Havering
LONDON BOROUGH

CABINET **14 August 2013**	
Subject Heading:	Appropriation of Land for Planning Purposes & Open Space Processes relating to the site of the Old Windmill Hall and the Adjacent Car Park
Cabinet Member:	Councillor Roger Ramsey, Cabinet Member for Value
CMT Lead:	Ian Burns, Interim Assistant Chief Executive, Legal & Democratic Services
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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
Is this a Strategic Decision?	No
When should this matter be reviewed?	Not Applicable
Reviewing OSC:	Value and Towns & Communities OSCs

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

Clean, safe and green borough	[]
Excellence in education and learning	[]
Opportunities for all through economic, social and cultural activity	[✓]
Value and enhance the life of every individual	[]
High customer satisfaction and a stable council tax	[]

SUMMARY

1.1 Cabinet approval has been given to the disposal of the site of the Old Windmill Hall and the adjacent car park. The approval includes the adjustment of the site to create a regular boundary with the adjacent Upminster Park. This adjustment takes an area of 191 sq m of open space to include within the disposal site and replaces it with 191 sq m of adjoining land from the site.

1.2 In connection with the disposal, a decision was taken to formally advertise the proposed disposal of 191 sq m open space (and its replacement with a similar compensatory area) and the appropriation of the disposal site for planning purposes. The statutory process governing these activities requires the proposal to be publicly advertised and for any objections to be considered.

1.2 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 That, having considered the responses made to the public notices in respect of land at the site of the Old Windmill Hall and the adjacent car park in connection with the proposed disposal and appropriation of land for planning purposes, Cabinet approval is given to proceed with:-

a) The disposal of 191 sq metres of open space shaded in blue in drawing SPS 1294/1 Rev A (attached as Appendix 1 to this report) under Section 123 of the Local Government Act 1972.

b) The inclusion within Upminster Park of the 191 sq metres of land to be used as open space shaded in green in drawing SPS 1294/1 Rev A (attached as Appendix 1 to this report) under Sections 122(1), 2(A) and 2(B) of the Local Government Act 1972.

c) The appropriation of the site shown outlined in red in drawing SPS 1294/1 Rev A (attached as Appendix 1 to this report) to planning purposes.

REPORT DETAIL

3.1 The Council owns the freehold interest in the land that is subject to this report.

3.2 The principle of disposal of the site edged red on the plan attached as Appendix 1 was approved by Cabinet on 13th February 2013 and was confirmed by the Value Overview & Scrutiny Committee on 12th March 2013. The Cabinet approval authorised the commencement of the relevant disposal and appropriation processes.

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 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 and the process of documenting any change to that purposes is called "appropriation". As a decision has been made to dispose of this site for development (subject to the usual development consents) the relevant purposes for holding it is now for planning purposes pending disposal.

3.4 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….".

3.5 When the appropriation is in respect of open space (of which a small part of the proposed disposal site is comprised), 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 the area in which the land is situated and consider any objections which may be made to them.

3.6 The actual area of land that falls within the definition of open land is the 191 sq m of land currently within the park that is proposed to be included within the disposal site and replaced with land from the adjoining site. The statutory requirement to advertise and then to consider representations against appropriation and disposal arises only due to the inclusion of this area of land.

In order to put the whole proposal into context the Council has also advertised its intention to appropriate the whole disposal site, to sell an area of open space and to incorporate land into the existing park and then to consider representations made on all of these three aspects.

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 those aims. The Council does intend to see the land used for development, subject to securing planning and any other relevant authorisations. In terms of the social and environmental aspects the Council intends to market the site for high quality residential development built to high sustainability standards to complement the heritage and other site specific aspects of this location. The economic reasons for this proposal were set out in the Cabinet reports that dealt with the principle of disposal and include both the Council's proposals for the future management of Community Halls and the on-going requirement to efficiently manage all assets.

3.9 The decision to initiate the process of proposed appropriation and disposal of open space was confirmed on 12th March 2013. Public notices were placed in the Romford Recorder on 17th May 2013 and 24th May 2013. Copies of the notices are shown in Appendix 2. The final date for submission of any response to the notices was 14th June 2013.

3.10 If representations are made to the Council in response to these notices it is necessary for the Council to consider these and to take them into account in deciding whether to proceed with the disposal and appropriation of the open land. It should be stressed that the issues under consideration in this report are whether the proposed appropriation of the disposal site for planning purposes, the proposed appropriation of an area (shaded green) for open space to be incorporated within Upminster Park and the proposed disposal of 191 sq metres of open land should proceed and the representations need to be considered in that context.

