

NORTH SOMERSET COUNCIL DECISION

DECISION OF: COUNCILLOR STEVE BRIDGER, EXECUTIVE MEMBER FOR ASSETS AND CAPITAL DELIVERY

WITH ADVICE FROM: THE DIRECTOR OF PLACE AND THE ASSISTANT DIRECTOR, LEGAL & GOVERNANCE AND MONITORING OFFICER



DECISION NO: 21/22 DP 131

SUBJECT: APPROPRIATION OF OPEN SPACE TO PLANNING PURPOSES:
LAND ADJACENT TO BROOKFIELD WALK, CLEVEDON

KEY DECISION: YES

REASON: Reasons for appropriation relate to two or more wards.

BACKGROUND:

The Site

The Site ("Land Adjacent to Brookfield Walk") comprises a greenfield site of c. 2ha to the east of Clevedon and adjacent to the settlement boundary. It consists of three grass fields aligned south west/north east, intersected by linear bands of trees and hedgerow. This is as shown on the attached Plan at **Appendix A**.

There are no buildings and no formal public rights of way through the Site, although an access route via an informal footpath runs from the entry to the Site at Kelting Grove in the western corner of the Site to the 'Millennium Orchard' that is adjacent to the south of the Site, and designated in the Local Plan as Green Belt. There is a formal access route through the site to the orchard in terms of a Deed of Grant between NSC and Clevedon Town Council.

The site is adjacent to a residential development to the north west, and Hither Green Industrial Estate to the south west. To the south east lies the Orchard, beyond which is the northbound slip road of the M5's Junction 20. The Site borders are defined by established trees and hedgerow. To the north east lies further fields in agricultural use.

An application to list the Site as a Town or Village Green was refused in 2020.

Issue and proposals

The Council is proposing to develop a 2nd site campus for Baytree Special School on the Site. Baytree is a Specialist School for young people who have Severe Learning Difficulties and/or Profound and Multiple Learning Difficulties.

Medical advancements are helping more children to survive. Alongside demographic growth, these factors have led to a significant deficit of local places with more children needing to access education in costly out-of-the-district establishments. Local schools are full, and demand continues to rise. The specific rise in the need for places for pupils with the most profound learning and physical disabilities would be met by the expansion of Baytree Special School onto a 2nd site in Clevedon. The current school buildings, that share a campus with a local primary school, children's centre and shared community spaces, is land-locked and cannot be expanded.

The proposed development comprises a single storey building of 3,300 sqm with associated car parking, landscaping and outdoor play facilities. The school will provide 65 to 85 places for pupils aged 3 – 19 with the most complex of special education needs and disabilities.

The Site is currently used as open space. Therefore, the Council cannot use its statutory powers to appropriate the land to planning purposes for the development without following a statutory process.

The purpose of this decision is to note that the statutory process has been followed and seek authority to appropriate the land for planning purposes in order to facilitate the carrying out of the development.

The Council's Power to Appropriate

Section 122 of the Local Government Act 1972 permits a 'principal 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 Local Government Act 1972 or any other enactment to acquire land by agreement.

The Council already owns the freehold of the Site, and is a 'principal council'. Therefore, the Council needs to be satisfied that:

1. The land is no longer required for the purpose for which it is currently held;
2. The purpose for which the Council is appropriating is authorised by statute.

In relation to point (1) above, the question of whether the land is no longer required for its current purpose is solely for the Council to decide in good faith. There is no requirement for the land to have fallen into disuse or disrepair, and the Council is entitled to balance the loss of the current use against the benefits to the wider community in making that decision.

The applicable principles for the Council in deciding whether or not the land is no longer required as open space were distilled by the High Court in the case of *The Queen on the application of Lorraine Elizabeth Maries v The London Borough of Merton* [2014] EWHC 2689

(Admin). *Maries* was a judicial review challenge against an open space appropriation for a school, and the challenge was lost on all grounds. The Court confirmed that:

1. Whether land is no longer required for a particular purpose, meaning no longer needed in the public interest of the locality for that purpose, is a question for the local authority, subject to Wednesbury principles of reasonableness, and not the Court;
2. The power to appropriate is concerned with relative needs or uses for which public land has been or may be put. It does not require it to fall into disuse before the authority may appropriate it for some other purpose;
3. The authority is entitled when exercising its appropriation power to seek to strike the balance between comparative local (public interest) needs: between the need for one use of the land and another with the wider community interests at heart. It is for the authority to keep under review the needs of the locality and is entitled to take a broad view of local needs.

In relation to point (2) above, Section 246(1)(b) of the Town and Country Planning Act 1990 provides that “reference to the appropriation of land for planning purposes is a reference to the appropriation of it for purposes for which land can be acquired under sections 226 (compulsory acquisition) and 227 (acquisition by agreement) of the TCPA 1990”.

