

DERBYSHIRE COUNTY COUNCIL

CABINET

3 April 2012

**Joint Report of the Director of Property and the Director of Legal
Services**

**PROPOSED APPROPRIATION OF LAND AT DARLEY DALE PRIMARY
SCHOOL, GREENAWAY LANE, DARLEY DALE**

EDUCATION

1. Purpose of the Report

To seek a Cabinet decision on whether to publish notices of the Council's intention to appropriate land at Darley Dale Primary School, which is currently held for education purposes and no longer required for such purposes, for planning purposes, which would enable the land to be disposed of for development (subject to compliance with any necessary procedures). Such development would meet housing needs in the area and would provide funding to enable reorganisation of buildings on the school site to take place. This is referred to in detail below.

2. Information and Analysis

At present Darley Dale Primary School is housed in two buildings on the school site, which are at different levels and some distance apart. The upper building was built early in the last century on land purchased for the purpose in 1912. The lower building was built after the last war, originally as part of a secondary school, on land purchased in 1947.

The County Council, as Education Authority, wishes to consolidate all classes in a single building by extending the lower building, a development which would be reliant on funding arising from residential development on a part of the overall site, including that part occupied by the upper building. The residential development would consist of 22 new dwellings, 15 of which would be designated as affordable homes. The affordable housing would help to reduce an unmet need for such housing in the Darley Dale/Matlock area.

A planning application relating to the proposed development was submitted to Derbyshire Dales District Council on 3 October 2008. This proposed the demolition of the school building on the upper site, but that building was listed

by English Heritage as being of special architectural interest, on 3 March 2009, and the application was withdrawn shortly afterwards.

On 25 February 2009 an application was made to the County Council, in its capacity as Registration Authority, on behalf of the Greenaway Lane Residents Association for the registration of part of the intended development site as a town or village green (TVG) under section 15 of the Commons Act 2006. The land which is the subject of the TVG application is a grassed area adjacent to the Infants building, sometimes referred to as the Old Orchard, shown hatched on the attached plan.

The County Council, as landowner, has objected to that application, and its functions as Registration Authority are being carried out entirely separately from its actions as an objecting landowner. As Registration Authority, the County Council has engaged an independent inspector to hold a non-statutory public inquiry, commencing on 17th April 2012, and to make recommendations to the Regulatory Licensing and Appeals Committee as to the determination of the application.

The part of the site which is the subject of the TVG application is a grassed area used by the school for outdoor learning and play and occasionally for "fire drills". There is, however, a playground on the infant school site and the whole of the junior and infant schools have ready access to large playing fields to the north and west. It is considered that whilst the land is currently used by the school for education purposes it is not required for such purposes as the alternatives referred to above are available.

On 2 February 2011 the County Council, jointly with Dales Housing Limited, made a further application to Derbyshire Dales District Council for planning permission for development similar to that proposed in 2008, except that the listed Infants school building is now proposed to be retained and converted into seven dwellings, the remaining 15 dwellings to be affordable new dwellings, with the infants school moving to the new lower school building.

On 5 July 2011 Derbyshire Dales District Council resolved to authorise the Head of Planning Services to grant planning permission for the development, subject to conditions, and to the negotiation of a section 106 Planning Obligation Agreement to secure a financial contribution towards the provision for children's play. This Agreement is presently being drafted, and once it has been executed, planning permission can be issued.

The part of the development affecting the listed building also required Listed Building Consent, and this was granted by the Secretary of State for Communities and Local Government on 17 August 2011.

Whilst the land shown hatched on the plan is, in the view of officers, not required for educational purposes, it is required for planning purposes in that it is an integral part of the development required to deliver much needed affordable and other housing for the area and which will also enable the school facilities as a whole to be consolidated and enhanced in an extended

and better lower school building. It is accordingly proposed that it be appropriated for planning purposes pursuant to section 122 of the Local Government Act 1972.

The site which is the subject of the planning application and resolution to grant planning permission is edged red on the attached plan and the wider school site is shown edged blue.

