

DERBYSHIRE COUNTY COUNCIL

CABINET

3 July 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 inform Cabinet of objections which have been received in response to the publication of notices of the Council's intention to appropriate land at Darley Dale Primary School for planning purposes and to seek a Cabinet decision on whether or not the Council should proceed with the appropriation of the land.

2. Information and Analysis

At its meeting on 3 April 2012 Cabinet considered a joint report from the Director of Property and the Director of Legal Services seeking a 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, the land forming part of an area of land intended to be developed to meet housing needs in the area and enable the school facilities to be consolidated and enhanced in an extended school building. A copy of the earlier report is attached. A description of the buildings currently on the School site and of the intended development is set out in section 2 of that report, together with the history of the matter to that time.

Cabinet resolved to authorise:-

- (1) the publication of notices in accordance with s122(2A) of the 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
- (2) thereafter consider any objections received before making a decision on whether or not the Council should proceed with the proposed appropriation.

Notices of the Council's intention to appropriate the land were published in the Derbyshire Times and the Matlock Mercury on Thursday 3 May 2012 and Thursday 10 May 2012. The period for objections to be made ended on 6 June 2012.

Ten objections have been received, 8 from local residents, one from the Open Spaces Society, and one from the Greenaway Lane Residents Association

Three of the letters from local residents were received after the advertised date for objections expired, but the writers have been told the Council will nonetheless take them into account. The objections received are attached.

The Primary School comprises both an Infant Department (sometimes known as “the Infant School”) housed in the Upper Building and a Junior Department (sometimes known as “the Junior School”) housed in the Lower Building, as marked on the attached plan.

Planning permission for the development of the site shown edged red on the attached plan, of which the land now under consideration (shown hatched) forms part, has now been issued.

As indicated in the earlier report, this provides for a new extension adjacent the Lower Building to house the Infant Department, so that the Infant and Junior provisions are located together, and for residential development on part of the site, including that occupied by the Upper Building and the hatched land, for housing, including affordable housing for which there is a need in the area. The residential development will partly fund the school development. A developer has been identified who will provide both the residential and school elements of the development. Work is hoped to commence within the next few months.

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 the hatched part of the intended development site as a town or village green (TVG) under section 15 of the Commons Act 2006. The land is a grassed area adjacent to the present Infants Department (the Upper Building), sometimes referred to as the Old Orchard, and is approximately 1333.5m² (0.133 hectares) in size.

The County Council, as landowner, 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, which commenced on 17th April 2012 and ended on 26 April 2012 and to make recommendations to the Regulatory-Licensing & Appeals Committee as to the determination of the application. The Inspector’s report following the inquiry has not yet been received by the County Council in its capacity as Registration Authority.

Cabinet will need to consider the objections made and decide whether to proceed with the appropriation of the land for planning purposes.

3. Financial Considerations

There are no financial considerations associated with the appropriation of the land.

4. Legal Considerations and Analysis

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”.

By reference to s227 and s226 of the Town & Country Planning Act 1990, under the heading “Acquisition for planning and public purposes”, the Council is authorised to acquire land by agreement where such land is required in order to secure the carrying out of development, redevelopment or improvement (or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated).

There are two circumstances in which appropriation under subsection 122 (1) of the 1972 Act 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 it was registered as such.

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. The County Council’s view is that 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 prudent 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”.

As detailed above, notice of the County Council’s intention to appropriate the land was advertised on Thursday 3 May 2012 and Thursday 10 May 2012 in the Derbyshire Times and the Matlock Mercury and the period for objections to be made ended on 6 June 2012.

As objectors have pointed out, appropriation under s122(1) can only be made where the land is no longer required for the purpose for which it is held. However, this does not mean that the land must not be used for any education purposes whatever at the present time. The test is not that, but whether at the time of appropriation the land is not *needed* in the public interest of the locality for education purposes.

The Council must take into account the fact the land is a grassed area adjacent to the present Upper Building, which is used by the Infant Department for outdoor learning and play (and occasionally for fire drills). However, there is a playground on the Infant Department part of the site and the whole of the Infant and Junior departments have ready access to large playing fields on the north and west sides of the Primary School site.

Planning permission has been granted for the development of the whole of the Infant site as indicated above, including a new Infant wing extension adjacent to the Lower Building, and when such development takes place would in fact bring the

Infant accommodation even closer to the playing fields. The creation of a single site school will address key concerns relating to the distance and substantial change of level between the two parts of the school. The major infrastructure of the school – especially the hall, kitchen, and library are all currently located in the Junior building. Creating immediate internal access to these facilities for the Infant aged children will bring major benefits. Disabled access between the two buildings is not possible without leaving one site and re-entering the other. Duplication of resources across the two buildings will also be minimised via the development and premises related costs will be reduced significantly. However, this cannot occur until the site is developed.

It is the view of officers that the land now under consideration is not needed in the public interest of the locality for education purposes at the present time given the large playing fields which are also part of the School site. However, this is for the Cabinet to judge and make a decision in relation to.

