

EXECUTIVE MEMBER DECISION



REPORT OF: Executive Member for Growth and Development,
Executive Member for Finance and Governance and
Executive Member for Environment and Operations

LEAD OFFICERS: Strategic Director of Growth & Development

DATE: 16th August 2023

PORTFOLIO(S) AFFECTED: Growth and Development

WARD/S AFFECTED: Ewood;

KEY DECISION: N

SUBJECT:

Disposal of Council owned land off Heys Lane Blackburn for the provision of new homes

1. EXECUTIVE SUMMARY

- 1.1 Gleeson Homes have secured an option to purchase the Scotland Bank Mill site (previously known as the Kickers factory) located off Scotland Bank Terrace off Heys Lane, Blackburn (Appendix A site A)
- 1.2 Gleeson intend to develop the site to provide family homes for sale. However, due to land contamination and abnormal costs the scheme is unviable for the number of homes, which can be developed on it.
- 1.3 Gleeson have carried out extensive financial assessments to reduce development costs (which have increased considerably over the last twelve months) but viability is still a challenge because of the high cost of abnormals and land remediation.
- 1.4 They have little scope of increasing sales income as they are limited by the price level at which they can sell the new homes. On its own, the site is unviable and unlikely to be developed and would remain an eyesore for years.
- 1.5 Gleeson have considered other options to bridge the viability gap and identified the adjacent Council owned site (Appendix A site B) as offering an opportunity to provide additional homes for sale, which will help overcome the viability gap.
- 1.6 Gleeson wish to purchase the Council owned site so that they can include it in their proposed scheme for the stalled site and have presented the Council with an offer for the land.

2. RECOMMENDATIONS

That the Executive Members:

- 2.1 Note that Gleeson Homes are planning to develop the old Scotland Bank Mill site, off Heys Lane, which has been stalled for a number of years, to provide quality homes for sale.
- 2.2 Grant approval to treat Gleeson Homes as special purchaser for the purchase of the Council owned site adjacent to the Scotland Bank mill site
- 2.3 Grant approval for the sale of the council owned site to Gleeson Homes for housing development.
- 2.4 Delegate authority to conclude negotiations, including terms of any land sale and contracts to the Growth Programme Director in consultation with the Executive Member for Growth and Development to approve the final heads of terms.
- 2.5 Authorise the Deputy Director, Legal & Governance (Monitoring Officer) to complete the necessary legal formalities.
- 2.6 Authorise the Strategic Director Growth and Development to appropriate the land off Heys Lane shown edged red on plan attached Appendix A (site B) from the Environment and Operations portfolio to the Growth & Development department for planning purposes pursuant to s226 Town and Country Planning Act 1990.
- 2.7 Noting that the land could be construed as 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, Legal & Governance (Monitoring Officer) to advertise the proposal to appropriate accordingly
- 2.8 Authorise the Deputy Director, Legal & Governance (Monitoring Officer) 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
- 2.9 Note that in authorising the commencement of the appropriation process of the land off Heys Lane, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report.
- 2.10 Authorise the Strategic Director Growth and Development for the consideration of any objections to both the appropriation proposal and 'open space' disposal.
- 2.11 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. Moreover, where necessary to enable the planning purpose to be achieved, authorise the Strategic Director Growth and Development to override any said third party rights or easements.
- 2.13 If the appropriation for planning purposes is approved and any third party rights and easements have been overridden, authorise the negotiation and payment of any compensation claims potentially emerging from the appropriation.

3. BACKGROUND

- 3.1 The Scotland Bank Mill site (aka Kickers factory) located off Scotland Bank Terrace off Heys Lane; Blackburn is in private ownership and has been stalled for a number of years (see Appendix A site A). Previous attempts to develop the site by a number of developers and registered providers have failed due to viability challenges.

- 3.2 Gleeson Homes (GH) have secured an option to purchase the site and build a scheme of quality family homes for sale. However, due to land contamination and high abnormal costs the scheme is unviable for the number of homes, which can be developed on it.
- 3.3 GH have carried out a number of financial reviews to produce a viable scheme but without success. Development costs have increased considerably over the last twelve months due to market conditions and viability is still a challenge because of the high cost of abnormals and land remediation.
- 3.4 GH have little scope of increasing their sales income as they are limited by the price level at which they can sell the new homes. GH have considered other options to bridge the viability gap and have identified the adjacent Council owned site (Appendix A site B) as offering an opportunity to provide additional homes for sale, which can help bridge the viability gap by bringing additional income into the scheme.
- 3.5 Council granted permission to GH to assess the suitability of the Council owned site. GH have undertaken a utilities survey and a Phase 1 geotechnical review of ground conditions and they have consulted highways engineers to assess the council site for housing development. These surveys have confirmed that the Council owned site could be added to the mill site and be developed for an increased number of new homes to aid scheme viability.