3.11 Representations have been received in response to these notices. To ensure that these can be fully considered copies of all representations are attached as Appendix 3. An analysis and commentary on the issues raised within the representations is set out below.

3.12 It is now necessary for Cabinet to formally consider the responses and to decide whether the proposed disposal and appropriation of the sites for planning purposes should proceed.

Analysis of Representations Received

3.13 A number of representations were received along with two petitions. A total of 398 letters of objection were recorded.

3.14 With regard to the petitions one was expressed as opposition to the sale of the land and contained 2548 signatures whilst the other related to the suggested provision of additional car parking spaces to support local business and contained 55 signatures.

3.15 The representations received raised issues about the whole proposal to sell the land for development and, in that context, tended not to be specific as to which notice the objection related to. For the avoidance of doubt and to ensure that all representations are correctly taken into account, it has been considered that all representations are regarded as objections to all three notices.

3.16 No further analysis of the petitions has been carried out. They are attached within Appendix 3 and express the views of the petitioners with no further details. Members will need to take these views into account in considering whether to confirm the appropriations and disposal of the open space and the incorporation of land into the park.

3.17 Turning to the individual representations, these are all contained within Appendix 3 and can be individually scrutinised by Members. It is not practical to comment on these on an individual basis but they have all been reviewed and an analysis has identified that there are certain themes that are raised by a number of objectors. To assist Members in their consideration of these representations a statistical analysis and commentary on these themes is set out below.

3.18 The themes identified are:

- No specific grounds.
- Opposition to the sale of land within a park.
- Concern about the effect of disposal/development on the remainder of the park
- Concern about car parking issues.
- Opposition to the development of the site.
- Concerns about the legal status of the land
- Miscellaneous/Other

3.19 **No specific grounds**

A total of 72 representations were expressed as an objection to the Council's proposals with no specific grounds for objection. There is no requirement for an objector to state their grounds of opposition.

Response

Members will need to take these views into account in considering whether to confirm the appropriation of the proposed disposal site and disposal of the 191 sq m of open space and the incorporation of a similar area of land into the park.

3.20 **Opposition to the sale of land within a park**

As stated above, all representations received are regarded as being opposed to the disposal of land within the park as this was a specific proposal that was the subject of one of the three notices. Of the 398 letters of objection, 206 specifically expressed opposition to the sale of land within the park and the 2548 signature petition also specifically raised this point. This is the largest theme identified within the representations received.

Within this theme a number of points are raised. The main concerns are that the sale of land within a park is, in principle, unacceptable, that the sale of the land sets an unwelcome precedent for other areas of open space and that the land is a valuable resource for users of the park – in effect that it is required for public recreation.

Response

Many representations regard the whole of the proposed disposal site as being within the park.

Many of these issues were considered by the Council when the original decision to identify this site for disposal was taken.

The Council agrees that its proposal does involve the appropriation of a site that would contain 191 sq m of land that is currently within the park and is used as open space. By definition this land is used for recreational purposes. It is the case that 191 sq m of land (shaded green on drawing SPS 1294/1 Rev A, annexed as Appendix 1) is to be incorporated back into the park so there is no net loss of open space.

The recreational needs of the community are important. Many planning policies and objectives of the Council (particularly within the Parks section) support this. However, on balance it may be considered that the disposal of 191 sq m of open land (when it is being replaced by an equivalent area) will not have a detrimental effect on those recreational requirements.

Members will need to take these representations into account and carefully balance the issues and the net effect of these proposals in considering whether to confirm the appropriation and disposal of the open space and the incorporation of land into the park.

3.21 **Concern about the effect of disposal/development on the remainder of the park**

This is a similar point to the preceding paragraph in so far as it opposes the sale of any land from the park. However, the theme identified within 97 of the responses received was the effect that the disposal would have on the use and enjoyment of the remainder of the park.

Issues such as the "closing in" of the northern edge of the park, the loss of views from the park, the change in the appearance and ambience of the park and the effect on users of the wider park were all identified. There was concern about access to the park from St Marys Lane and about the future requirements of users of the New Windmill Hall. These issues were considered when the original disposal decision was taken.

Response

In considering the issues raised Members will wish to seek to assess the effect that disposal may have on the park as a whole. The total disposal site has an area of approximately 1941 sq m of which 191 sq m will be made up of current open space (that is being replaced). The total area of the park will still be approximately 69,000 sq m.

