

LAKE FARM - APPROPRIATION OF OPEN SPACE TO PLANNING PURPOSES

Cabinet Member(s)	Councillor Jonathan Bianco
Cabinet Portfolio(s)	Finance, Property and Business Services
Officer Contact(s)	Rajesh Alagh Borough Solicitor
Papers with report	Appendix 1 attached

1. HEADLINE INFORMATION

Summary	This report asks Cabinet to delegate authority to the Deputy Chief Executive and Corporate Director of Residents Services together with the Leader of the Council and the Cabinet Members for Finance, Property and Business Service and Planning, Transportation and Recycling to fully consider any objections made to a Public Notice and to then decide whether to appropriate part of Lake Farm from public open space to planning purposes.
Contribution to our plans and strategies	Investment in primary schools to adequately address the impact of the population increase within the London Borough of Hillingdon relating to existing school places. This project also forms part of the Hillingdon Improvement Programme.
Financial Cost	There are no direct costs or fees associated with appropriation of the land. The QC advice costs of £5,000 will be contained within Residents Service revenue budget.
Relevant Policy Overview Committee	Residents and Environmental Services Policy Overview Committee
Ward(s) affected	Botwell

2. RECOMMENDATION

That Cabinet delegate authority to the Deputy Chief Executive and Corporate Director of Residents Services, in consultation with the Leader of the Council, the Cabinet Member for Finance, Property and Business Services and the Cabinet Member for Planning, Transport and Recycling, to fully consider any objections which have been made in relation to a Public Notice published in the Gazette newspaper and to decide whether to appropriate the land edged black on the map attached at Appendix 1 from public open space to planning purposes.

Reasons for recommendation

The land is required for the development of a new primary school but no final decision can be taken until the deadline for objections has expired and any objections made have been fully considered.

Alternative options considered / risk management

Not to proceed with the consideration of objections and the possibility of appropriating land at Lake Farm. This would prevent the construction of a primary school on the land.

Policy Overview Committee comments

None at this stage.

3. INFORMATION

Supporting Information

1. Lake Farm Country Park is located in the southern part of the London Borough of Hillingdon. It falls within Botwell Ward and is located towards the west of Hayes Town Centre. The areas to the north and east of the park are largely residential in character and the areas to the south and west predominantly comprise a mix of industrial and business areas and Green Belt land.
2. In its entirety, Lake Farm covers an area of approximately 24 hectares. The majority of the park comprises open meadowland/grassland and shrubs, interspersed by both formal and informal footpaths and bridleways. Two areas of formal grassland and trees, both with a children's playground, are situated in the north western and south western corners of the park respectively. A BMX track and a car park for visitors to the Country Park are located adjacent to the western boundary. Lake Farm is designated public open space and it is owned by the Council.
3. The Education Act 1996 provides that Local Authorities have a duty to educate children in their borough. The Hillingdon Primary Schools Capital Programme has been put into place by the Council to ensure that there are sufficient primary school classrooms and new primary schools built where this is required. The Council has identified part of Lake Farm as a suitable site to build a new primary school; it has undertaken a thorough criteria based assessment of alternative sites within the catchment area and has deemed that none of them are suitable.
4. The Council, in its capacity as the owner of Lake Farm, submitted an application for full planning permission to the Central and South Planning Committee at its 5 March 2013 meeting for the erection of a new three form of entry primary school which would occupy an irregularly shaped plot located at the eastern site of the Country Park which is identified on the map at Appendix 1. The school site itself will occupy an area of less than 3 hectares and it would be capable of accommodating up to 630 students plus a nursery for 45 children per session in two sessions and a SEN/SRP [Special Educational Needs] unit for approximately 12 pupils with Autism Spectrum Disorder. Provision would be made for hard and soft play space for the children, extensive landscaping works and the provision of associated car parking.

