

# APPROPRIATION OF LAND AT THE FORMER YIEWSLEY SWIMMING POOL AND FALLING LANE, YIEWSLEY

<b>Cabinet Member(s)</b>	Cllr Ian Edwards Cllr Jonathan Bianco
<b>Cabinet Portfolio(s)</b>	Leader of the Council Cabinet Member for Property, Highways & Transport
<b>Officer Contact(s)</b>	Jenny Evans, Place Directorate
<b>Papers with report</b>	Appendix 1 - Site Plan Appendix 2 - Cabinet Report dated 14 October 2021 and minutes Appendix 3 - Equality Impact Assessment Appendix 4 - Consultation responses received May / June 2023 and redacted petitions

## HEADLINES

<b>Summary</b>	<p>This report seeks Cabinet authority to appropriate land from public open space to planning purposes pursuant to section 122 of the Local Government Act 1972. This will facilitate the redevelopment of the former Yiewsley Swimming Pool and Falling Lane, Yiewsley by allowing the Council to utilise statutory powers to override third party rights that may prevent the implementation of any proposed development.</p> <p>A planning application has not yet been submitted in respect of the proposed development however, the design is at an advanced stage, and it is intended that the development will provide significant benefits to the local community including the provision of housing and community uses.</p>
<b>Putting our Residents First</b>  <b>Delivering on the Council Strategy 2022-2026</b>	<p>This report supports our ambition for residents / the Council of: Live in good quality, affordable homes in connected communities</p> <p>This report supports our commitments to residents of: Thriving, Healthy Households</p>
<b>Financial Cost</b>	No financial cost to the Council from this report
<b>Select Committee</b>	Property, Highways & Transport
<b>Relevant Ward(s)</b>	Yiewsley

## RECOMMENDATIONS

### **That the Cabinet:**

- 1) Having considered the consultation responses, approves the appropriation of the Site (subject to compliance with all necessary legal requirements) in exercise of statutory powers to appropriate for planning purposes, exercising powers under S122 of the Local Government Act for the planning purposes of facilitating redevelopment having regard to the Equalities Impact Assessment, for residential and other community uses pursuant to section 226 of the Town and Country Planning Act 1990.**
- 2) Approves the use of powers to override easements, restrictions and other rights in respect of the Site pursuant to section 203 of the Housing and Planning Act 2016 (the 2016 Act) following the grant of planning permission for the proposed development.**
- 3) Resolve that the area of Land at the former Yiewsley Swimming Pool and Falling Lane, Yiewsley shown edged [red] on the plan at Appendix 1 (the Site) is no longer required for the open space purposes for which it is currently held.**

### **PRINCIPAL REASONS FOR RECOMMENDATION**

The appropriation of the Site for planning purposes is necessary to facilitate the redevelopment of the Site. Without appropriation of the Site for planning purposes, there would be a risk that proposed redevelopment would not be delivered.

The appropriation of the Site will achieve the improvement of the social economic and environmental well-being of the Council's area, because it will enable the delivery of housing and community benefits.

It is considered that the public benefit of appropriation of the Site for planning purposes is likely to outweigh any private rights which might be interfered with as a result of appropriation for planning purposes.

### **Alternative options considered / risk management**

The Land could be cleared and returned to use as recreational green space, but this course of action is not considered appropriate because there is sufficient open space within 400 m of where residents live in Yiewsley for all open spaces. Also, a new leisure centre for recreation and leisure use is being built at the at Rowlheys Place, West Drayton approximately 2 miles away. In addition, the significant economic, social, and environmental benefits that would be delivered by the proposed development of the Land would not be delivered if the Land was returned to public open space. These significant benefits outweigh any detrimental impacts arising from the loss of the Land held for public walks and pleasure grounds as open space. In any event the majority of the land on Falling Lane has not been available for use for public walks and pleasure grounds for approximately 14 years and the part of the Land on Otterfield Road has not been available to be

utilised for the purposes described in the conveyance to the Council for 11 years. If the Land is to be developed, then there is no alternative but to appropriate the Land to planning purposes.

