



## CABINET

25 September 2013

**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

**CMT Lead:**

Ian Burns, Interim Assistant Chief Executive, Legal & Democratic Services

**Report Author and contact details:**

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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	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

## SUMMARY

- 1.1 Approval has been given to the disposal of the freehold interest in a number of small sites currently owned by the Council.
- 1.2 In connection with these disposals, a decision was taken to formally advertise the proposed disposal of any open space 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 the sites listed below in connection with the proposed disposal and appropriation of land for planning purposes, Cabinet approval is given to proceed with:-**
  - a) **The disposal of the following sites, authorisation for disposal in principle having been provided in a Lead Member Decision dated 9 July 2012 under Section 123 of the Local Government Act 1972. Plans of the sites are attached as Appendix 3 to this report.**
    - i. **Dorking Road**
    - ii. **Harlow Gardens**
    - iii. **Heaton Avenue**
    - iv. **Tavistock Close**
    - v. **Tiverton Grove**
  - b) **the appropriation of the following sites as shown in a Lead Member Decision dated 9 July 2012 and the plans in Appendix 3 for planning purposes.**
    - i. **Dorking Road**
    - ii. **Harlow Gardens**
    - iii. **Heaton Avenue**
    - iv. **Tavistock Close**
    - v. **Tiverton Grove**

## 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 the Lead Member for Value on 9 July 2012. The approval authorised the commencement of the relevant disposal and appropriation processes. Plans showing the extent of each site referred to in Recommendations 2a and 2b above are attached to this report as Appendix 3.
- 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 purpose is called “appropriation”. As a decision has been made to dispose of these sites for development (subject to the usual development consents) the relevant purpose for holding sites 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 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 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.
- 3.7 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 economic and other reasons for these proposed disposals proposal were set out in the 9 July 2012 report that dealt with the principle of sale. The economic rationale for the disposal is set out in page three of the Lead Member Decision of 9<sup>th</sup> July 2012, which includes the requirement that disposal of an asset be managed efficiently and that disposal makes a positive contribution to service delivery. Further as well as ensuring that the portfolio of retained property is suitable for the operational needs of the Council, there is a continuing need to generate capital receipts from 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.

- 3.8 The decision to initiate the process of proposed appropriation and disposal of open space was confirmed on 9 July 2012. Public notices were placed in the Romford Recorder on 31 May 2013 and 7 June 2013. Copies of the notices are shown in Appendix 1. The final date for submission of any response to the notices was 28 June 2013.
- 3.9 If representations are made to the Council in response to notices of this type 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 sites for planning purposes and the proposed disposal of any areas of open land should proceed and the representations need to be considered in that context.
- 3.10 Representations have been received in response to these notices on 5 of the 9 sites. To ensure that these can be fully considered copies of all representations are attached as Appendix 2. An analysis and commentary on the issues raised within the representations is set out below on a site by site basis. On the 4 sites where no representations have been received, Bell Avenue Land, Dudley Road Land, MacDonald Avenue/Jackson Close Land and Montgomery Crescent Land, the appropriation and disposal will now proceed.
- 3.11 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**

- 3.12 As stated above representations were received on 5 of the 9 sites and in two cases (Dorking Road and Tiverton Grove/Bedale Road) a petition was also submitted. 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.

- 3.13 The individual representations including the petitions are all contained within Appendix 2 and can be individually scrutinised by Members. To assist Members in their consideration of these representations a summary set out on a site by site basis is shown below.
- 3.14 Some of these sites were considered within a report carried out by WS Atkins in 2005 on behalf of the Council that dealt with an assessment of open space within the borough. That assessment analysed the quality of the open space and its value to the community. The report was prepared several years ago and some circumstances may have changed but it does provide a way to consider the representations made against the context of the quality/value of the site concerned.

### ***Dorking Road***

- 3.15 Three letters were received along with a petition containing 165 signatures making a total of 168 representations.
- 3.16 The letters refer to a number of issues and are reproduced within Appendix 2. The issues raised include opposition to the sale and development of the land, the loss of a site previously used as a play area, increased pressure on local parking, the effect of development on local infrastructure, the use of the site for recreational purposes and the process of notification.
- 3.17 Any development of the land will require planning consent and most of these matters will be the subject of further consultation and consideration on planning grounds as part of any planning application.
- 3.18 The area identified in the notice has previously contained play equipment but this has since been removed. The site is securely fenced and has a level, grassed surface with an open access from Dorking Road.