In considering whether to appropriate the land for planning purposes, the Council must also consider whether the land is required for development in the interests of its area and whether it is appropriate to take positive steps to bring about that development.

Officers consider that it is. The land in question forms part of a wider area of land intended to be developed for housing, including affordable housing for which there is an acknowledged need in the area, and the reorganisation of the Infant Department and Junior Department into an enhanced and extended building on the Lower Building site, closer to the playing fields (which will be partly funded by the housing element of the development).

Some objectors have raised the question of whether there will be an abuse of process by the Council appropriating the land. Clearly, the Council must act in good faith. In this instance, Parliament has given it an express statutory power to appropriate land for planning purposes and so long as this is done for proper reasons and in accordance with the statute, with due consideration of the objections made, it is considered the appropriation would be lawful. The reasons here are seen by officers as being that the land is no longer required for education purposes, but is needed for development which will provide consolidation and enhancement of the school facilities and the provision of housing, which outweighs the objections made. However, this is a matter for the Cabinet to judge and decide in relation to.

As objectors point out, it is true that, as set out above, an inquiry has been held into the application for village green registration. However, even if the use of the land was found to have been such as to give rise to a right to registration (which it is not the officers' view that it should) the fact would remain that this relatively small piece of land is nonetheless required for development which will give improved school facilities and housing, including affordable housing needed in the area.

There is a suggestion by objectors that the nearest open recreational space is some half a mile away at Whitworth Park, which is not a public park, and dangerous to access as it requires some users to cross the busy A6. Whilst not a 'public park', the Whitworth Park, covering 10 acres and is administered by a charitable trust for the benefit of the local community. With the aid of the Heritage Lottery Award, the Park was substantially upgraded and restored for the community ten years ago. For many Darley Dale residents the Park is closer to their home than the school and whilst it is

acknowledged that it is situated on the opposite side of the main A6 road to the school, there is a safe pelican crossing point near to the park. It is understood by officers that the park is open to the public and has extensive facilities including a football pitch, crown green bowls, children's playground, café, skate park and small lake.

The Objections

Copies of all the letters of objection are attached, and the Cabinet must consider the objections contained in each of them.

In relation to the detailed points made in the letter from the Open Spaces Society ("OSS"), which overlap with a number of points made in the other letters, officers' views are that:

- (1) It is correct that, as stated by the OSS, appropriation can only take place where the land is no longer required for the purpose for which it is currently held. This has been dealt with above.
- (2) It is true that a village green application has been made and the inquiry in relation to that held, but the fact remains that it is for the Council to consider whether the land is required for education purposes for which it is currently held and whether it should be appropriated for planning purposes in terms of the intended development of the school site and provision of housing as set out above. Officers consider that even if the land is used for public recreation purposes or has been used so as to give a right to registration as a TVG (though that has yet to be determined and is not the officers' view) the land should be appropriated for planning purposes in the form of the development of the site for the purposes of consolidating and enhancing the schools facilities and providing housing including affordable housing, for which there is a need in the area.
- (3) Cabinet is asked to form a view as to whether, even if the land is used for public recreation purposes, or even has been used so as to give a right to registration as a TVG, the land should be appropriated for planning purposes in the form of the development of the site for the purposes of consolidating and enhancing the school's facilities and providing housing including affordable housing for which there is a need in the area.
- (4) If the land is appropriated for planning purposes it may then be able to be developed in accordance with planning permission even if the application for registration as a TVG succeeds by reason of s241 of the Town & Country Planning Act 1990.
- (5) In relation to the case of BDW Trading Ltd v Spooner (2011), the view set out in OSS's letter is not accepted, and the same legal principles are considered to apply here in the event of appropriation as in that case. The question for the Cabinet at present is, however, solely whether the land should be appropriated for planning purposes.
- (6) Paragraph 74 of the National Planning Policy Framework ("NPPF") referred to by the OSS (which is merely part of the overall policy of the NPPF) does not

constitute any significant change in guidance from that previously in place (in what was then Planning Policy Guidance Note 17), planning permission has been approved having regard to all material considerations, and it is considered desirable to bring about the development of the site in order to provide enhanced educational facilities and housing in the interests of the area.

Whilst officers do not consider the land is used for public recreation, Cabinet is asked to consider whether even if the land is used for the purposes set out in the letters of objection, and even if indeed it falls to be registered as a village green, it should be appropriated for planning purposes.

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 Divisions relating to the application to register land at Greenaway Lane, Darley Dale as a town or village green.

10. OFFICERS' RECOMMENDATION That Cabinet

10.1 notes the responses to the publication of notices of the Council's intention to appropriate the land at Darley Dale Primary School, Greenaway Lane, Darley Dale shown hatched on the attached plan for planning purposes pursuant to s122 of the Local Government Act 1972; and

10.2 determines whether to proceed with the appropriation of the said land.

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