### **Democratic compliance / previous authority**

The principle of development of the Land was approved at Cabinet on the 18 May 2017 and on 14 March 2019. On the 14 October 2021, as set out in Appendix 2, Cabinet agreed the following:

- 1) Authorises officers to give public notice of the Council's intention to appropriate the land from public open space to planning purposes pursuant to section 122 of the Local Government Act 1972 as amended by the Local Government Planning and Land Act 1980 section 118 schedule 23 on the land set out in the plans.
- 2) Delegates authority to the Leader of the Council and Cabinet Member for Property and Infrastructure, in consultation with the Corporate Director of Infrastructure, Transport and Building Services, to consider any objections to the proposed appropriation; decide whether the land should be appropriated for planning purposes and to make all necessary decisions to give effect to the above recommendation and any other decisions which are required in relation to the land.

Whilst delegated authority to the Leader and relevant Cabinet Member is provided for a decision on this matter, as permitted in the Council Constitution, it has been agreed by the Leader to refer the matter back to the full Cabinet for a decision and for greater transparency.

### **Select Committee comments**

None at this stage.

## **SUPPORTING INFORMATION**

The Site comprises an area of 5066 sq. metres of land at former Yiewsley Swimming Pool and Falling Lane, Yiewsley. Part of the Site was previously used as a municipal swimming pool which was demolished in circa 2011 (the Former Swimming Pool Site).

The freehold to the Site is owned by the Council. Restrictive covenants are contained within a Conveyance dated 24 August 1922 between (1) William Garner and (2) Ernest James Sutton over the Former Swimming Pool Site (the **1922 Conveyance**). Please see below for a summary of the restrictive covenants:

- *not to hold a fair, burn bricks or tiles or do anything which may be a nuisance or annoyance;*
- *not to erect any house or building to be used for the carrying on of any trade or business whatsoever and not to allow any such house to be used as a tavern or beer shop;*
- *not to excavate any gravel, sand or clay or any material of any kind except for the purpose of buildings;*
- *not to erect any house or building closer to the road than is shown by a dotted building line which is fifteen feet distant from Otterfield Road;*

- *not to allow any erection of building or portion thereof (except ordinary dressings or bay windows) to project upon or overhang the space between the building line and the road boundary;*
- *not to erect any house or residence under a certain value;*
- *not to erect any temporary buildings of any kind or a caravan (except workshops and sheds to be used only temporarily while houses are being built); and*
- *not to use the parcels of land (or part thereof) as a road or right of way or allow any adjoining owner to use the same as a road or right of way so as to form a connection into the roads on the Otterfield Road estate.*

together "**the Restrictive Covenants**".

Due to the age of the 1922 Conveyance, it is not clear whom the benefit associated with the Restrictive Covenants resides with. It is possible that the proposals for development of the Site will interfere with the Restrictive Covenants which is why it is recommended that the Council engages Section 203 of the 2016 Act to override the same.

A Conveyance dated 21 December 1926 made between (1) the Mayor and Commonalty and Citizens of the City of London and (2) the Yiewsley Urban District Council (the **1926 Conveyance**) and a Conveyance dated 21 March 1934 between (1) William Henry Knowles and (2) Urban District Council of Yiewsley and West Drayton (the **1934 Conveyance**) provides that Site (and other adjoining land) be held for the purposes of public walks and pleasure grounds.

The Council considers that the entries within the 1926 Conveyance and the 1934 Conveyance is akin to a statutory trust under section 10 of the Open Space Act 1906 (the **1906 Act**). Where the Council acquires land under the 1906 Act it holds land on trust for those purposes. Therefore, as the land is held on trust for such purposes, there could be a departure from the terms of any such trust upon the proposed residential and community use development being carried out. Appropriation is therefore necessary, to free the Site from any such trust that may exist.

The Council obtained planning permission for the redevelopment of the Site to provide mixed use development including one three-storey block comprising health centre and gym; one two-storey block comprising 12 supported housing/living flats and associated accommodation; car parking; landscaping; and ancillary development by a planning permission dated 13 June 2014 (ref: 18344/APP/2013/3564). However, this planning permission was never implemented.

Following the above, a further application was submitted in 2021 which was subsequently withdrawn (ref: 76795/APP/2021/3704) for the demolition of existing Yiewsley Library Building and the erection of a new residential building on the Yiewsley Library site (Falling Lane) and the erection of a new mixed-use building on the former Yiewsley Swimming Pool site (Otterfield Road), with a replacement library at ground floor level and residential uses above. Detailed Description: Demolition of existing Yiewsley Library Building and the erection of a 5-storey residential building, comprising 50 dwellings, with 28 under-croft parking spaces (13 for residential and 15 for use by Rabbsfarm Primary School). The Otterfield Road site proposes the erection of a 6-storey building, comprising 50 dwellings, with 25 car parking spaces (23 for residential and 2 for library users) (the Withdrawn Application).

