

# EXECUTIVE MEMBER DECISION



**BLACKBURN**  
with  
**DARWEN**  
BOROUGH COUNCIL

**REPORT OF:** Executive Member for Children, Young People and Education, Executive Member for Finance and Governance, Executive Member for Growth and Development

**LEAD OFFICERS:** Strategic Director of Growth & Development

**DATE:** 24th November 2023

**PORTFOLIO(S) AFFECTED:** Growth and Development

**WARD/S AFFECTED:** Blackburn South East;

**KEY DECISION:** N

## **SUBJECT:**

Demolition of the old Longshaw Nursery building following relocation of Nursery to new building adjacent to Longshaw Infant School

## **1. EXECUTIVE SUMMARY**

- 1.1 The current Longshaw Nursery is located off Crosby Road a short distance from Longshaw Infant School with the two sites being separated by the site of the former and now demolished Longshaw Home for Older Persons (HOP) (see Appendix A).
- 1.2 Between 2020 and 2022, a number of reports were presented to the Executive Board highlighting the poor condition of the current Longshaw nursery building and its unsuitability in providing a modern, safe and welcoming environment for children.
- 1.3 Due to the very poor state of the building, inadequate classrooms and substandard facilities it was reported that the building was not fit for purpose. An assessment was undertaken to consider remodelling and extending the building but due to the presence of asbestos and irregular construction of the building this was deemed too expensive. The only way to improve and expand the facility would be by constructing a new nursery building.
- 1.4 Recommendation was made to the Executive Board to approve funding for the construction of a modern new nursery facility adjacent to the Longshaw Infant School. This would allow for the current nursery to continue providing a valuable service to children whilst the new building was completed.
- 1.5 During 2022, approval was secured for the new building, which has now been completed for the September 2023 intake. The current nursery is planned to be declared surplus, in September 2023, when it is vacated and the nursery provision is fully transferred to the new nursery building.
- 1.6 The Council wants to demolish the current building when vacated to deter anti-social behaviour, fly-tipping and illegal access into the building. Leaving the building standing would

be a hazard to local residents and attract criminality which would add security and management costs to the public purse

1.7 The Council has successfully secured One Public Estate (OPE) grant funding to carry out asbestos removal and demolition of the building. The grant is provided on condition that the Council dispose of the cleared land to a Registered Provider, at residual value, for the provision of new affordable homes.

## **2 RECOMMENDATIONS**

That the Executive Members:

- 2.1 Note that the existing nursery building is in a state of disrepair, contains “high risk” asbestos, is known to have a concealed concrete roof deck which could potentially be RAAC construction and as such will be declared surplus when it becomes vacant;
- 2.2 Note the Council’s plans to demolish the existing nursery building;
- 2.3 Authorise officers to finalise the boundary changes required to regularise the site of the new nursery building.
- 2.4 Authorise officers to seek and obtain all relevant Secretary of State consents to enable the actions proposed in this report.
- 2.5 Authorise officers to negotiate the terms of disposal of the cleared site shown in Appendix B to a Registered Provider for affordable homes provision.
- 2.6 Delegate authority to conclude any matters pertaining to the disposal including terms of any land sale and contracts to the Growth Programme Director in consultation with the Executive Member for Growth and Development.
- 2.7 Authorise the Deputy Director, Legal & Governance (Monitoring Officer) to complete the necessary legal formalities.
- 2.8 Authorise the Strategic Director Growth and Development to appropriate the land at Crosby Road shown edged red on the attached plan, (Appendix A, site A), from the Resources and Childrens portfolios to the Growth & Development department for planning purposes pursuant to s226 Town and Country Planning Act 1990.
- 2.9 Noting that some of 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
- 2.10 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
- 2.11 Note that in authorising the commencement of the appropriation process of the land off Crosby Road, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report.
- 2.12 Authorise the Strategic Director Growth and Development for the consideration of any objections to both the appropriation proposal and ‘open space’ disposal.

- 2.13 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 Growth and Development to override any said third party rights or easements.
- 2.14 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 existing Longshaw Nursery building, is of a post-war construction (circa 1950s-1960s). It is a single storey building with a basement housing the boiler house which has had the asbestos encapsulated in to the boiler walls, floors and ceiling.

The building's roof has seen significant alterations over time with the original concrete deck with asphalt roof finish being 'over- roofed' by a timber 'cut- roof' system with a concrete tile finish. Given the age of the building there is a potential risk of Reinforced Autoclaved Aerated Concrete (RAAC) which has the potential for catastrophic failure with little or no warning. Whilst a visual inspection has been undertaken this was inconclusive and a further intrusive investigation would be required by a suitably qualified specialist if the building was to be retained.

