



# EXECUTIVE MEMBER DECISION

<b>REPORT OF:</b>	Executive Member for Growth and Development Executive Member for Finance and Governance
<b>LEAD OFFICERS:</b>	Strategic Director for Growth and Development
<b>DATE:</b>	10 June 2022

<b>PORTFOLIO/S AFFECTED:</b>	Growth and Development
<b>WARD/S AFFECTED:</b>	Blackburn South and Lower Darwen; Ewood;

**SUBJECT: EMD: Disposal of 'open space' and appropriation of land at Heys Lane, Blackburn**

## 1. EXECUTIVE SUMMARY

To seek approval to the disposal of 'open space' and the appropriation of land at Heys Lane, Blackburn. The site referred to as Bank Heys, is allocated for residential development in the Local Plan. In March 2021, the Executive Board approved the disposal of the site to for residential development purposes.

## 2. RECOMMENDATIONS

That the Executive Member:

- 2.1 Approve the commencement of the land appropriation and disposal of open space process for the land at Heys Lane, shown edged red on the attached plan and comprising 2.86 acres or thereabouts by authorising the Strategic Director Place to appropriate this land from the Resources and Growth & Development portfolios to the Growth & Development department for planning purposes pursuant to s226 Town and Country Planning Act 1990.
- 2.2 Noting that the land is generally open space in character then such appropriation must also comply with s122(2A) of the Local Government Act 1972 and hence authorise the Deputy Director of Legal & Governance to advertise the proposal to appropriate accordingly.
- 2.3 Authorise the Deputy Director of Legal & Governance to advertise the proposal to dispose of 'open space' in accordance with the statutory process under Section 123(2A) of the Local Government Act 1972
- 2.4 Note that in authorising the commencement of the appropriation process of the Heys Lane site, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report.
- 2.5 Authorise the Strategic Director of Place in consultation with the Executive Member for Growth & Development and the Executive Member for Finance and Governance, to consider any objections or comments raised to the proposed land appropriation and to the disposal of open space at Heys Lane and if appropriate approve the disposal of open space at Heys Lane for the proposed housing development.

2.6 Note the Council's powers under s.203 – 206 of the Housing and Planning Act 2016 to override any third party rights and easements on the land once planning permission for the planning purpose has been obtained and so where necessary to enable the planning purpose to be achieved, authorise the Strategic Director of Place to override any said third party rights or easements.

### **3. BACKGROUND**

- 3.1 The site will be developed for housing as part of the Bank Hey Development Site, which is allocated for residential development in the Local Plan. The masterplan for the area estimates 315 homes to be built by 2026, with potential for an additional 335 homes beyond this date bringing the total number of residential properties to 650.
- 3.2 The Bank Hey Development Site extends to 101.85 acres (41.2 hectares) and is in multiple ownership. The Council's proportion of the site is calculated at 2.8%.
- 3.3 The Council intends to serve notice under Section 122 of the Local Government Act 1972 to appropriate the land at Heys Lane for planning purposes from the Education portfolio to the Growth & Development portfolio. This action has been taken in consultation with the Education Service. Land appropriation will enable the site to be developed for housing and enable the Council to override third party rights and easements pursuant to Section 203 of the Housing and Planning Act 2016.
- 3.4 The proposed appropriation 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 to consider any objections to the proposed appropriation which may be made to them.
- 3.6 In addition to the appropriation process, the land at Heys Lane is also considered to be 'open space' and therefore section 123(2A) of the Local Government Act 1972 applies. This requires the Council to again advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, erect site notices, and consider any objections to the proposed disposal which may be made to them.

### **4. KEY ISSUES & RISKS**

- 4.1 The Council has combined its site with other private landowners in order to maximise the development potential of the site.
- 4.2 Should the transaction not be completed the Council will retain a piece of land with low amenity value or use when considered in isolation.
- 4.3 The disposal of the wider Bank Hey Development Site will make a significant contribution to achieving the Council's housing delivery targets.
- 4.4 Currently there are approximately five houses along Heyworth Avenue that have private gates to their rear boundary which provide the residents with a direct access onto the Council's land. These are unauthorised and the Council is currently addressing this matter with the residents concerned.

#### **4.5 Appropriation**

- 4.5.1 The Council can appropriate land for any proper purpose for which it is authorised to acquire land by agreement. The general appropriation process is set out in section 122(1) of the Local Government Act 1972 (1972 Act).

