

CABINET REPORT DATED 25 APRIL 2013 - LAKE FARM - APPROPRIATION OF OPEN SPACE TO PLANNING PURPOSES

Cabinet considered a written report on Lake Farm Country Park at a meeting on 25 April 2013. It made a decision to delegate authority to myself, in my capacity as 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 Transportation 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 part of the land at Lake Farm from public open space to planning purposes.

The Council placed a Public Notice in the local Gazette newspaper which was published on 10 and 17 April 2013 respectively. It was made clear in the Notice that any persons wishing to lodge their objections had until 30 April 2013 to do so.

I asked my Head of Planning Sports and Green Spaces to log all the objections received by the Council; these were to include not only written objections but also those that were communicated by telephone. I am informed that no telephone objections were made at all and that a total of 5 written objections were received. One such objection, in the form of a letter, was made by the Member of Parliament for Hayes and Harlington. Attached to the letter were 583 signatures (of which 15 were not Borough residents), endorsing the Member of Parliament's objection.

Rather than set out the details of all the objections in full, I have decided to group them under appropriate themes and headings as some of the points made are repetitive and overlap with each other. I have then set out my written response under each of the headings, having first consulted with the Leader of the Council and the Cabinet Members for Finance Property and Business Services and Planning Transportation and Recycling. Some of the objections have raised legal issues and therefore, I have sought advice from the Council's Borough Solicitor where I have considered it appropriate to do so.

Objection

The land is a much used and valued public open space and is needed and used regularly by members of the public.

Response

It is recognised that Lake Farm is a valuable community facility that is used by members of the public for sporting, general amenity and recreational purposes. However, only a small portion of Lake Farm will be appropriated and the remainder of it will still be maintained as public open space. The Council has a statutory duty under section 13 of the Education Act 1996 to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education is available to meet the needs of the population in the borough. The decision to appropriate the land is a balancing exercise in circumstances where there are competing land use demands. Appropriation of the land will facilitate the development of a primary school which will contribute to the achievement of the social well-being of the

people in Hayes and it is considered that this outweighs the need to maintain the whole of Lake Farm as public open space. Therefore, this is not, as is alleged, contrary to the Open Space Strategy.

Objection

The land is an important site for wildlife.

Response

The impact on wildlife was considered as part of the planning application. Members of the Council's Central and South Planning Committee agreed with the officer recommendation that there would be adequate mitigation put in place and that the proposal to build a school would not result in any unacceptable impacts on wildlife or habitat. Lake Farm as a whole is big enough to accommodate all types of wildlife/habitat notwithstanding the construction of a primary school.

Objection

Inappropriate development on Green Belt Land.

Response

This issue was of fundamental importance in the determination of the planning application. The Council was required to show very special circumstances to develop Green Belt land. It did so by demonstrating an educational need and the lack of more appropriate alternative site provisions for the proposed school, combined with the low impact design, high quality landscaping scheme and incorporation of high levels of sustainable build measures.

It is also important to note that the planning application has been referred to both the Mayor of London and the Department for Communities and Local Government on the basis that the construction of the proposed school will take place on Green Belt Land and both are content for planning permission to be granted.

Objection

There are other suitable sites that should be used to build a school.

Response

Once again, as part of the planning process the issue of other suitable sites was fully examined. I am satisfied that the Council has undertaken a thorough criteria based assessment of alternative sites within the catchment area and has deemed that none of them are suitable.

Objection

Likely increase of dog fouling on other areas of Council owned land.

Response

Allowing dogs to foul in public places is a criminal offence. The Council has the power to prosecute and will use it if necessary.

Objection

The land has been used and maintained by the Council as public open space for many years.

Response

Circumstances change and there is a pressing need for primary school places to be provided. The Council has a statutory duty to educate children in the borough and it is acting reasonably by taking steps to meet this duty and at the same time ensuring that most of Lake Farm is maintained as public open space.

