and 1 July 2016. Copies of the notices are shown in Appendix 3. The final date for submission of any responses was 15 July 2016.
- 3.10 If representations are made to the Council in response to notices of this type, it is necessary for the Council to consider these representations and to take them into account in deciding whether to proceed with the appropriation and disposal of the open land. It should be stressed that the consideration in this report is whether the proposed appropriation of the disposal sites for planning purposes and the proposed disposal of the land should proceed and the representations need to be considered in that context.
- 3.11 Representations of objection were received in response to the site notices on all of the disposal sites. An analysis and commentary on the issues raised within the representations is set out below on a site by site basis. On the 2 sites where two individuals state that they wish to make a claim on the land rather than make representations (land between 8 & 9 Bretons Cottages and land adjacent to 1 Bretons Cottages), the appropriation and disposal will now proceed.
- 3.12 It is now necessary for Cabinet to formally consider the responses and to decide whether the proposed actions within this report should be authorised.

Analysis and proposed options

- 3.13 As stated above representations were received on all of the 6 sites and in two cases (Hitchin Close and Priory Road) petitions were also submitted.

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For the avoidance of doubt, and to ensure that all representations are correctly taken into account, every signatory to the petitions has been regarded as a separate representation and has been recorded as such.

- 3.14 A synopsis of the representations is attached for each site listed at 2.1(a) and 2.1(b) and 2.3 at Appendix 4. To assist Members in their consideration of these representations, a summary set out on a site by site basis is also shown below.
- 3.15 Of these sites, two have been considered in conjunction with an open space study (Hubbards Chase and Priory Road). The report has been carried out on behalf of the Council and has dealt with an assessment of open space within the borough. The assessment has analysed the quality of the open space and its value to the community and has provided a way to consider the representations made against the context of the quality / value of the site concerned.

Hitchin Close (formerly referred to as land adjoining former Whitworth Centre, Harold Hill)

- 3.16 Four letters and two emails were received along with four petitions consisting of 1,585 signatures making a total of 1,591 representations.
- 3.17 The letters refer to a number of issues including opposition to the sale, the loss of a site which is used by and beneficial to the wellbeing of the community, the adverse impact on protected species and wildlife generally, the proximity of the site to green corridors, the impact of development on flooding and the local infrastructure. The limited parking provision locally and concerns regarding access arrangements from the site on to Noak Hill Road have also been raised.
- 3.18 Any development of the land will require planning consent and most of these matters will be subject to further consultation and consideration on planning grounds as part of any planning application.
- 3.19 Four petitions were received in objection to the development of Harold Hill. Although they have been treated as 1,585 separate representations, no further reasons are given on the grounds for objection and the petitions have not been analysed further.
- 3.20 A Town and Village Green application has been submitted to the Council and is being pursued separately. The majority of the representations included within the application relate to the recreational use of the land and the importance of the access it affords to Noak Hill Road and vice versa.
- 3.21 Whilst the intention would have been to devise a development scheme which retained the public footpath travelling through it to enable residents to gain access to and from Noak Hill Road, the volume of representations

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received have been considered alongside an assessment of alternative open space provision within the immediate vicinity.

- 3.22 It has been acknowledged that the area of land is situated within a largely self-contained estate and is regarded as important in that context. Whilst there are imminent proposals to create a new open space sports facility on the former Broxhill site, it is accepted that the space available in its current location provides a valued resource to those residing immediately nearby.
- 3.23 It has been further acknowledged that a substantial area of land has already been developed adjacent to Hitchin Close. Given these circumstances, it is considered that a reasonable case exists not to proceed with appropriation, disposal and development of this site.

Hubbards Chase

- 3.24 One hundred and twenty letters and six emails were received making a total of 126 representations.
- 3.25 The representations refer to a number of issues including opposition to the sale and development of the land, the adverse impact on parking locally, the loss of a site which benefits the community and the lack of alternative open space provision locally, the adverse impact on wildlife, the impact of the development on flooding and the local infrastructure generally, the existence of a covenant on the title at Hubbards Chase and the unsuitability of an alternative space being provided along Wingletye Lane.
- 3.26 Any development of the land will require planning consent and most of these matters will be subject to further consultation and consideration on planning grounds as part of any planning application.
- 3.27 Many of the objections received referred to the existence of an historic covenant on the land. Legal advice has previously been obtained along with a copy of the registered title. This has established that the land was acquired pursuant to section 268 of the Local Government Act 1933 which permits the Council to use the land “for any local public purpose or for the benefit of the inhabitants of the area”. The title is subject to covenants but none appear to legally restrict the future use of the land although there are some indications that this was the intent of the original owner who passed the land to the Council under a Deed of Gift.
- 3.28 In connection with the recent Open Space study, the site has been assessed as being of “low value and low quality”. As there is no other public open space provision in the locality, the Council proposed to dispose of this area (1.2 acres) and make 2.7 acres available nearby along Wingletye Lane. The proposal was to create an access to the latter and make it usable. 1.8 acres of land at Elliot’s Field was also intended to remain as open space to the rear of a new development in order to meet local need.