Therefore ‘planning purposes’ in this context 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 well-being of the area, or which is required in the interests of the proper planning of the area in which the land is situated.

Section 122(2A) of the Local Government Act 1972 also requires that, prior to appropriating any land consisting of or forming part of an open space, the Council must advertise the proposed appropriation for two consecutive weeks in a local newspaper and consider any objections to the proposed appropriation which may be made to them.

In accordance with the statutory procedures, public notices were advertised in the North Somerset Times on 14 April 2021 and 21 April 2021. The consultation period ran for 21 days for interested parties to submit representations to the Council. The period for submission of representations expired on 5 May 2021.

Appropriation of land under section 122 of the Local Government Act 1972 is a distinctly different process from the compulsory acquisition of open space or common land under section 19 of the Acquisition of Land Act 1981. The appropriation procedure is not one that involves the compulsory purchase procedure to acquire freehold interests in land. The appropriation of land under section 122 concerns land that is already in the local authority’s ownership. Accordingly, matters which are relevant to the grant of a certificate by the Secretary of State for the acquisition of open space or common land under section 19 are not relevant to the section 122 procedure. For example, there is no legal requirement to provide replacement alternative provision.

DECISION:

1. To consider the representations, along with the information contained in this report, received in respect of the intention to appropriate the open space land adjacent to Brookfield

Walk, Clevedon BS21 6YG shown edged red on the plan attached at **Appendix A**, to this report (the 'Site').

2. To agree that the Site, which is currently held by the Council for the purpose of open space/recreation is no longer required to be held for those purposes as it is required to be appropriated for planning purposes for a special educational needs school.
3. To authorise the appropriation of the Site from open space/recreation purposes for planning purposes under Section 122(1) of the Local Government Act 1972 to facilitate the development of a school site for pupils who have Severe Learning Difficulties and/or Profound and Multiple Learning Difficulties.
4. To authorise the Director of Place to note the appropriation in the Council's records.

REASONS:

A total of 647 representations some in support and some opposed to the proposal were received in relation to the Site. To assist the Executive Member in his consideration of the objections a summary of the main issues, together with an analysis and responses/comments, is at **Appendix B**. Redacted copies of all representations have also been shared with the Executive Member and are available to view on request.

The Council acknowledges the importance of this Site to residents in the immediate vicinity and it does not take the decision to appropriate lightly. The matters raised in objections, including loss of recreation areas and the significance of the Site for the well-being of its users, have been carefully weighed.

It is considered that the loss can be justified by the benefits to the wider community of the expansion of the Baytree Special School, being a highly-specialised and much-needed provision of extra capacity to care for children with the most acute needs in our area.

The Council has a statutory duty to provide sufficient school spaces for these children, and this duty also needs to be weighed against the benefit of the open space to the area. It is considered that the need for extra special school provision is urgent, and outweighs the need for the open space provided at this Site.

On balance, there are other open space and recreation facilities in the local area that are available to the local community, and therefore it is considered that the Site should no longer be designated as open space.

The planning purposes that will be facilitated by the appropriation will be the improvement of land which will contribute to the economic and social well-being of the area. Baytree is the only school in North Somerset designated to provide education to pupils with Severe and Profound Learning Difficulties, and therefore its contribution to meeting the increasing demand for this resource is critical to the discharge of the Council's duties under the Education Act 1996.

OPTIONS CONSIDERED:

Options considered are:

- To proceed with the appropriation as proposed: this is recommended for the reasons detailed above.
- Not to proceed with the appropriation: this is not recommended, for the reasons detailed above.

FINANCIAL IMPLICATIONS:

The financial implications of the appropriation process in itself are minimal, relating to the costs of newspaper advertisements, legal advice and officer time. These costs have been absorbed within existing budgets.

The potential financial implications of the school proposal are subject to separate reporting in relation to that project.

LEGAL POWERS AND IMPLICATIONS

The legal powers and implications are dealt with in the body of this report.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

The legal and administrative process of appropriation has minimal climate change or environmental implications in itself. The Council is committed to becoming carbon neutral by 2030. Reducing the journey lengths for some pupils attending special schools and offering local provision will assist with this commitment

The appropriation of the site from open space for use for a school will have climate change and environmental implications, if the proposal is delivered, including a potential overall increase in carbon emissions compared to current use.

An energy efficient approach has been carried throughout all aspects of the design of the proposed 2nd site for Baytree School. The new build's passive design has been utilised to minimise both energy usage and running costs. A three-tier approach has been adopted. Firstly, building loads have been reduced through effective fabric design that go above and beyond the U-values and air tightness values stated within 2013 Part L2A 2 of the Building Regulations and those recommended within the National Calculation Methodology Non-Domestic Modelling Guide. Secondly, installed building services systems have been designed to maximise their efficiencies so that resources are not wasted. Finally, 15% regulated energy via renewable technologies has been incorporated.

