



CABINET

Subject Heading:

Disposal of land at Hall Lane Pitch & Putt Course, Upminster following its appropriation for planning purposes.

Cabinet Member:

Councillor Roger Ramsey, Cabinet Member for Finance and Property

SLT Lead:

Simon Pollock, Executive Director for OneSource

Report Author and contact details:

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Policy context:

The report deals with a statutory process

Financial summary:

There is no significant financial impact from the statutory processes as these are being met by existing budgets.

Is this a Key Decision?

Yes

Expenditure or saving (including anticipated income) of £500,000 or more

When should this matter be reviewed? **Not applicable**

Reviewing OSC: **Overview and Scrutiny Board**

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

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]

SUMMARY

- 1.1 On 13 March 2019, Cabinet authority was given to consider any objections to the intended appropriation and disposal of the Council-owned land at Hall Lane Pitch and Putt, Upminster. Cabinet also agreed to the principle of disposing of the land following its appropriation for planning purposes, subject to the required statutory processes being undertaken.
- 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 the appropriation and disposal of the land, authority was also given by Cabinet to formally advertise the proposed intentions.
- 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. Inevitably, a large number of representations relate to the planning application for which resolution to grant permission has been obtained.

RECOMMENDATIONS

- 2.1 That, having considered the responses received as a result of the public notices, and pursuant to the Cabinet decision of 13 March 2019, Cabinet approval is given to proceed with:
 - (a) The appropriation for planning purposes of the land at Hall Lane Pitch and Putt, Upminster.
 - (b) The disposal of the land at Hall Lane Pitch and Putt, pursuant to section 233 of the Town and Country Planning Act 1990. A Plan of the site is attached as Appendix 1 of this report.
- 2.2 That the Head of Property Services - in consultation with the Cabinet Member for Finance and Property - will as a result of this decision deal with all matters arising including the appropriation for planning purposes and thereafter the completion of the disposal of the land.

REPORT DETAIL

- 3.1 The Council owns the freehold interest in the land at Hall Lane Pitch and Putt, Upminster. The site has been identified for disposal following its appropriation for planning purposes.
- 3.2 The principle of disposal of the site was approved by Cabinet on 13 March 2019. The approval authorised the commencement of the relevant disposal and appropriation processes. A Plan showing the extent of the site referred to in the Recommendations at 2.1 is attached to this report at Appendix 1.
- 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 an in principle decision has been made by Cabinet to dispose of the land for development (subject to obtaining the usual development consents) the relevant purpose for holding the land is now required to be changed to that 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 principal 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 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 this case, the Council does intend to see the land used for development. There has been a resolution to grant planning permission under planning reference PO248.19-outline planning application for the demolition of all buildings and structures on site, and redevelopment of the site providing up to 37 residential dwellings, creation of a new highway access, public open space and landscaping and related infrastructure. The reasons for this proposed disposal were set out in the 13 March 2019 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 makes 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 13 March 2019. Public notices were placed in the Romford Recorder on 5th and 12th July 2019. Copies of the notices are shown in Appendix 2. The final date for submission of any responses was 5th August 2019.
- 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 site 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. An analysis and commentary on the issues raised within the representations is set out in Appendix 3.
- 3.12 In summary, the consultation resulted in 868 responses being received. The majority of these representations represented objections to the Council's proposals and most contained multiple reasons for making these objections. In terms of the number of individual grounds for objection, recurring themes included the loss of open space/biodiversity/trees and their deleterious effects on health & wellbeing, congestion & pollution, pressure on local infrastructure & services and the inappropriate form of development.
- 3.13 It is now necessary for Cabinet to formally consider the responses and to decide whether the proposed actions within this report should be authorised.

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 the subject land for planning purposes

Other options considered:

- 5.1 Having placed the notices, it is necessary for the Council to formally consider the responses 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 direct financial implications in considering the responses received to a public notice dealing with the disposal and appropriation of land for planning purposes.
- 6.2 If the appropriation and disposal go ahead, presale expenses up to the allowable maximum of 4% of sale proceeds will be offset against the capital receipts. Any costs over and above this, or of a revenue nature will be met through the prioritisation of existing resources. The net capital receipts from the future disposal can be utilised to fund capital projects approved as part of the Medium Term Financial Strategy and Capital Strategy. This may involve the flexible use of receipts to fund transformation costs of a revenue nature.