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- 3.29 As with Hitchin Close, the land at Hubbards Chase is situated within a self-contained and established estate. More importantly, it is acknowledged to be the only area of open space serving the local community. It is because of this that alternative provision in the form of Wingletye Lane had been considered.
- 3.30 Having carefully considered the impact on the estate, the need to maintain open space provision and the volume of representations received, it is considered that a reasonable case exists not to proceed with the appropriation, disposal and development of this site.

Priory Road

- 3.31 Seventy eight letters and four emails were received along with a petition which contained 524 signatures making a total of 606 representations.
- 3.32 A further 4 petitions were received in objection to the development of Harold Hill. Whilst none of these petitions refer specifically to Priory Road, they may be intended to cover this area of land given the more general reference to Harold Hill. These petitions contain a total of 1,585 signatures.
- 3.33 The representations refer to a number of issues including opposition to development on Harold Hill generally, opposition to the sale and development of the land, the adverse impact on parking locally and the narrow road widths, the impact of construction on the residents of the adjacent care home, the lack of an area which provides access to the open space which it adjoins, the adverse effect on wildlife, the impact of the development on flooding and the local infrastructure, the affect overall on the uniqueness of the area.
- 3.34 Any development of the land will require planning consent and most of these matters will be subject to further consultation and consideration on planning grounds as part of any planning application.
- 3.35 The land at Priory Road is not in the green belt but does adjoin land with this planning designation. Presently, the land is an area of grassland providing access via a single gate to the land at Dagnam Park..
- 3.36 In connection with the recent open space study, the site has been assessed (in conjunction with the much larger area of adjoining open space) as being "high quality and low value". The site area consists of 1.35 acres of an area of approximately 17 acres in total. In relation to the representations received, whilst any loss of open space has to be carefully considered, the demand for new homes is great and the local area also benefits from a much larger expanse of open space within the immediate vicinity.
- 3.37 Having considered the representations received, the need for new homes and the volume of open space within the immediate area, the view is such that whilst any loss of open land has to be carefully considered, the loss

should be measured against the overall context of the area. The loss of land will not compromise the availability of land locally and, as a result, the current use is not considered necessary. There is a requirement for new homes in the borough and there is a reasonable case, therefore, to appropriate the land for that purpose prior to disposal. However, one of the issues raised by objectors, highlighted the value of the link which is afforded by the site to the land at Dagnam Park. It is agreed that the preservation of an access through to Dagnam Park is, as referred to by objectors, an important consideration. As such, in order to protect and retain the existing route from the Priory Road land thoroughfare, it is proposed to enhance and widen the route to dedicate a formal and improved access arrangement at this location for the benefit of its users. As this will reduce the extent of the disposal area, the Head of Property will have delegated authority to deal with all matters arising in connection with this issue in order to complete the disposal. A provisional revised boundary line is shown on the plan attached to this report at appendix 1.

Rainham Road sites

- 3.38 Two letters were received from individuals who reside outside the borough. Neither of the individuals raised objections to the proposed sale or appropriation but both advised that they wished to submit claims on the land.
- 3.39 Both areas of land are openly accessible from within Bretons Outdoor Recreation Centre and neither area has been encroached upon.
- 3.40 Overall, Bretons is a large area of open space consisting of some 119 acres. The sites proposed for disposal total 0.77 acres. One area (the land between 8 & 9 Bretons Cottages) is a disused area of infill land whilst the other area (land adjacent to 1 Bretons Cottages) is a potential addition to the existing residential frontage. It is intended to use part of any receipt realised to enhance the larger site and further work will be carried out to identify benefits to Bretons subject to the outcome of this report, the planning process and the eventual disposal receipt.
- 3.41 As no formal representations have been received and the areas proposed for disposal are situated within a much larger area of open space, it is considered that the use of the land identified by plan number sps2310 is no longer required for its current purpose and the retention of the land identified by plan number sps2309 is not necessary as its function can be accommodated within the extent of the open space remaining. There is an increasing demand to provide additional housing within the borough and the intended purpose is to develop these sites (subject to planning). As no representations to the proposals were received, the formal appropriation and proposed disposal will now proceed.

Tweed Way

- 3.42 Three letters were received as representations.
- 3.43 The representations refer to parking difficulties locally which would be exacerbated by development, the effect of development on the local infrastructure, the noise and disruption which would be caused during the construction process and the loss of an open space.
- 3.44 Any development of the land will require planning consent and most of these matters will be subject to further consultation and consideration on planning grounds as part of any planning application.
- 3.45 Having considered the representations received, the current use of the land and the need for new homes generally, the view is such that whilst any loss of land has to be carefully considered, this land was not identified as open space within the current open space study and does not perform a recreational function. It has been managed to address anti-social behaviour on site but this is not something that can be sustained in the long term. In view of this, the land is not required for its current purpose. It could be used to provide much needed housing within the Borough and there is a reasonable case to use the land for this purpose consequently, it is recommended that the land should be appropriated for planning purposes and pursued for disposal thereafter.