In 2005 the site was assessed as being “Below Average Quality and Below Average Value”. The nearest alternative areas of open land are Priory Road Open Space and Central Park that are both approximately 500 metres walking distance away. Both are assessed as being “Above Average Quality and Above Average Value”.

The notification process (advertising in the local press for two consecutive weeks) is a requirement of the relevant statute.

- 3.19 The petition states “We, the undersigned, are concerned local residents who oppose the sale of the (Park) land in Dorking Road”. Although it has been treated as 165 separate representations no further reasons are given on the grounds for objection and the petition has not been analysed further.

### ***Harlow Gardens***

- 3.20 Eleven letters and one e-mail were received making a total of 12 representations.
- 3.21 The representations refer to a number of issues and are reproduced within Appendix 2. The issues raised include opposition to the sale and development of the land, the noise and disruption of development, the trees and wildlife on the site, the use of the site for recreational purposes and the process of notification.
- 3.22 Any development of the land will require planning consent and most of these matters will be the subject of further consultation and consideration on planning grounds as part of any planning application.
- 3.23 The area identified in the notice is fenced and access from Harlow Gardens is gated. The site is not level and is overgrown in certain areas. There is some evidence of fly tipping having taken place in the past.

In 2005 the site was assessed as being "Below Average Quality and Below Average Value". The nearest alternative area of open land is Havering Country Park that is approximately 700 metres walking distance away and is assessed as being "Above Average Quality and Value".

The notification process (advertising in the local press for two consecutive weeks) is a requirement of the relevant statute.

### ***Heaton Avenue***

- 3.24 Four letters were received and all four were treated as representations.
- 3.25 The letters refer to a number of issues and are reproduced within Appendix 2. The issues raised include opposition to the sale and development of the land, the loss of a site that makes a contribution to the street scene, the noise and disruption of the development itself, the use of the site for recreational purposes and the process of notification.
- 3.26 Any development of the land will require planning consent and most of these matters will be the subject of further consultation and consideration on planning grounds as part of any planning application.
- 3.27 The contribution of this site to general recreational needs is considered to be limited. The site has not been previously identified as a play area and is an amenity green within the wider estate. It is not assessed as an area of open space within the 2005 report. There are other amenity greens and play sites in close proximity to this site.

The notification process (advertising in the local press for two consecutive weeks) is a requirement of the relevant statute.

### ***Tavistock Close***

- 3.28 Six letters were received and all six were treated as representations.
- 3.29 The letters refer to a number of issues and are reproduced within Appendix 2. The issues raised include opposition to the sale and development of the land, the noise and disruption of development, the effect of further development on parking in the area, the use of the site for recreational purposes, the use of the site as a buffer adjacent to the A12, the effect on the trees on the land the presence of utility equipment beneath the land and the process of notification.
- 3.30 Any development of the land will require planning consent and most of these matters will be the subject of further consultation and consideration on planning grounds as part of any planning application.
- 3.31 The area identified within the notice runs alongside the A12 Colchester Road and is situated between that road and the existing houses in Launceston Close, Tavistock Close and Widecombe Close. There is a metal palisade fence running along the A12 side of the site along with a line of mature conifer trees. There is some evidence that the site is used as an informal pedestrian “cut through” to the road. The land contains utility equipment and any proposed development would have to allow for this.

In 2005 the site was referred to as “Widecombe Close” and was assessed as being “Above Average Quality and Below Average Value”. The report suggests that for sites within this category consideration should be given to enhancing value or altering the use of the site to accommodate a higher value recreational use. If neither of these options are feasible then a further change of use should be considered.

The nearest alternative area of open land is Faringdon Avenue Open Space which has not been identified for disposal and is approximately 250 metres walking distance away. It is assessed as being “Below Average Quality and Below Average Value”.

The notification process (advertising in the local press for two consecutive weeks) is a requirement of the relevant statute.

### ***Tiverton Grove/Bedale Road***

- 3.32 Ten letters were received along with a petition containing 104 signatures making a total of 114 representations.
- 3.33 The letters refer to a number of issues and are reproduced within Appendix 2. The issues raised include opposition to the sale and development of the land, opposition to the general principle of selling

areas of green space, the effects of development local amenity including car parking, the effect on local infrastructure, the noise and disruption of development, the loss of value and the process of notification.

- 3.34 Any development of the land will require planning consent and most of these matters will be the subject of further consultation and consideration on planning grounds as part of any planning application
- 3.35 The contribution of this site to general recreational provision is recognised and the proposal is to dispose of part of the site for development. In analysing these representations Members will wish to consider whether this contribution can be adequately protected through the retention of the smaller area.