Legal implications and risks:

- 7.1 The Council is seeking to appropriate land for planning purposes under section 122 of the Local Government Act 1972 and then dispose of the same pursuant to section 233 Town and Country Planning Act 1990.

- 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 sections 203 – 205 Housing and Planning Act 2016 (“the 2016 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, the land is no longer required for the original purpose for which it was acquired
 - e. rights capable of being overridden by sections 203 - 205 of the 2016 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 section 226 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 203 - 205 of the 2016 Act) 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 carried out in accordance with planning permission, even if they interfere with third party rights.

- 7.7 The purpose of section 203 - 205 of the 2016 Act is to ensure that where land has been appropriated for planning purposes, and provided that work is carried out 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) of the Local Government Act requires 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 the site notices and objections have been 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 Plan attached at Appendix 1 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.
- 7.10 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.
- 7.11 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 wellbeing.
- 7.12 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 wellbeing 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 are likely give rise to compensation.

- 7.13 The disposal of the land will be pursuant to section 233 of the Town and Country Planning Act 1990. The Council has, in addition to advertising the intended appropriation of the land (pursuant to section 122 Local Government Act 1972) advertised the intended disposal (on the same basis) in accordance with section 233(4) of the Town and Country Planning Act 1990.
- 7.14 In considering representations made following the advertising of the intended appropriation and the subsequent intended disposal, the Council is required to take these into account in reaching their decision to appropriate and dispose. This involves the exercise of a discretion and the duty to act reasonably in a “Wednesbury” sense. In practice this will involve balancing the benefits of appropriating and then disposing of the land as against the loss suffered by those landowners that benefit from rights affecting the land and those members of the public that use and enjoy the land for open space purposes. Adjoining landowners will have their rights overridden (in exchange for compensation) by the appropriation process, for example, this would include landowners that have acquired rights to light or have the benefit of restrictive covenants that affect the land. Members of the public that use the open space for recreational purposes will have their ability to use the open space land for these purposes taken away.
- 7.15 In exercising the authority recommended at 2.2 of this report, the Head of Property will need to dispose of the land in accordance with Section 233 Town and Country Planning Act 1990 which requires that the Council on disposing of the land must secure the best consideration on the disposal that can be reasonably be obtained.

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 (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:
- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
 - (iii) foster good relations between those who have protected characteristics and those who do not. .

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

9.2 Following a consultation exercise, to ascertain the views of residents impacted by the potential loss of open space, there were responses around the deleterious effects on the health and wellbeing of our residents. All comments on health can be mitigated through the alternative open spaces nearby. There were comments around socio-economic status (more expensive membership at nearby golf course).

9.3 It is considered that there are no communities falling under the list of "protected characteristics" that would be significantly or unduly harmed by the proposals, which is outlined in the Equality and Health Impact Assessment.

Health and Wellbeing Implications and Risks

10.1 Without the mitigation measures, the disposal and re-appropriation of the land at Hall Lane Pitch & Putt Course, Upminster could have a net negative impact on health. The effect is due to the loss of 75% of the green space, access to a sports facility, the threat to biodiversity, net increase in private vehicle movement and the loss of a local community group. The new development might create a few jobs for local subcontractors although the new properties will not be affordable to those who need most.

10.2 However, the negative impacts could be mitigated. Some of the measures are seen in the proposal. The proposal includes the provision of at least 25% of the site area allocated as public open space accessible free by all residents. Besides, environmental impacts can be mitigated by retaining most of the existing significant trees, planting more trees in the open space area, protect the trees inhabited by rare species if they happen to be on the development site, and containing a wildlife area. A standard wildlife assessment must be carried out. Moreover, in the public open space area, cycle racks, green gym, walking paths, benches and children play areas should be installed to allow physical activity and community activities and to make the best use of the space. Revenue from the sale of the land could be used to invest in affordable housing or converting empty offices.

BACKGROUND PAPERS

Redacted Representations received