The external walls are constructed with as a masonry cavity wall, given the build date and lack of any evidence of retro-fit works having been undertaken since original construction it is expected to perform poorly. Equally, the floor slab will be uninsulated and the roof is partially insulated add to the energy inefficiency of the building. Whilst the building will comply with the Regulations at the time of construction it is significantly adrift for the current regulations and Energy Efficiency Standards including MEES.

- 3.2 There is a conservatory lean-to extension to the nursery for additional space. The lean-to is constructed from polycarbonate roof sheets and fully glazed. This is proving to be too hot in summer and too cold in winter. There is inadequate ventilation to the property.

Classroom sizes in the existing building were deemed too small and not fit for purpose in respect of the layout of the premises in order to deliver continuous provision as detailed by the Early Years Foundation Stage Curriculum. The internal walls are typically load bearing solid masonry walls and would require major structural steelwork to facility larger room areas.

- 3.3 Due to the construction material of the building there were concerns around proposals for remodelling and structural alterations of the building to enlarge the teaching areas including altering the entrance / reception area. As such a recommendation was made to build a new nursery building to provide the modern, fit for purpose facility required and to demolish the old building which would be a potential health hazard, too costly to modernise and likely to attract anti-social behaviour and criminality.

- 3.4 A report was presented to and approved by the Council's Executive Board in March 2020 which advised of a planned programme to relocate Longshaw Nursey School from its current site and co-locate it with Longshaw Infant School. It was reported that the existing Nursery School premises was in a poor state of repair and no longer fit for purpose.

- 3.5 A subsequent report was taken to the Council's Executive Board in 2021 – *Titled: Schools capital programme variation to support the creation of new school places (dated 14.01.2021)*

outlining that Early Years provision in the Longshaw and Highercroft areas was in low supply, and existing provision within these areas had limited capacity to expand. It is anticipated that the planned local housing growth would attract families with younger children and create increased demand for Early Years provision in the area.

The planned new nursery-building would allow for increased capacity of places to meet anticipated demand, and create a fit for purpose environment that secures qualitative early years provision in the area. The cost of the project, and variation, was requested to be provided in the Council's 2020/21 capital programme with supplementary funding to be used from the Schools Basic Need budget and the 2 year old Capital budget. This report did not identify any budget to carry out any asbestos removal or to demolish the existing building.

- 3.6 The Department for Education (DfE) maintains strict controls around the disposal of school playing field land. It is not the government or the DfE that instigates the disposal of school playing fields. It is local authorities, or the academies and maintained schools themselves, that propose to dispose of these often surplus or unused fields in order to invest the proceeds in school sport or education. Consultation must take place widely prior to making an application.
- 3.7 Schedule 14 of the Education Act 2011, extends the requirement to ask for Secretary of State consent to dispose of community school land to include all land in which a freehold or leasehold interest is held by the local authority and which has been used for any school (including any academy) in the last 8 years.
- 3.8 The boundary of the site of the new build nursery has had minor amendments and the latest site area is reflected in Appendix A, area coloured purple. Appendix A shows the existing location of the Longshaw Nursery (site A), the site of the former Longshaw HOP (site B), the existing Longshaw Infant School (site C) and the location of the new nursery building (area coloured Purple).
- 3.9 The existing Longshaw Nursery site is located on a site of approximately 0.28 hectares. The new nursery building now occupies a site with an area approximately 0.23 hectares with no loss of amenity space. The new building is a modern facility offering quality premises for pupils and is located adjacent to Longshaw Infant School.
- 3.10 During late 2022, Council officers identified an opportunity to bid for grant through the One Public Estate (OPE) Brownfield Land Release Fund ("BLRF"). A bid was submitted which successfully secured grant to fund the demolition of the building and site clearance. The bid was conditional on the cleared nursery site and the former Longshaw HOP site being developed for the provision of affordable homes by a Registered Provider.

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

- 4.1 On a borough-wide basis, there are sufficient places to meet the demand for Early Years Education (EBD November 2020, Childcare Sufficiency Assessment). However, there are some areas of Blackburn, where supply does not currently meet demand. The Borough's planned housing growth is also expected to result in increased demand.

Early Years provision in the Longshaw and Highercroft areas is currently in low supply, and existing provision within these areas has limited capacity to expand.

- 4.2 A paper presented to and approved by Executive Board in March 2020 advised of a planned programme to relocate Longshaw Nursey School from its current site and co-locate it with

Longshaw Infant School. The current Nursery School building is in a poor state of repair and no longer fit for purpose.