CONSULTATION

The appropriation proposal has been subject to public consultation, as set out above.

RISK MANAGEMENT

The appropriation process itself is a legal/administrative process and carries minimal other risks. The key risk to the council is the risk of legal challenge. External specialist support has been taken to mitigate this risk.

Risks relating to the school proposal are considered as part of the reporting and governance for that project.

EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment?

The appropriation process, in that it relates to the legal purpose for which the land is held and is not in itself a decision to proceed with the act of development, has minimal equality implications. An Equalities Impact Assessment for the appropriation is attached as Appendix C1.

An Equality Impact Assessment was also carried out and submitted with the planning application (20/P/0605/R3). For completeness, this is attached as Appendix C2 for the Executive Member's consideration.

A summary of the EIA for the planning application follows for ease of reference:

An Equality Impact Assessment ("EIA") was undertaken as part of the process to apply for permission to start consultations to expand Baytree Special School. The post-consultation EIA confirmed that generally children with Severe and Profound Learning Difficulties and their families are likely to be positively affected by the creation of a second site for the school. A school designed to meet their requirements and provide greater numbers of places will enable their needs to be better met and potentially avoid the need for out of the area placements.

Some pupils and their families may positively benefit from a school site closer to their home whilst others may be negatively affected by having to travel further. Having a choice of two locations may provide options to reduce transport overall, especially where a local place that previously would not have been available can be offered.

Older, disabled and younger people living close to the site may be differentially negatively affected by the loss of the open space as they may find it harder to travel any extra distance to other local sites. Previous consultations had identified a person with a disability who a respondent felt might be adversely impacted by the removal of access to the site as it would compromise their opportunity to access nearby play space. In relation to play space there are 5 other play areas within a mile / 1.1 miles of the site.

For other users of the site including dog walkers and walkers/runners, there is a public right of way adjacent to the Site next to a local rhyme. It is used, along with a neighbouring field that borders the site, for activities such as running and dog walking. The development that includes Hazell Close, less than a mile away from this site, is a popular area for leisure activities including running and dog walking. Norton Woods are also under a mile from the site and a popular area for dog walkers and for families, although it is noted that this is private land and that in certain areas of Norton Woods dogs must be kept on their lead. It is also envisaged that the public will still have access to the orchard to the south to the proposed school site and access to existing public rights of way (PROW) in the close vicinity.

Overall as there are other alternative nearby facilities within a mile of the site that can be used for leisure purposes, it is considered the benefit from the creation of a new site for 65 - 85 children with profound and severe learning needs provides a greater benefit than the loss of the open space. The loss of immediate open space is outweighed by access for pupils with

profound and severe learning needs whose equality of opportunity would be compromised, unlike mainstream pupils, as there would not otherwise be a local school place available to meet their school-place needs.

The EIA will be reviewed and updated if the project is progressed to the delivery stage.

CORPORATE IMPLICATIONS

The appropriation of the Site in itself has limited corporate implications.

Consultation responses have been considered by the Director of Place and a report on her consideration of the responses is appended.

APPENDICES

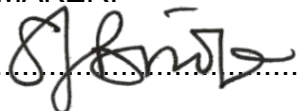
- Appendix A: Plan of the Site
- Appendix B: Report of the Director of Place on the Consideration of Representations
- Appendix C1: Equality Impact Assessment for appropriation decision
- Appendix C2: Equality Impact Assessment for planning application

BACKGROUND PAPERS

Redacted copies of consultation responses are available on request and have been shared with the Executive Member.

SIGNATORIES: In addition to the responses summarised in Appendix B, I have carefully considered the further responses received and summarised in Appendix D before taking this decision.


DECISION MAKER:

Signed:  Executive Member for Assets and Capital Delivery

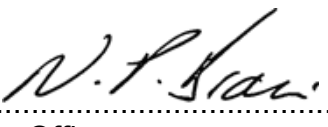
Date: 16 July 2021

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WITH ADVICE FROM:

Signed:  Assistant Director Placemaking and Growth. In accordance with 21/22 DP 62

