

EXECUTIVE BOARD DECISION



REPORT OF: Executive Member for Growth and Development

LEAD OFFICERS: Strategic Director of Place

DATE: Thursday, 10 June 2021

PORTFOLIO(S) AFFECTED:

WARD/S AFFECTED: Livesey with Pleasington;

KEY DECISION: N

SUBJECT:

Appropriation of Land and Disposal of Open Space of Land at Lomond Gardens and Land off Old Gates Drive, Blackburn (the Land).

1. EXECUTIVE SUMMARY

- 1.1 This report outlines proposals for disposal of a public open space and the appropriation of land for planning purposes, and invites the Executive Board to consider the objections received to the proposed appropriation of Council owned land at Lomond Gardens and land off Old Gates Drive for disposal.
- 1.2 This report outlines the process for the disposal of the public open space and appropriation of land.

2. RECOMMENDATIONS

That the Executive Board:

- 2.1 Acknowledges and considers the objections received for the appropriation of land at Lomond Gardens and land off Old Gates Drive.
- 2.2 Acknowledges and considers the objections received for the disposal of open space at Lomond Gardens and land off Old Gates Drive.
- 2.3 Having considered the objections, approve the proposed appropriation of land and disposal of open space of land at Lomond Gardens and land off Old Gates Drive for the reasons set out in this report.

3. BACKGROUND

- 3.1 On 12th March 2020, the Executive Board approved the disposal of Council owned land at Lomond Gardens to McDermott Homes for housing development, as well as the proposed appropriation of / disposal of open space at Lomond Gardens for planning purposes under Section 122 of the Local Government Act 1972.
- 3.2 The proposed appropriation (shown edged red on the attached plan, Appendix A) is for enabling the construction of up to 30 new family homes. The developer has formally submitted a reserved matters planning application (planning reference 10/21/0277) of the

proposed scheme for consideration by the Planning team. Outline planning permission was secured in 2019 (planning reference 10/19/0542).

- 3.3 To date, notice has been given on two separate occasions under Section 122 of the Local Government Act 1972 that the Council intends to appropriate the land at Lomond Garden and land at Old Gates Drive for planning purposes. This will enable new housing to be developed on site and enable the Council to override third party rights and easements pursuant to Section 203 of the Housing and Planning Act 2016.
- 3.4 In accordance with the Council's Executive Board approval, the Council proceeded with the statutory requirements for Appropriation of Land and Disposal of Open Space by way of issuing site and press notices. This required the Council to advertise the proposal twice over two consecutive weeks in the local newspaper and consider any objections to the proposed appropriation which may be made to them. The Notices were printed in the Lancashire Telegraph and displayed on site on the following dates:
- 3.4.1 9th April 2020, 16th April 2020 and 23rd April 2020
- 3.4.2 25th March 2021 and 1st April 2021
- 3.5 Initially when the Notices were first displayed in April 2020 the developer was in the early stages of scheme preparation. The Council opted to pause the appropriation process and resume activity once the reserved matters application had been submitted.

4. KEY ISSUES & RISKS

- 4.1 Over the course of the two advertising periods the Council received a total of 60 objections (58 in 2020 and 2 new objectors in 2021) in relation to the appropriation / disposal of open space by local residents including the Feniscowles & Cherry Tree Residents' Association.
- (Appendix B references detailed responses to the objections received. In summary the main areas of concern related to the site access point being off Old Gates Drive, which could impact on highways issues and loss of open space. The developer has now proposed the site access point to be from Lomond Gardens, which satisfactorily addresses most objections. Construction traffic will now access the site from Green Lane and use the temporary road that was constructed as part of the recent drainage works. The Planning process will give full consideration to; highways, road safety, planning policies and construction traffic matters).
- 4.2 The Council has considered the use of the open space and has assessed that the sporadic use of the open space can be better used to provide additional new housing, for which there is a need in the borough. In addition, the development will now retain and enhance the public open space at Old Gates and include the future maintenance of this land within the landscape management proposals for the housing scheme.
- 4.3 The Council has considered developing homes on the site without appropriating the Land for planning purposes, however, the Land which was used for education purposes as an all-weather pitch for St Bede's RC High School for any sports or recreational purposes has not been used for this purpose since at least 1997. Over time, the land has been left open and has been used as a public open space, albeit sporadically, and has on occasions attracted anti-social behaviour. It was therefore proposed that the land be disposed of and be appropriated for planning purposes under Section 122 of the Local Government Act 1972 and subject to the powers provided by Section 237 of the Town and Country Planning Act 1990. An options assessment was also undertaken during 2019, which identified the site as being suitable for housing development. The Council therefore considers that there is a need to appropriate the land for planning purposes to enable the development of the Land to help fulfil its Local Plan to build new homes in the borough. This will support the

regeneration of the area and the effect of appropriating land in this way is that the rights of affected third parties (such as rights of light and rights of access) can be overridden to the extent that they become an entitlement to compensation rather than a right to obtain an injunction to prevent the development happening.