The planned new building will allow for increased capacity of places to meet anticipated demand, and create a fit for purpose environment that secures qualitative early years provision in the area.

The relocation will secure longer term financial sustainability and protect the future provision of a Maintained Nursery School in the Borough which compliments the provision of education for infants at the Longshaw Infant School next door.

- 4.3 During the delivery of the scheme, the land required for the new nursery building has been increased to provide a modern facility with a suitable amount of space for Childrens play to be incorporated.
- 4.4 The DfE has the existing nursery site listed as an education asset, as noted in 3.5 above, DfE expect local authorities to carry out wide consultation to gauge interest in any educational establishment wishing to use the surplus building prior to any other use being considered. However, due to the very poor condition of the building which has asbestos present, it is deemed a health risk for anyone to consider continued use of the building. Any repairs or upgrades required to make the building safe would be too costly and would still only result in an old, unsuitable building being available.
- 4.5 The Council wishes to demolish the building as soon as practical to deter anti-social behaviour, fly-tipping and illegal access into the building. Leaving the building standing would be a hazard to local residents and be a beacon to attract criminality. Tackling such issues would add security and management costs to the public purse and additional strain on emergency response services such as the police and fire brigade.
- 4.6 Independent valuation advice has valued the land of the former nursery site as being £165,000. Demolition and site clearance costs are estimated at £145,000. This represents a net value of the site as being approximately £20,000
- 4.7 The Council has successfully secured OPE grant funding for the asbestos removal and demolition of the building. A key condition of the grant is for the land to be sold to a Registered Provider (on a residual value basis) for the provision of new affordable housing. Failure to spend the grant would result in repayment of grant to OPE and loss of around 15 much needed new homes for affordable rent.

This report proposes that the land is to be sold to a Registered Provider for affordable housing based on a residual value basis, which may result in a sale of the land at Nil value.

### **Appropriation**

- 4.5 The Council can appropriate land for any proper purpose and this is described in the Legal Implications below. However, it is worth noting here that 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 Crosby Road is identified as suitable for 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

4.6 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 at Crosby Road (site of the Longshaw HOP) may 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' and the process of dealing with this is set out in the legal implications.

4.10 It is recommended that the council delegate authority to the Strategic Director Growth and Development, 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 Crosby Road and if appropriate approve the proposed disposal of 'open space' at Crosby Road for the proposed housing development.

## **5 POLICY IMPLICATIONS**

5.1 The demolition of the old nursery buildings will remove an old building unsuitable for continued use, containing asbestos and in disrepair. The cleared site will be redeveloped for affordable housing.

5.2 The proposed residential development would support delivery of new affordable homes to meet local and boroughwide demand. Development proposals will be in line with the Local Plan and the Council's Corporate Plan.

5.3 Disposal of the site is in accordance with the Council's Disposal Policy.

## **6 FINANCIAL IMPLICATIONS**

6.1 No new funding is required to carry out the demolition; demolition of the old nursery building and site clearance will be funded by OPE BLRF grant, which has been secured. The cleared site is proposed to be redeveloped for affordable homes

6.2 Site valuation for housing will be based on a residual valuation based on a scheme of affordable homes, this may result in a nil capital receipt.

6.3 All new homes will contribute to the Council's MTFs by way of Council Tax income and New Homes Bonus if the scheme is still active at the time.

## **7 LEGAL IMPLICATIONS**

7.1 The disposal of the site is in line with the Council's Disposal

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 or a very long lease, then various aspects of S123 of the Local Government Act 1972 (“the Act”) shall apply.

- 7.3 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.
- 7.4 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.
- 7.5 “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.
- 7.6 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.”
- 7.7 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)*).
- 7.8 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 Crosby Road is identified as suitable for 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.
- 7.9 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.

7.10 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.

7.11 The Council will need to progress its application with the DFE as soon as possible.

## **8 RESOURCE IMPLICATIONS**

8.1 The Growth & Development team will lead on managing the demolition and detailed negotiations for the redevelopment of the site. Legal resources will be required to support the land transfer.

8.2 Additional external support may be required 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 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.**

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 developments.

## 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.

<b>CONTACT OFFICER:</b>	Subhan Ali, <a href="mailto:Subhan.ali@blackburn.gov.uk">Subhan.ali@blackburn.gov.uk</a>
<b>DATE:</b>	19 <sup>th</sup> September 2023

**BACKGROUND  
PAPER:**

EBD March 2020, Variation to the 2021/22 schools capital programme  
EBD November 2020, Childcare Sufficiency Assessment  
EBD January 2021, Schools capital programme variation to support the  
creation of new school places