In 2005 the site was referred to as “Bedale Road Playground” and was assessed as being “Below Average Quality and Above Average Value”. The report suggests that for sites within this category the policy should be to enhance their quality and that their value should be protected. As stated above, Members will wish to judge whether the quality of the site can be adequately protected through the retention of the smaller area.

The nearest alternative areas of open land are Dagnam Park which is also assessed as being “Below Average Quality and Above Average Value” or Central Park that is described as “Above Average Quality and Above Average Value. Both of these areas are approximately 500 metres walking distance away.

The notification process (advertising in the local press for two consecutive weeks) is a requirement of the relevant statute.

- 3.36 The petition states “We, the undersigned , demand, that Havering Council DO NOT under any circumstances sell of or lease the public open space known locally as Tiverton Green for Housing or any related use, other than Public Green Open Space and that the site be retained for use by local residents and their children” .
- 3.37 The issue to be considered by Members is whether, in light of the representations received and an assessment of the weight of these objections, the disposal and appropriation of the sites for planning purposes should go ahead.

## **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 these sites, 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 1<sup>st</sup> 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. The responses confirm that there are alternative open spaces within the locality within walking distance. There should not therefore be a significant impact in terms of accessible open space.

## **BACKGROUND PAPERS**

Having Open Space and Sports Assessment – October 2005  
Lead Member Decision 9<sup>th</sup> July 2012

Look local with jobs24.co.uk

Friday May 31, 2013, Recorder 51

**LONDON BOROUGH OF HAVERING**  
Local Government Act 1972 Section 122(1), (2A)  
**Appropriation of Land for Planning Purposes**

Notice is hereby given that the London Borough of Havering proposes to appropriate a total area of approximately 1.38 hectares (3.4 acres) for planning purposes in the interests of the proper planning of the area.

A full list of the sites is shown below. Plans showing the proposed areas edged red are 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.

Drawing No.	Site Description	Site Area
SPS1383	Bell Avenue Land, Romford, RM3 7BL	0.18 hectares (0.44 acres)
SPS1386	Dorking Road Land, Harold Hill, RM3 9YX	0.08 hectares (0.21 acres)
SPS1714	Dudley Road Land, Harold Hill, RM3 8LH	0.10 hectares (0.26 acres)
SPS1715	Harlow Gardens Land, Collier Row, RM5 3UL	0.24 hectares (0.61 acres)
SPS1380	Land adjacent to 81 Heaton Avenue, Harold Hill, RM3 8LH	0.02 hectares (0.05 acres)
SPS1390	Macdonald Avenue / Jackson Close Land, Hornchurch, RM11 2PA	0.26 hectares (0.64 acres)
SPS1391	Montgomery Crescent Land, Harold Hill, RM3 7UX	0.16 hectares (0.40 acres)
SPS1717	Tavistock Close Land, Harold Hill, RM3 8HF	0.22 hectares (0.54 acres)
SPS1544	Tiverton Grove / Bedale Road Land, Harold Hill, RM3 9UA	0.10 hectares (0.25 acres)

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 3BD for the attention of Ian Burns and must be received no later than 4.00pm on 28 June 2013.

**Dated 31 May 2013**  
Published in the Romford Recorder 31 May 2013  
Ian Burns, Acting Assistant Chief Executive  
London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD

Legal and Public Notices

**LONDON BOROUGH OF HAVERING**  
Local Government Act 1972 Section 123  
**Disposal of Open Space**

Notice is hereby given that the London Borough of Havering proposes to dispose of a total area of approximately 1.38 hectares (3.4 acres) of open space.

A full list of the sites is shown below. Plans showing the proposed areas edged red are 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.

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London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD

58 Recorder, Friday June 7, 2013

Legal and Public Notices

**LONDON BOROUGH OF HAVERING**  
Local Government Act 1972 Section 123  
**Disposal of Open Space**

Notice is hereby given that the London Borough of Havering proposes to dispose of a total area of approximately 1.38 hectares (3.4 acres) of open space.

A full list of the sites is shown below. Plans showing the proposed areas edged red are 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.

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Friday June 7, 2013, Recorder 59

Legal and Public Notices

**LONDON BOROUGH OF HAVERING**  
Local Government Act 1972 Section 122(1), (2A)  
**Appropriation of Land for Planning Purposes**

Notice is hereby given that the London Borough of Havering proposes to appropriate a total area of approximately 1.38 hectares (3.4 acres) for planning purposes in the interests of the proper planning of the area.

A full list of the sites is shown below. Plans showing the proposed areas edged red are 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.

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