Following advice from Counsel, it is considered that the application for registration as a TVG should fail although this is subject to factual evidence and cannot be guaranteed. Even were it to succeed, however, whilst generally such land may not be able to be developed as this would be inconsistent with the use by local residents for lawful sports and pastimes, the land may still be able to be developed for the intended purposes following appropriation, by reason of section 241 of the Town and Country Planning Act 1990.

Planning permission for the intended development is likely to be granted in the very near future and the benefits of development are such that appropriation of the land for planning purposes may be regarded as appropriate.

3. Financial Considerations

The cost of advertising a notice of the Council's intention to appropriate the land for planning purposes would be approximately £500 + VAT based on advertising for two weeks in a local newspaper.

4. Legal Considerations

The appropriation of land by principal councils, which includes the County Council, is provided for by section 122 of the Local Government Act 1972, as amended. By virtue of subsection (1), a 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 by the council for the purpose for which it is held immediately before the appropriation".

There are two circumstances in which appropriation under subsection (1) is only permitted if certain conditions are satisfied, which are provided for by subsections (2) and (2A) respectively.

Subsection (2) applies to the appropriation of, amongst other land, land which is a village green. This does not apply to the hatched land at the present time, since it would only become a village green if a registration was made.

Subsection (2A) applies to the appropriation of "any land consisting or forming part of an open space". "Open space" here includes any land used for the purposes of public recreation. On the County Council's understanding of the

matter, this would not apply to the land in question, but the Greenaway Lane Residents Association, in their outstanding application, are contending that it is used for this purpose. The safe course is therefore to act as though, at the present time, subsection (2A) is applicable.

The effect of subsection (2A) is to prevent appropriation under subsection (1) "unless before appropriating the land the Council cause notice of their intention to do so, specifying the land in question, to be advertised in 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".

The subsection does not indicate what time should be allowed for objections before deciding whether to appropriate such land. It is considered that 21 days, counting from the second advertisement, would be a reasonable period to allow for objections to be submitted. Any objections would then need to be considered by the County Council and a decision made as to whether or not the land should be appropriated for planning purposes.

Should the land be registered as a town or village green, subsection (2) of section 122 of the Local Government Act 1972 would prevent a decision on appropriation under subsection (1) being taken after the date of registration because it exceeds 250 square yards in aggregate. Instead any appropriation would have to be considered under section 229 of the Town and Country Planning Act 1990, to which section 122(2) refers.

Appropriation under section 229 of the Town and Country Planning Act 1990 requires an Order to be made by the County Council and confirmed by the Secretary of State. Further, subsection (3) provides that section 19 of the Acquisition of Land Act 1981 shall apply to the Order as it applies to a Compulsory Purchase Order under the 1981 Act. In summary, the effect in the present case would be that the Order would be subject to special Parliamentary procedure unless the Secretary of State is satisfied, and certifies, to the effect there has been, or will be, given in exchange for the land other land of at least the same area and equally advantageous to those entitled to use it as a village green, and that this land will be vested in the County Council subject to similar village green rights.

It is recommended that the County Council as landowner, should take steps to advertise its intention to appropriate the land at the upper site of Darley Dale Primary School shown hatched on the attached plan for planning purposes and publish notices in accordance with s122(2A) Local Government Act 1972 and consider any objections made with a view to deciding whether to proceed with such appropriation.

5. Property Considerations

As detailed above the proposal is that the land shown hatched on the attached plan be appropriated from educational purposes for planning purposes.

6. Other Considerations

In preparing this report the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property and transport considerations.

7. Key Decision

No

8. Call-in

Is it required that call-in be waived in respect of the decisions proposed in the report? No

9. Background Papers

Files held by Property Services and Legal Services Departments relating to the application to register land at Greenaway Lane, Darley Dale as a town or village green.

10. OFFICER'S RECOMMENDATION That Cabinet

- 10.1 authorises the publication of notices in accordance with s122(2A) Local Government Act 1972 advertising the Council's proposed intention to appropriate land at Darley Dale Primary School, Greenaway Lane, Darley Dale for planning purposes; and
- 10.2 thereafter consider any objections received before making a decision on whether or not the Council should proceed with the proposed appropriation.

JEREMY GOACHER
Director of Property

JOHN McELVANEY
Director of Legal Services