Date: 16 July 2021

Signed: .....Assistant Director Legal and Governance and
Monitoring Officer

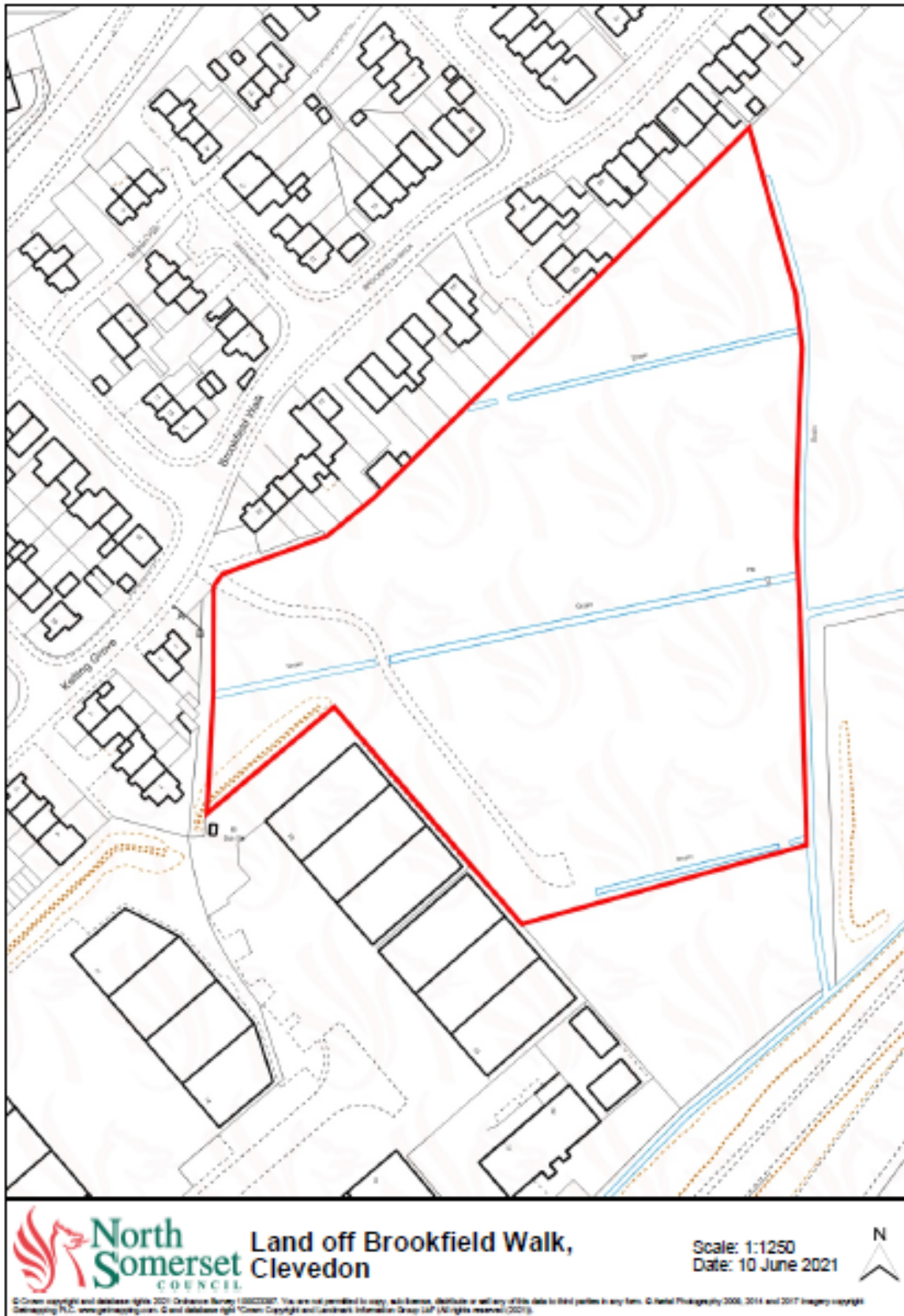
Date: 15 July 2021

Footnote: Details of changes made and agreed by the decision taker since publication of the proposed decision notice, if applicable:

Please see additional Appendix D, which details and comments on further responses received after the publication of the proposed Decision Notice. This has been provided for the Executive Member's consideration in making his decision.

APPENDIX A - PLAN

LAND TO BE APPROPRIATED ADJACENT TO BROOKFIELD WALK, CLEVEDON
(THE SITE)



Appendix B

Summary of representations and responses

Appropriation of Open Space to Planning Purposes – Land adjacent to Brookfield Walk, Clevedon BS21 6YG

1. Summary of representations

- (a) The Council received a total of 647 representations to the public notice of the proposed appropriation.
- (b) Of this total, 54 were individual letters/emails, comprising 27 representations in support, and 27 objections.
- (c) Another 346 objections were based on a standard form of objection ('Standard Form Objection 1', 'SFO1') and 247 objections were based on a second standard form of objection ('Standard Form Objection 2', 'SFO2').