4. KEY ISSUES & RISKS

- 4.1 The Council land is presently designated as informal open space, GH propose to develop a portion of this land to provide new homes and will also be providing some quality public open space within the scheme. All new public open space provided on site will be managed by Gleeson's management company. This will result in a saving to the Council in future maintenance costs for the site. There is another larger parcel of open space to the north of the site off Scotland Bank Terrace which offers quality pos to the local community.
- 4.2 The new housing scheme will help bring a long-term stalled site forward for development and provide a number of homes for sale within the area. The development will also offer an opportunity to include a number of small-unregistered slivers of land into the new highways access to the scheme from Heys Lane. The Council will adopt the new access road.
- 4.3 The sale of the site will generate a capital receipt and create additional Council Tax income for the new homes. Over both parcels, Gleeson will be able to provide approximately 40 new homes to include 2, 3 and 4 bed homes.
- The proposed homes will be from their space standard range, which offer larger footprints and plots.
 - The mix of homes gives a strong emphasis towards family homes and the proposed sale price points are linked to the national living wage making them affordable to prospective buyers.
 - All new homes will be built to Part L of Building Regulations (up to 49% more energy efficient).
 - Gleeson Homes provide quality homes for a wide customer base which includes keyworkers, local skilled workers or individuals looking for affordable home ownership
- 4.4 Council surveyors have valued the site using market comparables and produced a value for the site in its current use as informal open space, affordable housing and open market housing to a willing and able developer, these valuations are outlined in the part 2 report. The land valuations have not taken consideration of any site constraints or abnormals.

The Council owned land on its own would not be attractive for development due to the high development costs and small number of homes it would yield which would render it unviable. Bringing the site into development alongside the Scotland Bank site creates viability for the developer and helps bring forward a long term stalled site.

Gleeson Homes have presented a written offer for the unencumbered freehold interest in the Council land with vacant possession.

Appropriation

- 4.5 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).
- 4.6 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)*).
- 4.7 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 off Heys Lane is identified as suitable for housing development due to its location within an established neighbourhood. The proposed appropriation will bring the site forward to help deliver new homes on the adjacent stalled site, which continues to cause nuisance and blight to local residents. 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 report.
- 4.8 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.

Disposal of Open Space

- 4.9 As the land off Heys Lane has been fully open to the public for leisure use, it clearly falls under the statutory definition of '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..
- 4.10 It is recommended that the council delegate authority to the Strategic Director Growth and Development, in consultation with the Executive Members for Environment and Operations and Growth and Development. To consider any objections or comments raised to the proposed disposal of 'open space' off Heys Lane and if appropriate approve the proposed disposal of 'open space' off Heys Lane for the proposed housing development.

Special Purchaser status

- 4.11 While most disposals by local authorities for transparency and best consideration purposes primarily require them to be made in an open market setting, it is recognised and codified particularly for the Council in the Disposal Policy that exceptions exist. In this case, the Council has determined that it will only dispose the freehold of the site to Gleeson Homes and that it is granting special purchaser status to this entity.
- 4.12 The reasoning is that firstly, this is connected to bringing forward an adjacent stalled site which has been undeveloped for more than 10 years and has a negative impact on the quality of life of local residents. Secondly, this proposal has only come about because Gleeson Homes have secured an option on the stalled site and can guarantee development and building of new homes subject to scheme viability. Thirdly, scheme viability can be achieved by including the Council owned land as part of the development. This proposal supports two of the Council's visions to provide new homes and that of supporting communities.

5. POLICY IMPLICATIONS

- 5.1 There are no new policy implications, the site is currently designated as informal open space and development of new homes will improve the area by bringing forward the long term stalled Scotland Bank Mill site.
- 5.2 The proposed residential development would support delivery of new homes to meet local and boroughwide demand. Development proposals will be in line with the Local Plan, the Council's 2030 Vision and the Council's Corporate Plan.
- 5.3 Disposal of the site is in accordance with the Council's Disposal Policy and the approved Housing Toolkit.

6. FINANCIAL IMPLICATIONS

- 6.1 Sale of the Council owned land would generate a capital receipt as per the land offer made by Gleeson Homes.
- 6.2 The site has been valued for housing based on local comparables for affordable housing provision. This reflects the type of housing, which will be built with sales prices aimed at providing low cost home homes for local skilled workers.
- 6.3 All new homes will contribute to the Council's MTFs by way of Council Tax income

7. LEGAL IMPLICATIONS

- 7.1 The disposal of the site is in line with the Council's disposal policy and is supported by technical input from legal.
- 7.2 The Council will look to safeguard its interests in ensuring that the land is developed in line with its future revenue benefit projections by agreeing a build programme with the developer.
- 7.3 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 or a very long lease, then various aspects of S123 of the Local Government Act 1972 (“the Act”) shall apply.

- 7.4 Firstly, the Council should be seeking to achieve best consideration reasonably obtainable for the site, unless the Council can apply the exemptions permitted by Government Circular. Although the Council has a general power of competence pursuant to s1 of the Localism Act 2011 to do anything that individuals can legally do, the Local Government Act 1972 and General Disposal Consent (England) 2003 to seek Best Consideration still applies and so this must be minded when the Council makes any decision to sell via any process, including an informal tender process.
- 7.5 Secondly, 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. It is noted that for a number of years the Council has put up signage which has allowed the land to be used under licence for casual pastimes as indicated by signs posted at various access points to the land. Any rights of access under this licence will be withdrawn and will overall assist the Council to illustrate that a potential village green application is inappropriate.
- 7.6 “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. 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.
- 7.7 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.”
- 7.8 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.
- 7.9 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

- 8.1 The Growth team will lead on managing the detailed negotiations for the development of the site. Legal resources will be required to support the land transfer.

8.2 Additional support will be required from Capita Property to carry out a scheme assessment, a viability appraisal and preparation of Heads of Terms

9. EQUALITY AND HEALTH IMPLICATIONS

9.1 Provisions of the 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.

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.

10. CONSULTATIONS

The Council has carried out a Housing and Economic Needs Assessment for the Borough and has an adopted Local Plan which is currently being refreshed.

These have outlined housing demand and type; further consultation will be carried out with local residents during the planning process for the development.

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.

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DATE:	16 th August 2023
BACKGROUND PAPER:	