Objection

The land that is to be appropriated was originally acquired for the purpose of providing public open space.

Response

As I have explained above, circumstances change and the Council has powers to appropriate land for different purposes. It will use these powers if it considers that the use of its land needs to change for a particular reason. In this case, the Council is required to meet its statutory duty and it also considers that it is in the public interest to build a primary school on part of Lake Farm.

Objection

The area of land to be appropriated is considerably larger than the land identified in the Council's planning application.

Response

This is incorrect. The area of land to be appropriated is identical to the site area identified for the planning application. The actual school boundary will be smaller but it is necessary to appropriate all land which might be required for construction and work associated with the planning application.

Objection

The extent of appropriation is excessive and unjustified.

Response

The area of land to be appropriated is exactly the same as the area which was the subject of the application for planning permission. The land is required to construct a

new three form of entry primary school plus a nursery and a SEN/SRP [Special Educational Needs] unit. Provision will be made for hard and soft play space for the children, extensive landscaping works and the provision of associated car parking. In the circumstances, the extent of the appropriation is proportionate and justified.

Objection

The Council has acted with prior judgment.

Response

There is no evidence to support this assertion. The planning application was considered on its merits and the decision as to whether the land should be appropriated is a separate matter. All relevant considerations have been taken into account. The need for a new primary school in Hayes was clearly identified by the Council and alternative provision was carefully examined but was considered to be insufficient.

It is unclear whether the objection relates to the location of a new school across multiple sites (the building on one site and playing fields elsewhere) or to split the demand for additional school places across a number of sites. With regard to the former, a number of alternative sites, including some split sites, (for example, Botwell Common Sites 1 & 2 and Lake Gardens) were considered and discounted within the submitted alternative sites assessment. The Central and South Planning Committee, in assessing the planning application, considered these sites and took the view that they were not viable and appropriate options.

As far as splitting the demand for additional school places across a number of sites is concerned, the Council is already expanding all existing schools within the area to the maximum possible extent. Notwithstanding this, there is still a need for a new primary school.

Objection

The procedure adapted by the Council using public notices under section 122 of the Local Government Act 1972 is wrong in law.

Response

The Council has sought a legal opinion from a QC who specialises in property and planning law which supports the Council's proposed appropriation of the land. In addition to the legal test set out in section 122, the Council also needs 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. I have been advised that all necessary legal tests have been satisfied and that the purported legal analysis, as set out in the objection, is simply wrong in law.

Objection

The land to be appropriated is still required for the purposes for which it is held.

Response

The advice from the QC is that it is legitimate for the Council to say that the land is no longer required for the purpose of public open space 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.

Established case law confirms that the decision as to whether land is no longer required for a particular purpose, and is required for another purpose, is one for the local authority to make, acting in good faith. The decision to appropriate the land is being made for proper and justifiable reasons and the Council has at all times acted in good faith by taking steps to ensure that all children in the borough should receive a suitable education.

Objection

Relevant Legislation has not been considered by the Council.

Response

Examples of such legislation are section 40 of the Natural Environment & Rural Communities Act 2006 and the Education (School Premises) Regulations 1999.

All relevant legislation was considered by the Council as part of the planning process and was fully taken into account. The decision to appropriate is a separate matter which is governed by section 122 of the Local Government Act 1972 and section 266 of the Town and Country Planning Act 1990.

In conclusion, having fully considered the objections made, as demonstrated by my responses to them, I have decided, having consulted with the Leader of the Council and the Cabinet Members for Finance Property and Business Services and Planning Transportation and Recycling, to appropriate part of the land Lake Farm, which is identified as edged black on the map attached at Appendix 1 of the Cabinet report dated 25 April 2013, from public open space to planning purposes pursuant to Section 122 of the Local Government Act 1972 and section 226 of the Town and Country Planning Act 1990.



Jean Palmer

Deputy Chief Executive and Corporate Director of Residents Services.

Dated 14th May 2013