The Council has revised the aforementioned plans for redevelopment following detailed consideration of resident feedback received during the consultation period for both applications. The Council has not yet submitted a planning application in respect of the revised proposals, but the new proposals will include the following benefits:

- Optimising use of previously developed land;
- 95 new residential units meeting the Borough identified housing need and providing much needed affordable housing, including wheelchair accessible units;
- 100% affordable housing;
- Private and communal amenity spaces;
- Enhanced pedestrian connectivity to and from the Site and into the wider recreation ground;
- Modern, fit for purpose housing and meets or exceeds space standards;
- An energy efficient development that will lower energy bills for residents;
- A modern library and community facility;
- On-site play space provision.

It is anticipated that the planning application, which is at an advanced stage of preparation, will be submitted to the local planning authority for determination in Summer/Autumn 2023.

The Council is not seeking to appropriate the amenity space of Yiewsley Recreation Ground which was designated as Metropolitan Open Space in January 2020 pursuant to the Hillingdon Local Plan (adopted in 2012). The Site is considered to be brownfield land and consists largely of existing hardstanding.

Delegated authority was granted to the Leader of the Council and Cabinet Member for Property & Infrastructure in consultation with the Corporate Director of Infrastructure, Building Services and Transport on 14 October 2021 to begin the procedure for the appropriation of the Site and to consider any consultation responses; decide whether the Site should be appropriated for planning purposes and make all necessary decisions to give effect to the recommendations and any other decisions which are required in relation to the Site. The Council then instigated a consultation exercise for the appropriation of the Site in November 2021 but the appropriation was not subsequently pursued following the withdrawal of the Withdrawn Application (the Previous Consultation Responses).

As a result, due to the passage of time, on 31 May 2023 the Council embarked on a further consultation period which was open for comments until 27 June 2023 (the Existing Consultation Responses). The Council has considered both the Previous Consultation Responses and the Existing Consultation Responses below to ensure a fair process.

## Consultation

Local authorities who have acquired land for a statutory purpose must hold that land for that purpose. They can only change the purpose for which they hold land using statutory powers of appropriation. The power to appropriate land to planning purposes in this context simply involves formally changing the purpose for which land is held, so that it is held for a 'planning purpose'. Planning purposes in this context therefore means appropriation which will facilitate the carrying out of development, re-development or improvement of land which is likely to contribute to the economic, social or environmental wellbeing of the area, or which is required in the interests of the proper planning of the area in which the land is situated. The Proposed Development of the Property in accordance with planning policy will be such a planning purpose.

Pursuant to Section 122(2A) of the 1972 Act before appropriating land consisting of open space, the Council must first:

- Advertise its intention to appropriate open space land for two consecutive weeks in a newspaper circulating the local area; and
- Consider any objections to the proposed appropriation.

Provided that the above steps are complied with the Council would upon redeveloping the Site be released from any trust for the enjoyment of the public imposed by a S10 Trust (Section 122(2B) of the 1972 Act).

The Existing Consultation Responses comprise of fifty (50) objections which were submitted via the online portal, three (3) emails to the local MP and the Leader and Mayor of the Council as well as two separate petitions.

The themes which have arisen from the online portal objections and emails and Council's response to the same are listed in the table below. The petitions are considered separately below:

Item	Objection Theme	Councils Response
1	<i>A new development of flats will add pressure to existing services such as education and youth services, healthcare, public transport and emergency services in addition to an increase in traffic, congestion and added pollution.</i>	<p>The Council has not yet submitted a planning application for the proposed development. The process of appropriation is separate from the planning process. These matters will be considered in detail during the assessment of the application by the Council (acting as local planning authority). Residents will be able to provide consultation responses on the planning application when it is submitted.</p> <p>As part of the planning application that will separately come forward the Council will be required to submit various assessments e.g. a transport assessment which will demonstrate the impact any proposed development will have and any mitigations. The Council as local planning authority may impose planning conditions to secure any necessary mitigations.</p>