5. The report considered by the Planning Committee highlighted that the application for planning permission, if granted, would represent inappropriate development within the Green Belt and result in the loss of a portion of public open space. Therefore, the Council was required to show very special circumstances. It did so by demonstrating an educational need and the lack of more appropriate alternative site provisions for the school, combined with the low impact design, high quality landscaping scheme and incorporation of high levels of sustainable build measures. On this basis, the application was recommended for approval, subject to referrals being made to the Mayor of London and the Secretary of State.
6. At the Committee meeting on 5 March, reference to a Section 106 Agreement, which is commonly known as the 'Trident Agreement', was made in the course of debating the application. It was submitted that there was a covenant in the Agreement, given by the Council, which prevented Lake Farm being used for any purpose other than public open space. The Members of the Committee were unable to verify this as they did not have access to the Agreement at the meeting.

The Planning Committee decision

7. In the circumstances, the Committee resolved that delegated powers be given to the Head of Planning, Sport and Green Spaces to grant planning permission subject to, inter alia, the following:
 - That the application be referred to the Mayor under Article 3 of the Town and Country Planning [Mayor of London] Order 2000;
 - That the application be referred to the Secretary of State as a departure from the provisions of the Development Plan, in accordance with the Town and Country Planning [Consultation] [England] Direction 2009;
 - That legal advice be obtained as to whether the Trident Agreement gives rise to any additional issues which have not been taken into account;
 - That should the Secretary of State not call in the application and subject to the Mayor of London not directing the Council under Article 5 of the Order to refuse the application or that he wishes to act as the determining authority, the application be deferred for determination by the Head of Planning, Sport and Green Spaces under delegated powers.

The Trident Agreement

8. There is an Agreement in existence dated 25 August 2000 which was entered into by Stockley Park Phase 3 Limited [the "Owner"] Stockley Park Consortium Limited [the "Applicant" for planning permission] and the Council. Although the Agreement principally relates to Stockley Park, it also extends to Lake Farm.
9. There are two provisions in the Agreement which are of particular significance. The first is an obligation on the part of Stockley Park Phase 3 Limited, in its capacity as owner, which states:

"Prior to occupation of more than 20,000 sqm of floor space on the Development Site [Phase 3 Stockley Park], the Owner shall pay to the Council the sum of £1m as a contribution towards the cost of laying out, landscaping and maintaining Lake Farm for use as public open space and/or leisure activities as shall be agreed between the Owner and the Council each acting reasonably."

10. The second provision, which is an obligation on the part of the Council, is the one which was referred to during the debate at the Planning Committee meeting. It states:

"The Council shall ensure that Lake Farm is laid out and landscaped and maintained for use as public open space and/or leisure activities unless otherwise agreed by the Owner."

11. Given that this is an old Agreement and the fact that the above clause is capable of being interpreted in more than one way, the Borough Solicitor commissioned a legal opinion from a QC who specialises in planning and property law.

The QC's opinion

12. The QC has advised that the interpretation of the above clause is "not free from doubt unless or until pronounced upon by a Court of Law". Therefore, the QC has further advised that the Council has two options open to it in terms of overcoming any difficulties created by its obligation to Stockley Park Phase 3 Limited. The first, and most obvious, is to secure a written agreement from this company to the effect that part of Lake Farm can be used for a purpose other than open space/leisure activities. However, there is no certainty as to whether and or when the company will agree to this; even if agreement is given, it is likely that Stockley Park Phase 3 Limited would seek a removal or a variation to its obligation to pay the Council £1m prior to its occupation of more than 20,000 sqm of floor space on the Development Site.
13. The second, and more certain option, is for the Council to appropriate the land on Lake Farm proposed for development as a primary school, so that it becomes held for planning purposes within the meaning of the Town and Country Planning Act 1990. This is a course of action which the Council would have to follow in any event before it could build a school on Lake Farm. If land is appropriated and becomes held for planning purposes, by virtue of section 237 of the 1990 Act, the land in question may be developed in accordance with planning permission notwithstanding that it involves "a breach of restriction as to the user of land arising by virtue of contract". In other words, section 237 should overcome the restriction in the section 106 Agreement.