2. Themes of responses

- (a) A large number of objections raised matters which relate to the proposed development of the land and to the planning merits of the proposals. These are not matters which are relevant to the appropriation of the Site.
- (b) The main points of objections raised in the individual letters/emails which are relevant to the appropriation related to the following themes:
 - A. Loss of well-used open space and recreation area;
 - B. Loss of wildlife and nature reserve;
 - C. Lack of other open space in Clevedon & providing replacement;
 - D. Lack of flat and accessible walking areas for older people in East Clevedon;
 - E. Loss of vegetation screening from M5;
 - F. Contribution of the space to physical and mental well-being;
 - G. Failure to consider other more appropriate locations for the proposed development.
- (c) Standard Form Objection 1 states that the respondents are *“against any building on green belt and or public open space amenity land which there is a recognise shortage of within Clevedon. We are 100% opposed to this land being developed for any purpose including a school of any type.”*
- (d) The form gives a list of recreational activities to which respondents noted their usage as follows:

- a. Football playing/training: 106
 - b. Rugby playing/training: 46
 - c. General ball games: 169
 - d. Dog walking: 239
 - e. Wildlife spotting: 189
 - f. General well-being: 237
 - g. Picnics: 120
 - h. BBQs: 62
 - i. Kids parties: 67
- (e) Some responses with Standard Form Objection 1 gave additional comments, which mentioned additional recreational activities, visiting with family, fruit-picking, photography, yoga and karate. These are considered to fall within the themes of loss of open space/recreation land and contribution well-being.
- (f) Standard Form Objection 2 contains the following pro-forma grounds of objection:

“The NPPF 2019 Paragraph 96-97 clearly states that open space should not be built on unless

An assessment has been undertaken which has clearly shown the open space, buildings of land to be surplus to requirements;

or b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location;

or c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

*The Council has failed to conduct open space assessments. The Council has failed to abide by their own regulations. Ignored the people and Clevedon town council during the local green space allocation. I do **not consent to any appropriation** that would result in losing the most valued open space at Brookfield Walk that serves a population of +4572.”*
- (g) Various responses in Standard Form Objection 2 also gave additional comments relating to use of the Site for dog-walking, exercise, loss of wildlife habitat, lack of other available open space, importance for well-being, and opposition to the loss of green space.
- (h) The responses in support of the appropriation all mentioned the need for the special school expansion and the lack of capacity at the existing facility. These are also reasons relating to the proposed development and the planning merits of the school expansion.

- (i) However seven responses in support cited reasons which viewed the need and use as open space as being outweighed by the need for the school, and mentioned the availability of other open space. In summary, these reasons were:
 - a. The need for the school outweighs the need for any other use as there are 'lots of green spaces in Clevedon';
 - b. There appears to be very few walkers in the area and the loss of open space will have a minimal impact;
 - c. There will be other open land available to residents;
 - d. According to the plans for the school, walking or playing in the orchard will still be permitted;
 - e. The inclusion of the wildlife area will allow wildlife to thrive without the presence of humans or dogs;
 - f. The school will be quiet on evenings, weekends and holidays.

3. Other matters raised

- (a) Various issues relating to the planning merits of the proposed school expansion development were raised, including:
 - a. Flood risk;
 - b. Inappropriate development in the Green Belt;
 - c. Unsuitable location for a school;
 - d. Traffic impacts;
 - e. Failure to consider alternative sites;
 - f. General objection to any development on open space.
- (b) The proposals for the school expansion (Application 20/P/0605/R3) have undergone a rigorous consultation and assessment process and have been assessed against all relevant local and national planning policy. The application has a resolution to grant planning consent and the Secretary of State decided on 29 March 2021 not to call in the application.
- (c) The issue in the present case is whether the site is no longer required for the purpose for which it is currently held having regard to relative needs for the land in the interests of the local authority's area.
- (d) Many objections also gave personal views, observations or simply stated factual matters, not in themselves relevant to the open space appropriation process.

4. Council's responses/comments

- (a) Section 6 of this Appendix B contains a table summarising the objections and the Council's specific responses to/comments on each Theme, as well as other discrete and specific matters which have been raised by objectors.