2	<p><i>The Council cannot be said to contribute towards achieving the promotion of the improvement of the economic, social or environmental wellbeing of the whole or any part of the area and the requirements of the covenant should be maintained by the Council. Alternatively, the Council should progress developments for community use such as a community centre or GP surgery as there is too much housing being built in the area.</i></p>	<p>Section 227 of the Town and Country Planning Act 1990 permits the Council to acquire by agreement any land which it thinks will facilitate the carrying out of development, re-development or improvement likely to contribute to the economic, social or environmental wellbeing of the area or which is required in the interests of proper planning in the area in which the land is situated.</p> <p>Development of the land would provide public benefit as the Site is currently considered brownfield and consists of largely existing hardstanding. The redevelopment would bring new and improved community uses to the area in addition to the proposed additional housing (including affordable housing) – see development proposals above.</p>
3.	<p><i>The consultation process for the appropriation should have been more open and directed to local residents as part of the consultation process. There was failure to give proper public notice pursuant to R (Day) v Shropshire Council [2023] UKSC 8.</i></p>	<p>The correct consultation process (as has been outlined above) has been followed. Notices were placed for two consecutive weeks in the London Gazette and site notices were placed in the following locations:</p> <p>Entrance to both site, attached to entrance gates and lamp posts. Copy of consultation documents made available in Yiewsley Library.</p> <p>The notices referred to a website whereby the consultation materials could be viewed and materials were also made available in hard copy at Yiewsley Library.</p> <p>A press release was also issued alongside a community briefing note (which is not a statutory requirement).</p> <p>The Council took the advice of Trowers &amp; Hamblins LLP in respect of the consultation and the preparation of consultation materials.</p> <p>The Council is satisfied that the correct process has been followed.</p>
4	<p><i>The previous consultation provided draft plans for the site, the consultation feedback is not meaningful without this information</i></p>	<p>As has already been outlined above, the planning process and the appropriation process are separate. The previous consultation process for the proposed appropriation was carried out in tandem with the planning application for the Withdrawn Application.</p> <p>This current consultation has not been accompanied by a relevant planning application and this will follow</p>

		shortly. The Council has considered the Previous Consultation Responses below to ensure that all opinions have been considered. When a new planning application is submitted it will be the subject of a separate consultation exercise by the Council in its capacity of local planning authority.
5	<i>New developments such as high rise flats will lead to loss of daylight and a loss of green space.</i>	<p>As part of the process in any planning application, the local planning authority will undertake an analysis of these matters.</p> <p>There is no proposed loss of current publicly available green space. The land, notwithstanding a designation as open space, is considered brownfield land which is covered by hardstanding.</p>
6	<i>New flat developments are usually expensive and end up vacant as local people cannot afford to live in these flats. The flats will bring down the value of other properties and there are already too many flats in the area.</i>	Whilst the proposed development will be subject to a separate planning application consultation exercise, the Council intends that the proposed development will provide 100% affordable housing significantly in excess of the Council's local plan and the London Plan requirements. The Council also intends to provide affordable housing in excess of the policy requirement, but this will be confirmed in the planning submission.
7	<i>These developments will have an adverse effect on the ecosystems and biodiversity of the area</i>	As part of the process in any planning application, the local planning authority will consider these matters. It should be noted however that the development is proposed on land that is currently covered with hardstanding.
8	<i>The Council are not taking into account the guidance and advice on maintaining open space as per the LBH Open Space Strategy 2011-2026, 'Rights for Nature' movement, Hillingdon Strategic Climate Action Plan, Local Plan Part 2 - Development Management Policies, GLA chapter 7 London Living Spaces &amp; Places Policy 7</i>	<p>All relevant guidance will be taken into account during the design and planning process.</p> <p>There is no proposed loss of current publicly available green space.</p>
9	<i>Closing the library in its current location will inhibit access to residents to library services whilst the new library is built and accessibility to new library will worsen as the current library has parking and is next to bus stops.</i>	The Council intends to continue to ensure that there is library service provision in the Yiewsley and West Drayton area during any redevelopment. Any closure proposed would be taken into account during the planning application process.