- 4.4 To not appropriate the land for planning purposes would risk the proposed development being frustrated by third party rights, which, in turn, could delay the building of new homes. The Council does, however, recognise where a legal basis is established for any third party rights that those third parties will be duly compensated.
- 4.5 The use of appropriation power needs to be justified by a clear 'public interest' case that overrides the individual rights of potential affected third party owners and occupiers of nearby properties.
- 4.6 The justification for recommending the land be appropriated for planning purposes rests on the need for regeneration and provide more housing in the borough. The development of the Lomond Gardens site will contribute towards the borough's identified housing needs requirements over the draft Local Plan period to 2037.
- 4.7 The development of new homes is likely to bring a positive contribution to the economic, social and environmental conditions of the area. Given these benefits, it is considered that there is a clear and compelling case in the public interest to pursue the development protected from possible restraint by injunction. Appropriating the land for planning purposes will achieve that while still enabling any interference with third party rights to be addressed via compensation.

5. POLICY IMPLICATIONS

- 5.1 The Council's draft Local Plan sets a housing requirement to meet over the Local Plan period to 2037.
- 5.2 Development of the site will contribute to meeting this target and assist in improving the quality of the borough's housing offer.

6. FINANCIAL IMPLICATIONS

- 6.1 The Council will receive a capital receipt for the land and the scheme will provide a Section 106 contribution towards local infrastructure.
- 6.2 The Council will also receive Council Tax income and New Homes Bonus from 30 new homes.
- 6.3 Section 204 of the Housing and Planning Act 2016 provides that compensation will be payable to those parties whose interests have been affected by any appropriation.

7. LEGAL IMPLICATIONS

- 7.1 The proposed development site has been owned by the Council or Lancashire County Council since 1967.
- 7.2 The National Planning Policy Framework has replaced the National Planning Policy on Housing (PPS3). However, requirements still remain with the Council to demonstrate the provision of an adequate mix of housing developments and setting of targets for affordable housing. As any future proposed disposal is likely to be for the freehold of the land, then

various aspects of Section 123 of the Local Government Act 1972 (“the Act”) are considered to apply.

- 7.3 The extent that the land to be disposed of is considered to be open space is guided by Section 123 (2A) of the Act. This requires the Council to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.
- 7.4 Open space is defined in 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, or land which is a disused burial ground”. And it is the conclusion in the body of the report that while the site is generally unkempt which limits its effective use as open space that much of the site is reasonably likely to fall into that category to the extent that it would be prudent for the Council to treat it as such. While there is case law on such matters, it may be sufficient to only look at the plain English language meaning of the phrase in this case.
- 7.5 Section 122(1) of the 1972 Act states: “Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned.”
- 7.6 This appropriation process is a helpful avenue for the Council where agreement cannot be reached or the beneficiaries of any (possible) rights are unknown. Section 203 authorises the overriding of any private rights affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person authorised by that authority. The ability to interfere with these (possible) rights is important in the context of enabling any development to proceed. The power to override such rights does not prevent such rights being compensated.
- 7.7 Section 122(2) of the 1972 Act requires the Council, prior to any appropriation, to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.
- 7.8 The Council has complied with the statutory requirements in respect of advertising the proposed disposal of open space and appropriation of land.

8. RESOURCE IMPLICATIONS

- 8.1 Existing staff resources will be provided from the Council’s Growth, Property, Planning and Legal teams.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

9.1 In authorising the appropriation and disposal of open space of Land at Lomond Gardens and Land of Old Gates Drive, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998, so far as they might be applicable in deciding whether or not to authorise the appropriation, and with regard to Article 1 of Protocol 1 Part II of Schedule 1 of the Human Rights Act 1998, it is considered that in balancing the rights of the individuals who may be affected by the appropriation against the benefit to the community of proceeding with the appropriation, the appropriation resulting in the interference of (possible) individual rights is justified in the interests of providing necessary housing to the area.

10. CONSULTATIONS

Stakeholder consultation will be undertaken during the full planning process.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

CONTACT OFFICER:	Simon Jones – Growth Programme Director
DATE:	June 2021
BACKGROUND PAPER:	EBD March 2020 - Disposal of Council Land at Lomond Gardens, Blackburn, Site Appropriation and Disposal of Open Space