Issues such as the appearance of any new development, the height of any new buildings and the effect that this may have on the amenity of park users are all factors that would be considered as part of any planning process (see below). Additionally, part of the approval to the disposal of this site contained specific references to the need for any development to be sensitive to its surroundings and to the need for any scheme to be prepared by a specialist Conservation Architect

3.22 **Concern about car parking issues**

Car parking issues were mentioned in 153 of the responses and were the subject of the 55 signature petition.

Essentially, objectors referred to two issues. There were the loss of existing car parking and the loss of an opportunity to expand car parking provision by using the Old Windmill Hall site to enlarge the existing car park.

As far as the existing car park is concerned the representations identified that the car park is used by visitors to the park, to neighbouring properties and to the wider Upminster Town Centre and that it supported local retailers by offering parking facilities to shoppers. It was also identified that the car park is used in connection with local schools and offers a safe, convenient place to park when dropping off and picking up pupils.

Objectors felt that the loss of the car park would be inconvenient and would deter visitors to the town. In turn this would have detrimental effect on the economy of the town and would contribute to the challenges that neighbourhood shopping areas are currently facing. It

was also considered that users of Upminster Park, particularly those bringing sports equipment or participants to the park, would be deterred.

Similar points were raised by representations that suggested that the existing car park should be enlarged to include the site of the Old Windmill Hall. These representations stated that there would be benefits for all of the parties mentioned above and also users of New Windmill Hall. A particular point raised on this issue was that if New Windmill Hall were to expand its activities then additional parking would be of extra value.

A final point made was that there is an immediate revenue loss in closing the existing car park and that this loss would be increased if the opportunity to enlarge the car park was lost.

Response

These car parking issues were referred to within the Cabinet report on the proposed disposal and were considered in detail at the Overview & Scrutiny Committee of 12th March 2013. The existing car park provides 15 spaces that are used on a "Pay and Display" basis in line with the Council's charging policies.

There are 43 spaces available on a "Pay and Display" basis in the New Windmill Hall Car Park that is the nearest alternative car park to this site. Furthermore, within Upminster Town Centre there are over 900 spaces available within Council and private car parks that are open to the public.

From a financial point of view capital expenditure would be required to enlarge the car park. There will be a small loss in revenue if the car park was removed. In purely financial terms the existing car park income does not compare favourably to the potential capital receipt.

Members will wish to weigh up these various factors in considering whether to confirm the appropriation and the disposal of the areas of open space that are the subject of these notices.

3.23 **Opposition to the development of the site**

Of the 398 representations received, 178 specifically stated that their grounds for opposing the proposals were related to the proposed development of the site.

Many objectors expressed their general opposition to any development of the site and these views were often allied to the general concerns about the disposal of land at this location. A significant number of

objections also specifically opposed residential development on this site and, especially, any use of the site for a flatted development.

The reasons behind this opposition included some views that the area already suffers from over-development and that further residential units at this location would place increased pressure on other facilities. The density of a flatted development raised concerns including traffic movements on and off the site and the possibility that street parking in the area would increase.

The actual form of development was identified as an area of concern as the site is within the location of a number of properties that have significant heritage issues. The effect of development on the site and on the park was also mentioned with factors such as the alleged loss of trees being mentioned either under this theme or under Miscellaneous (see below) although it is not clear whether this will be the case.

Response

In considering these issues the first point to clarify is that there are no firm development proposals in place at present. If a decision is taken to proceed with the disposal the Council intend to market the site and invite bids from interested parties. It is anticipated that interest may be received from bidders that wish to use the site for high quality residential development.

Bidders will be required to provide details of their development proposals at the bidding stage and part of the evaluation process will be to ensure that full account is taken of the circumstances present at this site, in particular, the heritage issues. Bidders will be encouraged through the marketing particulars and bid evaluation processes to engage the services of a specialist Conservation Architect.

The successful bidder will then submit a planning application for their proposed development and, if successful, the development may proceed. The Council will seek to enter into a contractual commitment with the purchaser of the land that they will only develop in line with the consent granted.

The position is that the type of issues raised within these representations that relate to the development of the land will be part of the consideration of any scheme during the statutory consultation period within the planning process when the actual form of proposed development is known. There will be wide public consultation on any planning application and there will be an opportunity to make representations during the statutory consultation process.

In these circumstances, Members will want to carefully consider the points raised about any development within the context of notices that

relate to the appropriation of land and the disposal of open space. It may be considered that the planning process is the appropriate way to ensure that development only takes place if it is appropriate and in line with local and national planning policy and other material considerations.