10	<i>Will any new proposed developments be more accessible to all such as those with disability?</i>	Any designs will take into account Equality Act 2010 requirements for accessibility to the residential units, library and local park.
11	<i>It is illegal to appropriate community land for housing</i>	As is explained further at Section [6] above there is a statutory process which has to be followed to appropriate open space land.
12	<i>The Council are re-lodging applications to wear down residents.</i>	The Council chose to re-consult on the proposed appropriation to ensure that the process was fair and to ensure that any new residents were given the opportunity to voice their opinion. The Council also recognise that residents previously expended efforts replying to the previous consultation and so they have considered the Previous Consultation Responses below.

In addition to the aforementioned objections, two separate petitions have been created as follows:

- A petition with 542 signatures to stop the loss of Yiewsley Library in the current location and to stop housing being built on the former Yiewsley Swimming Pool Site; and
- A petition with 25 signatures to stop flats being built on Yiewsley Recreation Ground.

Consultation responses and petitions are set out in Appendix 4.

When a planning application is submitted interested persons will be able to make representations on such application to the Council as local planning authority. As is noted above, the proposal is not to appropriate any land which was recently designated as Yiewsley Recreation Ground.

The themes which have arisen from the Previous Consultation Responses (which have not already been considered above) and Council's response to the same are listed in the table below:

Item	Objection	Councils Response
1	<i>Development is out of character / not in keeping with the local area</i>	This comment relates to the previous development proposals pursuant to the Withdrawn Application and therefore are not relevant to this decision.
2	<i>There is no S106 associated with the development to support local infrastructure / community facilities</i>	This comment relates to the previous development proposals pursuant to the Withdrawn Application and therefore are not relevant to this decision. The proposed application will be subject to any contributions towards local infrastructure as are required by policy and the local planning authority.
3	<i>The [Site] is incorrectly being classified as a brownfield site where it should be greenfield given it has been reverted to open space and grassland</i>	The Site is considered to be brownfield because it consists largely of existing hardstanding following the demolition of the former swimming pool.

4	<i>Development affects public right of way to bowling green and to park by the Library</i>	This comment relates to the previous development proposals pursuant to the Withdrawn Application and therefore are not relevant to this decision.
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The Council considers that it has addressed all other comments raised pursuant to the Previous Consultation Responses at Section 7 above as similar issues arose from the Existing Consultation Responses.

In summary, it is considered that most of the concerns which have been raised will be considered pursuant to the planning application process. The Council have considered all of the consultation responses carefully to ensure that any issues relevant to the appropriation of the Site have been considered and specifically that the correct statutory process has been followed.

### Issues

Before the Site can be appropriated for planning purposes, the provisions of Section 122 of the Local Government Act 1972, namely that the area of land in question is no longer required for the purposes for which it was held immediately before appropriation must be satisfied. This means that it is necessary to first establish the purpose for which the Site is currently held.

Pursuant to the 1926 Conveyance and the 1934 Conveyance the Site is held for the purposes of public walks and pleasure grounds. Part of the Site was previously used as a municipal swimming pool (however this was demolished in circa 2011). The Site is no longer required for this purpose because a new leisure centre including swimming pools is under construction 1.5 miles away.

The Council should also be satisfied that the relevant area of 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. The following matters therefore need to be considered by the decision maker and determined before land can be formally appropriated:

- Whether the appropriation will facilitate the carrying out of development, redevelopment 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.

It is considered that the appropriation will facilitate public benefit as will make efficient and viable use of the Site which is currently considered brownfield and consists of largely existing hardstanding. The redevelopment would bring new and improved community uses to the area in addition to the proposed additional housing (including affordable housing) – see the specific development proposals at paragraph 2 above.

Against the above background, in order to deliver the proposed development, and to realise the wider public benefits, it is necessary to ensure that there are no third party rights that could prevent the proposed development from being delivered so that the rights of such third parties are converted into entitlements to compensation, without any risk of injunctions being made to restrain infringements of third party rights.

Section 122 of the Local Government Act 1972 provides that the Council may appropriate for any purpose any land which belongs to the Council which is no longer required for the purpose for

which it is held immediately before the appropriation. Section 203 of the Housing and Planning Act 2016 provides that any restrictive covenants and other adverse rights or interests affecting the proposed land to be appropriated for planning purposes as set out in this report can be overridden, thereby releasing any proposed scheme from the risk of a third party beneficiary of such rights from obtaining an injunction to restrain the development and converting their entitlement (if any) to monetary compensation.