- (b) The points raised by objectors in relation to the themes identified in paragraph 2(b) above are important issues which the Council takes very seriously in weighing up the relative needs for the Site.
- (c) In carrying out the balancing exercise between competing needs, the Council may take a broad view of the public benefits provided by those competing needs.
- (d) The public interests being met in this context are those which are being met by the 'planning purposes' for which the appropriation is proposed. The planning purposes for the appropriation will facilitate the carrying out of development, re-development or improvement of land which is likely to contribute to the economic, social or environmental well-being of the area, or which is required in the interests of the proper planning of the area in which the land is situated.
- (e) The expansion of Baytree Special School is urgently required for the social and economic well-being of some of the area's most vulnerable young people. A combination of increased demand for special school places, and lack of capacity within North Somerset, means that the area is an 'exporter' of special school pupils, putting the additional financial burden of travel on the council and/or parents and carers.
- (f) The existing Baytree Special School campus in Weston-super-Mare is the only school in North Somerset designated to provide education to children with severe and profound learning difficulties ('SPLD'). It has a high percentage of children who are unable to walk on their own or need adult help with daily activities. Therefore additional classroom space, equipment space (e.g. fixed ceiling hoists) and support staff are required to ensure that their attendance at school is in line with their statutory Education, Health and Care Plans.
- (g) The existing campus is co-located with other facilities and does not have the physical space available to expand these requirements. A new campus will allow for purpose-built facilities for the most complex needs, allowing more places for pupils with less acute needs at Weston-super-Mare.
- (h) The decision to locate the expansion at this Site is based on an extensive body of research, options appraisal, consultation and assessment. It will contribute to the improvement of social and economic well-being in North Somerset and provide urgently required facilities for SPLD pupils.
- (i) From the perspective of the Council as Education Authority and the wider community, the benefits of securing the delivery of the Baytree Special School expansion are material and considerable.

5. Conclusions

- (a) The Council acknowledges the importance of this Site to residents in the immediate vicinity and it does not take the decision to appropriate lightly. The matters raised in objections, including loss of recreation areas and the significance of the Site for the well-being of its users, have been carefully weighed.
- (b) It is considered that the loss can be justified by the benefits to the wider community of the expansion of the Baytree Special School, being a highly-specialised and much-needed provision of extra capacity to care for children with the most acute needs in our area.
- (c) The Council has a statutory duty to provide sufficient school spaces for these children, and this duty also needs to be weighed against the benefit of the open space to the area. It is considered that the need for extra special school provision is urgent and outweighs the need for the open space provided at this Site.
- (d) On balance, there are sufficient open space and recreation facilities in the local area to off-set this loss, and therefore it is considered that the Site is no longer required for open space.
- (e) The planning purposes that will be facilitated by the appropriation will be the improvement of land which will contribute to the economic and social well-being of the area. Baytree is the only school in North Somerset designated to provide education to SPLD pupils, and therefore its contribution to meeting the increasing demand for this resource is critical to the discharge of the Council's duties under the Education Act 1996. The resulting loss of the open space at the Site is considered to be proportionate and justified in the circumstances.

6. Summary of objections and council response/commentary

No.	Summary	Response/commentary
A	Loss of well-used open space and recreation area	<p>The Council recognises that the Site has been used for recreation and exercise for many years. It is acknowledged that the loss of this space will have local effects on regular users of the Site and this is a matter to be carefully weighed.</p> <p>It is noted that the responses to consultation indicated that the most popular activities on the Site are dog-walking and general well-being. The orchard land at the southern corner of the site is not being appropriated and this land would still be available for public use.</p> <p>In addition, a public footpath is available about 100m to the north of the Site, providing access to extensive walking routes around the surrounding fields and open countryside.</p> <p>By contrast, Baytree Special School is the only school in the North Somerset area catering to the needs of SPLD pupils, and the area is currently an 'exporter' of these pupils to other local authority areas.</p>
B	Loss of wildlife and nature reserve	<p>It is correct that the eastern hedgerow on the Site qualifies as priority habitat. The orchard in the southern corner of the planning application land is not part of the land being appropriated.</p> <p>These features will not be adversely affected by the appropriation. These matters were assessed in the</p>

No.	Summary	Response/commentary
		<p>planning application process and an Ecological Appraisal and Arboriculture Assessment were carried out. Detailed landscape management proposals have been designed to implement the recommendations of these reports.</p> <p>The result of this work is that the need to maintain wildlife was a key reason why the proposed development has been positioned centrally on the Site and retains key trees and allows the retention of as much of the hedgerow surrounding the site and trees as reasonable practicable. Vegetated swale detention basins, conservation grass and wildflower areas will also be installed and maintained in accordance with an approved Landscape and Ecological Management Plan.</p> <p>The Council does not foresee any net loss of quality of ecology or habitat as a result of the appropriation.</p>
C	Lack of other open space in Clevedon and providing replacement	<p>The Council is entitled to take a broad view of local needs when striking a balance between relative public interests and needs.</p> <p>The Council's area contains about 200 Ha of urban and rural green infrastructure. The possible loss of this site would represent a loss of 1% of the overall open space within North Somerset. The Clevedon Rugby Club, Clevedon Cricket Club and Fir Wood are all located within about 1 mile of the Site.</p> <p>As such the Council is of the view that there is no overall significant loss of open space accessible by the public in the immediate vicinity.</p>