3.24 **Concerns about the legal status of the land**

This issue was a fairly common point raised in the representations and was mentioned within 32 of the responses received. This involved the understanding that there are legal constraints – possibly restrictive covenants – that prevent the land from being sold or developed.

Response

The position is that the land is not subject to any provisions that would preclude disposal or development of the land.

3.25 **Miscellaneous /Other**

There were 95 other responses which raised one or more of the issues addressed above, in addition to other issues summarised in the next paragraph of this report. Members will want to consider the actual representations made in order to fully take into account these issues. The representations are annexed to this report at Appendix 3.

The other representations include some factors that are related in some ways to the areas referred to above - concerns about the sale of publicly owned land, concerns about the loss of trees or about other environmental issues, including impact on wildlife. There were also representations generally about the disposal of land, the use of capital receipts and the creation of development profit. Some of the issues raised relate to how the notices were placed or about the process of identifying the land for disposal and the consideration of objections.

3.27 **Summary**

The issue to be considered by Members is whether, in light of the representations received, the appropriation of the site for planning purposes should go ahead.

Similarly, Members are also required to consider whether, in the light of the representations received, the disposal of the 191 sq m of open space – that will be replaced by an equivalent area – should be confirmed. Again, the decision relates to the recommendations which include the proposed appropriation of 191 sq metres to open space; the disposal of 191 sq metres of open space shaded in blue in drawing SPS 1294/1 Rev A (attached as Appendix 1 to this report) under Section 123 of the Local Government Act 1972 and the appropriation

of the site shown outlined in red in drawing SPS 1294/1 Rev A (attached as Appendix 1 to this report) to planning purposes.

The disposal of the remainder of the site does not require any further approvals.

Whilst wide ranging objections have been received against disposal and development, Members need to consider whether the land swap involving a small area of land within the park is acceptable and that the area of open space should be sold as part of a larger site. Members also need to consider whether objections received carry sufficient weight not to proceed to appropriate the area proposed disposal site for planning purposes.

REASONS AND OPTIONS

4 Reasons for the decision:

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

5 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

6 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.

7 Legal implications and risks:

7.1 The Council is seeking to dispose of and to appropriate land for planning purposes under Sections 122 and 123 of the Local Government Act 1972.

7.2 Prospective purchasers of land commonly require local authorities to provide clean title to land by such appropriation thus clearing encumbrances such as easements. Appropriation for planning purposes achieves this.

7.3 There is a requirement for authorities to follow the correct processes when dealing with the disposal of areas of land defined as open space.

7.4 While members of the Cabinet may well have been party to the initial decision to the principal of disposal of the land, it is considered that this does not amount to a pre-determination of this matter, which while it is related requires consideration of separate issues.

7.5 Public law decisions of local authorities are subject to the risk of legal challenge.

8 Human Resources implications and risks:

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

9 Equalities implications and risks:

Section 149 of the Equalities Act 2010 (EA) came in to force on 1st April 2011 and broadly consolidates and incorporates the 'positive equalities duties' found in Section 71 of the Race relations Act 1976 (RRA), Section 49 of the Disability Discrimination Act 1995 (DDA) and section 76(A)(1) of the Sexual Discrimination Act 1975 (SDA) so that due regard must be had by the decision maker to specified equality issues. The old duties under the RRA, DDA and SDA remain in force.

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.

The equality impacts raised in the representations received relate to the loss of open space and in particular the loss of an area of 191 square metres within Upminster Park. The response confirms that the equivalent area is to be appropriated to open space and incorporated in to Upminster Park. Therefore on balance there is no impact. In respect of the potential loss of 15 Pay & Display parking spaces there are 43 within the New Windmill Hall Car Park available on the same basis and in excess of 900 within Upminster Town Centre. There should not therefore be a significant impact in terms of accessible parking.