It is accepted that appropriating the land for planning purposes may infringe private rights (in particular the Restrictive Covenants and the trust). However, this infringement must be considered in the context of the history and the configuration of Site which demonstrates that the likely benefits of the proposed development (explained above) will significantly outweigh any harm as a result of infringement of private rights which appear to be inactive and historic in nature.

The Site currently consists largely of existing hardstanding and therefore although the Site is technically designated as open space, in practice, it is not currently utilised as such. The hardstanding exists because part of the Site is used as the existing library car park and the remainder consists of hardstanding which remains from when there was a swimming pool on the Site which was demolished in circa 2011. Therefore, the Council consider that the Site should be considered as brownfield land. There are currently no proposals to appropriate any green space which will be fully retained. As such the public ability to use green space in this area will not be affected by the proposals or the appropriation

The impact in terms of infringement of the trust can be further mitigated when it is considered that the previous swimming pool use itself could have been in breach of the terms of the trust. It is possible that this part of the Site may have already been appropriated pursuant to the predecessor of s122 of the Local Government Act 1972. The Council has proceeded on the cautious basis that this is not the case and that the trust still applies. However the Council consider that this history demonstrates that the impact of appropriating the land and overriding the trust is largely mitigated by the fact that the Site has not been used as open space in the traditional sense for many years.

As such the Council considers that the impacts on private and public rights through the appropriation are limited in practice and that any impacts are greatly outweighed by the benefits of redevelopment.

At this stage, the Cabinet are asked to resolve to appropriate the Site for planning purposes and to approve the use of powers to override restrictive covenants and other rights in respect of the Site pursuant to section 203 of the Housing and Planning Act 2016.

The Human Rights Act 1998 in Article 1 of Part II - The First Protocol:  
It is considered that there is a compelling case in the public interest for the land to be appropriated. The Human Rights Act 1998 places an obligation on public bodies such as the Council to demonstrate that the use of powers such as appropriation is in the public interest and is proportionate to the end being pursued. As noted above, it is accepted that appropriating the land for planning purposes will infringe private rights, however the Council considers this wholly justified given the above context on grounds of public interest and promotion of economic, social and environmental well-being, and that in any event any injured party will have the right to claim appropriate compensation for their injuries. Promoting the redevelopment of the Site is considered to be consistent with the principles of good public administration and is in the public interest in the delivery of the proposed development.

The Equality Act 2010 requires that the Council when exercising its functions must have "due regard" to the need to eliminate discrimination, to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. As such Equality Impact Assessments (EqIA) has been undertaken in respect of the impact of the appropriation and development proposals. This EqIA is attached as Appendix [3] to this report. The EqIA sets out a number of positive impacts that the scheme will deliver including more affordable homes of a higher quality, that are safer, more accessible and more fuel efficient and sustainable, and therefore have the potential to improve the quality of life for people of all ages and backgrounds. Specifically beneficial advancing equalities the EqIA identifies the following:

- increased choice of housing in the area.
- significant provision of fully accessible affordable housing, including units for wheelchair use, allowing greater housing options for all residents;
- new homes will be an opportunity to 'design out crime', therefore improving community safety;
- new energy efficient housing with the potential to reduce energy bills and fuel poverty;
- new homes and a new community library built to modern accessibility standards, such as those with disabilities will be able to benefit from more appropriate and adaptable homes and community facilities, in terms of level access, wheelchair accessibility etc;
- improvements to the step-free access into the recreation ground from the Fairfield Road car park are part of the proposals, with disabled bays being provided in the new development;
- improvements to the paths within the recreation ground are also proposed as part of the application therefore increasing accessibility to recreation facilities for the wider community; and
- the new state of the art library, with integrated community facility, with access afforded direct from the public car park - aiding community cohesion and bringing the existing vacant land into community use. with access afforded direct from the public car park - aiding community cohesion and bringing the existing vacant land into community use.

The EqIA does note some minor adverse impacts of the development mainly during construction, which includes temporary relocation of the library. For example for older or more vulnerable residents. The disruption of building works may cause anxiety and the Council will have procedures in place to mitigate against this as part of its proposals, as set out in the EqIA. It is felt that on balance the positive impacts for delivering the Scheme are significantly greater than the negative and the EqIA confirmed that the overall impact of the Scheme is beneficial on persons with protected characteristics.