No.	Summary	Response/commentary
D	Lack of flat and accessible walking areas for older people in East Clevedon	<p>As above.</p> <p>Much of the nearby open space is within a flat and accessible route such as Cherry Avenue, 0.3 miles and 6 minutes walking time from the Brookfield Walk site. Teignmouth Road playground is 0.4 miles and a 7 minutes walking time away from the area. The football pitches and play area at the end of Hazell Close / Homeground are 0.7 miles and 14 minutes walking time from the site and Clevedon Rugby ground is 0.8m away and a 16 minutes walking time from this location. Other nearby open spaces include the Coleridge Vale Road and Churchill Avenue play areas that are 1.1m away and 22 minutes walking time from the site. There are rights of way accessible from this development.</p> <p>Clevedon Cricket Club and Fir Wood are all located within about 1 mile of the Site, although are less accessible as any route to these venues requires up-hill travel.</p>
E	Loss of vegetation screening from M5	<p>No development will be taking place on land between the M5 and the proposed development. This land, including the Town Council's orchard land, does not form a part of the appropriation exercise or new school plans.</p> <p>The Council does not foresee any loss of screening of the M5 as a result of the appropriation or development.</p>
F	Contribution of the space to physical and mental well-being	<p>The impact on the well-being of users of the Site is noted, and it is acknowledged that particularly in recent times, it has been a significant resource during lockdown.</p>

No.	Summary	Response/commentary
		<p>However this must be weighed against the longer term need and the much more limited – and permanently diminished – opportunities of SPLD pupils in North Somerset. The relative benefit to the pupils, their families, and the wider community in having this capacity available is considered to be greater than the local benefits to users of the Site.</p>
G	<p>Failure to consider other more appropriate locations for the proposed development</p>	<p>An initial list of 13 potential sites were considered before, as part of planning requirements, examining 528 properties in more detail. This Site was identified and remained as the most suitable. This review of sites was submitted and considered as part of the Planning Submission for the new school as the site is in the Green Belt. Whilst the committee supported approval of the application (subject to certain conditions being met) the planning application was also referred to the Secretary of State for Homes, Communities and Local Government as the planning rules require Council's to do so if they propose to allow major development in the Green Belt or when there is an objection from the Environment Agency (EA) and the site is in a flood risk area. The SoS decided not to intervene and leave it to the Council to decide the application. The EA withdrew their objections to the scheme.</p> <p>In making the planning determination, the need for the new school outweighed the need to protect the greenbelt. This site was, of the 527 other sites considered, the one that best met the requirements for the school.</p>

No.	Summary	Response/commentary
SFO1	Against any building on green belt and or public open space amenity land which there is a recognise shortage of within Clevedon.	<p>Development on the Green Belt is a planning issue which has been taken into consideration in the application process.</p> <p>General opposition to building on open space does not address the particular relative merits of the competing uses for this Site, and is accordingly too vague to be relevant.</p>
SFO2	NPPF Paragraphs 96-97	This is not a planning application and the planning merits are not relevant to the decision to appropriate. Accordingly the NPPF provisions are not relevant.
SFO2	The Council has failed to conduct open space assessments.	An open space assessment is a consideration during the planning consideration of a planning application for development of an accessible open space. It is not relevant in this process.
SFO2	The Council has failed to abide by their own regulations.	It is not understood what is meant by this objection.
SFO2	Ignored the people and Clevedon town council during the local green space allocation.	It is unclear what is meant by this objection, but in any event the allocation of open space is a separate issue to the appropriation of open space, and not relevant in this context.
SFO2	Use as an orchard and for fruit-picking	The orchard is a piece of land immediately to the south of the Brookfield Walk Site and is managed by a group on behalf of Clevedon Town Council. This site is not affected by the appropriation exercise, and measures will be put in

No.	Summary	Response/commentary
		place to ensure that there is continued access it to it from Brookfield Walk over the Council's land.



North Somerset Council Equality Impact Assessment

Appropriation of land adjacent to Brookfield Walk, Clevedon

1. The Proposal

Directorate:	Place
Service area:	Development
Lead Officer:	Jenny Ford
Links to a budget reduction proposal:	No
Date of assessment:	10 June 2021

Description of the proposal:

Proposal under this appropriation is to change the designated use of the land adjacent to Brookfield Walk, Clevedon, from open space to a site for a specialist school for young people who have Severe Learning Difficulties and/or Profound and Multiple Learning Difficulties.

Nothing will change until development commences on site. A separate EIA submitted in relation to the planning application (ref 20/P/0605/R3) and further assessments may be needed in relation to decisions to progress with development.

Summary of changes:

Listed legal purpose for which the land is held will be changed.

2. Customer equality impact summary

Will the proposal have a disproportionate impact on any of these groups?

Insert X into one box per row, for impact level and type.