4.5.2 The Council's powers to appropriate land for planning purposes is contained in s226 of the Town and Country Planning Act 1990. It is also clarified here for the avoidance of doubt that in this case the Council thinks:

- the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land (section 226(1)(a)); and
- the proposed development and improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or part of the Borough (section 226(1)(a) and (1A)).

4.6 The Council should only resolve to appropriate land for another purpose if it is satisfied that the land is not required for the purpose for which it is currently held. The land at Heys Lane has been identified for some time as housing development in the Council's adopted Local Plan. The site is included in the Council's Growth programme to provide residential dwellings, the proposed appropriation will bring the site forward to deliver new homes in line with the site designation and the Council's growth programme. Any proper objection on the proposed appropriation will need to be formally considered by a subsequent formal decision. This will be in the form of an executive member approval.

4.7 The Council considers there could be a small chance of some informal private rights of way and other informal easements having accrued over time over the development site due to the site being 'open' for a considerable period. Where land is appropriated for planning purposes and planning permission for the planning purpose has been achieved, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. The Council has this statutory power to override easements or rights of way affecting land.

#### **4.8 Disposal of Open Space**

4.8.1 As the land at Heys Lane can be considered to have been reasonably open to the public for use, it considers that it is best to act cautiously and deem this site suitable as one to which ought to be considered as 'open space'. A proposed disposal of open space must follow on from the process provided for under section 123(2A) of the Local Government Act 1972. 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, erect site notices, and consider any objections to the proposed disposal which may be made to them.

4.8.2 It is recommended that the Council delegates authority to the Strategic Director of Place in consultation with the Executive Members for Finance and Governance and Growth and Development, to consider any objections or comments raised to the proposed disposal of 'open space' at Heys Lane and if appropriate approve the proposed disposal of 'open space' at Heys Lane for the proposed housing development.

### **5. POLICY IMPLICATIONS**

The site is allocated for housing development within the Council's adopted Local Plan Part 2 (2015). The proposed disposal will help to progress delivery of essential housing development in accordance with the Local Plan, and will work towards meeting the Council's targets for housing delivery. However, the Council is fully mindful of its statutory processes and substantive consultation considerations it must make.

### **6. FINANCIAL IMPLICATIONS**

- 6.1 In the absence of disposal of open space for land appropriation purposes, the residential development on the Council land will not be progressed and will result in the loss of a capital receipt for the Council.
- 6.2 Although not currently calculable, there may be compensation due to exercising the appropriation rights.

## **7. LEGAL IMPLICATIONS**

- 7.1 To the extent that the land to be disposed of is considered to be “open space” then s123(2A) of the Act shall apply. 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.
- 7.2 “open space” is defined in section 336(1) of the Town and Country Planning Act 1990 as: “means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground” (emphasis added) And it is the conclusion in the body of the report 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.
- 7.3 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.”
- 7.4 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 and obviously humans rights considerations must be fully examined as part of the process.
- 7.5 Section 122(2) of the 1972 Act requires the Council, prior to any appropriation of land comprising open space, 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.

## **8. RESOURCE IMPLICATIONS**

Legal resources will be required to complete the appropriation process.

## **9. EQUALITY AND HEALTH IMPLICATIONS**

- 9.1 Provisions of the Human Rights Act 1998 (“HRA”) which are relevant in relation to the proposed appropriation are:
- (1) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe.

- (2) The HRA still does not incorporate the Convention into UK law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.
- (3) The main article of the Convention, which is of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.
- (4) In appropriating land an authority must show that the appropriation is justified in the public interest.

9.2 Article 1 of Protocol 1 provides that:

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
- (2) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.
- (3) However, the above rules shall not prevent a State enforcing such laws, as it deems necessary to control the use of property in accordance with the general interest.
- (4) The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is a relevant factor in considering the balance.
- (5) With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.

9.3 In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

- (1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

9.4 The Council has carried out an equality impact analysis checklist. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the proposed appropriation would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

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. (*insert EIA link here*)

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. (*insert EIA attachment*)

## 10. CONSULTATIONS

Public consultation will take place on receipt of any future planning application for development of the site.

## 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 and published if applicable.

<b>VERSION:</b>	<b>1</b>
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<b>CONTACT OFFICER:</b>	Simon Jones, Programme Director, Growth and Development
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<b>DATE:</b>	May 2022
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<b>BACKGROUND PAPER:</b>	EMD Disposal of land at Heys Lane, 2020.
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