REASONS AND OPTIONS

Reasons for the decision:

- 4.1 This decision is required as a result of the statutory process involved in dealing with the proposed disposal of and appropriation of land for planning purposes.

Other options considered:

- 5.1 Having placed the notices, it is necessary for the Council to formally consider the response received. As this report only concerns the consideration of these responses, no other options are available.

IMPLICATIONS AND RISKS

Financial implications and risks:

- 6.1 There are no financial implications and risks in considering the responses received to a public notice dealing with the disposal and appropriation of land for planning purposes.

Legal implications and risks:

- 7.1 The Council is seeking to appropriate land for planning purposes under Sections 122 and 123 of the Local Government Act 1972.
- 7.2 Section 122 of the Local Government Act 1972 (“the Local Government Act”) enables the Council to appropriate land which belongs to the Council for any statutory purpose for which it is authorised to acquire land and which is no longer required for the purpose for which it is held immediately before the appropriation. The Council must, therefore, consider whether the land is no longer needed for the purpose for which it is so held if it is to be appropriated for planning purposes.
- 7.3 The meaning of the words “no longer required for the purpose for which it was held immediately before the appropriation” was considered by the Courts in the context of the predecessor to section 122. In that instance “not required” was held to mean “not needed in the public interest of the locality”.
- 7.4 Appropriation of the land for “planning purposes” (in order to engage the provisions of s237 Town and Country Planning Act 1990 (“the 1990 Act”)) requires the Council to consider the following factors whether;
- a. the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated;
 - b. the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well- being of the area;
 - c. it is in the public interest that the proposed development should be carried out, having regard to the provisions of the development plan, 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;
 - d. as noted above, whether the land is no longer required for the original purpose for which it was acquired

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- e. whether rights capable of being overridden by s237 of the 1990 Act exist and whether interference with such rights is necessary
- 7.5 “Planning purposes” is defined in Section 246(1) of the 1990 Act and acquisition for such purposes includes acquisition under s226 or 227 of the 1990 Act.
- 7.6 Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the 1990 Act. The consequence (by virtue of Section 237 of the 1990 Act, as amended by Schedule 9 of the Planning Act 2008) is that the erection, construction or carrying out of any maintenance or any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are done in accordance with planning permission, even if they interfere with third party rights.
- 7.7 The purpose of Section 237 of the 1990 Act is to ensure that where land has been appropriated for planning purposes, and provided that work is done in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, can be overridden. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference with them.
- 7.8 Section 122(2A) and 123(2A) of the Local Government Act require that before appropriating and disposing of any land consisting of or forming part of „open space the Council must advertise the proposed appropriation in two consecutive editions of a local newspaper and consider any objections received in response. It is considered that the consulting requirements of section 122(2A) and 123(2A) and the site notices and objections correctly considered.
- 7.9 It is considered reasonable for the Council to use its powers in this case to appropriate and dispose of the land, within the red line areas as on the Plans attached at Appendices 1 and 2 for planning purposes. As the appropriation will facilitate the carrying out of development and improvement to the land and contribute to the promotion of the economic, environmental or social well-being of the Borough.

Human Resources implications and risks:

- 8.1 There are no Human Resources implications or risks in considering the responses received to a public notice dealing with the disposal and appropriation of land for planning purposes.

Equalities implications and risks:

- 9.1 The public sector equality duty requires all public authorities to have due regard to the impact of its decision on protected characteristics.
- 9.2 The duties under section 149 of the EA do not require a particular outcome and what the decision making body decides to do once it has had the required regard to the duty is for the decision making body subject to the ordinary constraints of public and discrimination law including the Human Rights Act 1998.
- 9.3 A consultation exercise was undertaken to ascertain the views of residents impacted by the potential loss of space. Generally it was felt that loss of space would have an impact on certain communities' e.g families with small children. However this can be mitigated as there alternative open spaces nearby which are available for use.
- 9.4 The Human Rights Act 1998 ("the 1998 Act") prevents public authorities from acting in a way that is incompatible with rights protected by the 1998 Act. Of particular relevance to the acquisition of interests in land or overriding of interests/rights in land are Article 8 of the European Convention regarding respect for privacy and family life and Article 1 of the First Protocol, which concerns the protection of property.
- 9.5 Such rights are qualified rights and may therefore be overridden where it is considered that the interference with these rights are proportionate and that the interference is necessary in the interests of, amongst other things, national economic well being.
- 9.6 It is acknowledged that the appropriation of land for planning purposes may result in interference with property rights. However, compensation will be payable in accordance with statute. The assessment undertaken by the Council has taken into account the social, economic and environmental well being of the locality. Moreover, in considering this appropriation, the Council has carefully considered the balance to be struck between individual rights and the wider public interest and considers that there are no such rights to be considered in this assessment that will give rise to compensation.

BACKGROUND PAPERS

Redacted Representations received