## Financial Implications

There are no direct implications arising from this report if it is approved that the site is no longer required for open space purposes and is appropriated for planning purposes. Financial implications may arise in the future and will be subject to Cabinet Reports. The cost of advertising the proposed appropriation in the local newspapers and the cost of consultation will be met from existing revenue budgets.

## RESIDENT BENEFIT & CONSULTATION

### The benefit or impact upon Hillingdon residents, service users and communities?

The appropriation of the Land will result in the land being held for planning purposes. A final decision will be made regarding the appropriation of the Land to planning purposes.

### Consultation carried out or required

There is a statutory right to object to the proposed appropriation of the Land.

The Council has advertised its intention to appropriate the Land and must take any consultation responses into account before formally deciding to appropriate the Land.

## CORPORATE CONSIDERATIONS

### Corporate Finance

Corporate Finance have reviewed this report and concur with the Financial Implications set out above, noting that there are no direct financial implications associated with the recommendations in this report.

### Legal

Section 122 of the Local Government Act 1972 (the 1972 Act) permits the Council to appropriate any land which belongs to them and is no longer required for the purpose for which it is held immediately before the appropriation, for any purpose for which it is authorised by the 1972 Act or any other enactment to acquire land by agreement.

The most relevant acquisition power for these purposes is section 227 of the 1990 Act. This permits the Council to acquire by agreement any land which it thinks will facilitate the carrying out of development, re-development or improvement likely to contribute to the economic, social or environmental wellbeing of the area, or which is required in the interests of the proper planning of the area in which the land is situated.

Any reference to appropriation for planning purposes is, by virtue of the provisions in section 246 of the 1990 Act, regarded as a reference to appropriation for the purposes for which land can compulsorily be acquired under section 226 of the 1990 Act (which are the purposes set out in paragraph [6] above).

The Council must also be satisfied that the Land is no longer required for the statutory purposes for which it is currently held prior to the appropriation. This “surplus to requirements” component of s122 of the 1972 Act enables the Council to prioritise relative needs. It follows that the Council is entitled to look at the current use of the Land as well as the prospective use of the Land and on this project, what the Land can deliver. The Council can consider matters such as whether sufficient use is currently made of the Land and the need to secure an enhanced form of redevelopment.

Section 122(2A) of the 1972 Act before appropriating land consisting of open space, the Council must first advertise its intention to appropriate open space land for two consecutive weeks in a newspaper circulating the local area; and Consider any objections to the proposed appropriation. The appropriation has been duly advertised and this is discussed at paragraph [7] above which also summarises the consultation responses. Following the appropriation the Site will be released from the trust detailed at paragraph 1 of this report (Section 122(2B) of the 1972 Act).

Appropriating land for planning purposes can engage s203 of the 2016 Act allowing the Council to override private third-party rights, subject to payment of compensation under section 204 of the 2016 Act, provided the four conditions discussed in the main body of this report are met.

Provided all the conditions for the application of s203 are met third party right will be overridden automatically (i.e without further decision or action from the Council) and it is irrelevant who carries out the development. The affected third-party would be entitled to claim for statutory compensation when development takes place, but they would not be entitled to obtain damages or to an injunction once the land has been appropriated.

The types of rights that can be overridden under section 203 comprise;

- a. a “relevant right or interest” i.e. “any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support)”, and
- b. a restriction as to the user of land arising by virtue of a contract (and the Restrictive Covenants fall into this category).

Where it is known that appropriation for planning purposes would affect third-party rights, case law states that the Council must consider that it has sufficient reason in the public interest to interfere with third-party rights and that the interference is no more than is necessary. The Council must also act in accordance with the rights under the European Convention on Human Rights, and as advised in paragraph [15] above, this includes Article 1 of the First Protocol (right to peaceful enjoyment of possessions) and Article 8 (right to respect for private life, family and home). The Council must strike a fair balance between the public interest and the individual's rights and consider whether the interference is “proportionate”. In view of the factors described in this report it is considered that it is necessary to appropriate the Site for planning purposes and that there is a compelling case in the public interest to support the decision to do so.

Compensation, if payable, under section 204 of the 2016 Act is calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965.

## **Property**

The Property and Estates Team can confirm that the above proposals do not impede with any plans, proposals or strategies from an Estate / Asset Management direction.

## **Comments from other relevant service areas**

Where reports span across other service areas relevant services should be consulted and brief comments included here to support the recommendation.

## **BACKGROUND PAPERS**

NIL