BACKGROUND PAPERS

None

APPENDIX 1


Havering
Strategic Property Services
Job Title:
Old Windmill Hall &
Upminster Park
St Mary's Lane
Drawing Title:
Site Plan
Drawn By:
HT
Scale:
1:1250 @ A4
Date:
September 2012
Drawing Number:
spd12/6a/1 Rev A
Blue Indicates Land to be included in Site (0941m2)
Green Indicates Land to be included in Park (165m2)
St Joseph's Catholic Primary School
St Joseph's Church
The Presby
War Memorial
CHAMPION ROAD
GRIDIRON PLACE
The Rectory
Shelter
Parkside House
Millfield House
Bentrose
Chelston
Stoneycroft
Broken Ridging
1 to 6 Rollins
ST MARY'S LANE
CRANBORNE GARDENS
0.48 Acres (1941m2)
Old Windmill Hall
New Windmill Hall
165m2
156m2
20m2
12m2
Car Park
El Sub Sta
Upminster Park
Sacred Heart of Mary Girls' School (Secondary)
The Old Chapel
BM 26.79m
24.1m
25.6m
28.5m
23.3m

APPENDIX 2

LONDON BOROUGH OF HAVERING

Local Government Act 1972 Section 122(1), (2A), (2B)

Appropriation of Land at St Marys Lane, Upminster Site of the Old Windmill Hall and Adjacent Car Park

Notice is hereby given that the London Borough of Havering proposes to appropriate a total area of approximately 0.1941 hectares (0.48 acres) of land formed of the Old Windmill Hall, the adjacent car park and an area of open space coloured blue on plan reference SPS 1294/1 Rev A all comprised with the area edged red on plan reference SPS 1294/1 Rev A for planning purposes in the interests of the proper planning of the area.

A plan reference SPS 1294/1 Rev A showing the proposed area edged red and including the area coloured blue is available for inspection between 9.30am and 4.30pm on normal working days at the offices of London Borough of Havering, PASC (Public Advice Service Centres) Liberty Shopping Centre, Romford RM1 3RL.

Under the provisions of Section 122 (2A) of the Local Government Act, 1972, any person wishing to object to the proposed appropriation should write setting out the details of such objection to: The London Borough of Havering, Legal & Democratic Services, Town Hall, Main Road, Romford, RM1 3BY for the attention of Ian Burns and must be received no later than 4.00pm on 14 June 2013.

Dated 17 May 2013
Published in the Romford Recorder 17 May 2013

Ian Burns, Acting Assistant Chief Executive
London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD

LONDON BOROUGH OF HAVERING

Local Government Act 1972 Section 122(1), (2A), (2B)

Land at St Marys Lane, Upminster Site of the Old Windmill Ha[illegible]d Adjacent Car Park

Notice is hereby given that the London Borough of Havering proposes to appropriate an area of 0.0191 hectares (0.0472 acres) from the site of the Old Windmill Hall and the adjacent car park to open space thus incorporating it within the adjoining park at Upminster Park, Upminster.

A plan reference SPS 1294/1 Rev A showing the proposed area coloured green is available for inspection between 9.30am and 4.30pm on normal working days at [illegible]ffices of London Borough of Havering, PASC (Public Advice Service Centres) Liberty Shopping Centre, Romford RM1 3RL.

Under the provisions of Section 122 (2A) of the Local Government Act, 1972, any person wishing to object to the proposed appropriation should write setting out the details of such objection to: The London Borough of Havering, Legal & Democratic Services, Town Hall, Main Road, Romford, RM1 3BY for the attention of Ian Burns and must be received no later than 4.00pm on 14 June 2013.

Dated 17 May 2013
Published in the Romford Recorder 17 May 2013

Ian Burns, Acting Assistant Chief Executive
London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD

LONDON BOROUGH OF HAVERING

Local Government Act 1972 Section 123

Disposal of Open Space in St Mary's Lane, Upminster Site of Old Windmill Hall and Adjacent Car Park

The Council gives notice that it proposes to dispose of an area of approximately 0.0191 hectares (0.0472 acres) of land of open space situated at the site of the Old Windmill Hall and the adjacent car park.

A plan reference SPS 1294/1 Rev A showing the proposed area coloured blue is available for inspection between 9.30am and 4.30pm on normal working days at the offices of London Borough of Havering, PASC (Public Advice Service Centres) Liberty Shopping Centre, Romford RM1 3RL.

Under the provisions of Section 123 (2A) of the Local Government Act, 1972, any person wishing to object to the proposed disposal should write setting out the details of such objection to: The London Borough of Havering, Legal & Democratic Services, Town Hall, Main Road, Romford, RM1 3BD for the attention of Ian Burns and must be received no later than 4.00pm on 14 June 2013.

Dated 17 May 2013
Published in the Romford Recorder 17 May 2013

Ian Burns, Acting Assistant Chief Executive
London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD

APPENDIX 3

REPRESENTATIONS

For technical reasons, copies of the representations are not available for download from the Council's website. Copies can be supplied upon request to Andrew Beesley, Committee Administration Manager, 01708 432437. Andrew.beesley@havering.gov.uk