The Council's powers of appropriation

14. If the Council wishes to appropriate land, it will need to be satisfied that the provisions of Section 122 of the Local Government Act 1972 are met and in particular that the land is no longer required for the purposes for which it was held immediately before appropriation. The Council will also need to be satisfied that the land should be appropriated such that it becomes held for planning purposes by applying the tests set out in section 226(1) and (1A) of the Town and Country Planning Act 1990.
15. The following matters therefore need to be considered and determined before land at Lake Farm can be appropriated:

- Identification of the purpose for which the land is currently held;
- Whether the land is no longer required for that purpose;
- Whether the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land and whether this is likely to contribute to the achievement of the economic, social or environmental well-being of the area.

16. Cabinet can legitimately address each of the above matters as follows:

- The land is currently being held as public open space;
- The land is no longer required for this purpose on the basis that it is only a small portion of Lake Farm and the remainder of Lake Farm will continue to be used as public open space;
- Appropriation will facilitate the development of a primary school which will contribute to the achievement of the social well-being of the area.

17. Before any final decision can be made to appropriate land at Lake Farm, regard has to be had to Section 122 (2A) of the 1972 Act which provides:

“A Council may not appropriate land consisting of or forming part of an open space unless before appropriating the land, they 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.”

18. The Council has placed a Notice in the Gazette newspaper which was published on 10th and 17th April 2013 respectively. Any objectors have until 30th April to lodge their objections. Cabinet is therefore being asked to delegate the decision to appropriate the land to the Deputy Chief Executive and Corporate Director of Residents Services, in consultation with the Leader of the Council, the Cabinet Member for Finance Property and Business Services and the Cabinet Member for Planning, Transport and Recycling, having fully considered any objections made.

The Town and Country Planning (Mayor of London) Order 2008

19. Under Article 4 of the 2008 Order, the Mayor is required to provide the Council with a statement setting out whether he considers that the application for planning permission complies with the London Plan and his reasons for taking that view. Unless notified otherwise by the Mayor, the Council must consult the Mayor again under Article 5 if it subsequently resolves to make a draft decision on the application, in order that the Mayor may decide whether to allow the draft decision to proceed unchanged or direct the Council under Article 6 of the Order to refuse the application.

20. The Council consulted the Mayor under Article 5, as directed by the Central and South Planning Committee and on 10th April, he notified the Council that he has decided to allow the draft decision to proceed unchanged.

The Secretary of State's determination

21. At the time of writing this report, the Secretary of State has not made a determination. A verbal update of the position will be provided at the meeting.

Financial Implications

The Council already owns the land in question, as outlined above, the appropriation is a legal mechanism to allow the change in the potential use of land and there are no fees or direct costs associated with the appropriation. The appropriation avoids the potential risk of the alternative negotiation that would be required to achieve a written agreement with Stockley Park Phase 3 limited to agree a change in purpose for this part of the Lake Farm site and therefore leaves in place the obligation by the company to pay the Council £1million at a point of occupation of more than 20,000 square meters of floor space of the development site.

The cost of the QC's opinion of £5,000 will be charged to and contained within Residents Services revenue budget.

4. EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

The effect of the recommendation is to allow a final decision to be made as to whether part of the land at Lake Farm should be appropriated for planning purposes.

Consultation Carried Out or Required

Although this does not amount to consultation as such, there is a statutory right to object to the proposed appropriation of land at Lake Farm.

5. CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and confirms that such an appropriation will have no financial impact on the Council, nor will reclassification of this land alter the carrying value on the Council's balance sheet.

Legal

All legal implications are contained in the body of the report.

Corporate Property and Construction

Corporate Property and Construction supports the recommendation made in this report.

6. BACKGROUND PAPERS

Central and South Planning Committee Report and Minutes dated 5 March 2013.