H = High, M = Medium, L = Low, N = None

+ = Positive, = = Neutral, - = Negative

Impact Level

Impact type

	H	M	L	N	+	=	-
Disabled people				X		=	
People from different ethnic groups				X		=	
Men or women (including those who are pregnant or on maternity leave)				X		=	
Lesbian, gay or bisexual people				X		=	
People on a low income				X		=	
People in particular age groups				X		=	
People in particular faith groups				X		=	
People who are married or in a civil partnership				X		=	
Transgender people				X		=	
Other specific impacts, for example: carers, parents, impact on health and wellbeing, Armed Forces Community etc.				X		=	
Please specify:							

3. Explanation of customer impact

Please describe the reasons for the impact level in the table above.

No impact will occur as a result of the appropriation decision. Further EIAs may be required in relation to other decisions relating to this site.

4. Staff equality impact summary

Are there any staffing implications for this proposal? No

Explanation of staff impact

If yes, please describe the nature of the impact, including how many posts could be affected.

Please state whether they are vacant, or filled permanently or temporarily: N/a

5. Consolidation savings

Please complete for medium or high impact areas

Does this budget saving include many service areas/savings/projects?

If so, please identify the areas included in this proposal that could potentially have a medium or high impact for equality groups

Service area	Value of saving
N/a	
Total	

6. Review and sign off

Service Manager Review

Insert any service manager comments here: None

Is a further detailed equality impact assessment needed? No (not for this purpose)

If 'yes', when will the further assessment be completed? N/a

Service Manager: Alex Hearn, Assistant Director, Placemaking & Growth

Date: 29 June 2021

Executive Member decision on appropriation of open space to planning purposes: Land adjacent to Brookfield Walk, Clevedon

REVIEW OF RESPONSES RECEIVED AFTER PUBLICATION OF DECISION NOTICE (9th – 15th July 2021)

Two responses were received, referred to as Respondent A and Respondent B below.

Ref	Issue	NSC response
RESPONDENT A		
1	On what basis do you assess the mobility and accessibility of current users of the land, to alternatives 1 and 1+ miles away as being appropriate and acceptable?	<p>The Council is entitled to take a broad view of local needs when striking a balance between relative public interests and needs. The Council's area contains about 200 Ha of urban and rural green infrastructure. The possible loss of this site would represent a loss of 1% of the overall open space within North Somerset.</p> <p>In appropriating land, there is no legal requirement to ensure the availability of alternative or replacement open space.</p> <p>Appendix C2 of the Executive Member decision is an Equality Impacts Assessment in relation to the development of this site and considers the impacts on a range of users with protected characteristics.</p>
2	The Environmental Impact Assessment was undertaken over 2 years ago and has expired. Will another be undertaken?	This is a planning issue and not a consideration for the appropriation process.
3	Flood impact assessment related only to the proposed building and not to the impact on the surrounding area. The area is flood plain with the M5 on one side and residential buildings on the other – where will the water go?	This is a planning issue and not a consideration for the appropriation process.
4	The balance of the disadvantages to a large number of Clevedon residents is in no way balanced by the easier accessibility for a small number of potential users of the facility.	<p>The Council acknowledges the importance of this site to residents in the immediate vicinity and it does not take the decision to appropriate lightly. The matters raised in objections, including loss of recreation areas and the significance of the Site for the well-being of its users, have been carefully weighed.</p> <p>It is considered that the loss can be justified by the benefits to the wider community of the expansion of the Baytree Special School, being a highly-</p>

Ref	Issue	NSC response
		<p>specialised and much-needed provision of extra capacity to care for children with the most acute needs in our area.</p> <p>The Council has a statutory duty to provide sufficient school spaces for these children, and this duty also needs to be weighed against the benefit of the open space to the area. It is considered that the need for extra special school provision is urgent, and outweighs the need for the open space provided at this Site.</p>
RESPONDENT B		
5	Land was given to the council by the developer of the Hither Green estate as a 'breathing area' for nearby householders.	The purposes for which a Council needs to use its assets may change over time. The Council is acting legally and properly in considering different options for this site and has followed the necessary processes.
6	Land was designated as Public Open Space in 1970/80 and has remained as such in Development Plans.	This is a planning consideration rather than an issue for appropriation.
7	Part of site is in the Green Belt	This is a planning consideration rather than an issue for appropriation.
8	Site is a large green open space with trees and wildlife	Please see previous response on this matter in Appendix B of the Executive Member decision reports. The Council does not foresee any net loss of quality of ecology or habitat as a result of the appropriation.
9	Parents can safely leave children unsupervised	The Council acknowledges the importance of this site to residents in the immediate vicinity and it does not take the decision to appropriate lightly. The matters raised in objections, including loss of recreation areas and the significance of the Site for the well-being of its users, have been carefully weighed.
10	Space is large enough for all ages to enjoy without interfering with others	
11	<p>Other spaces mentioned are unsuitable as alternatives:</p> <ul style="list-style-type: none"> - Fir Woods: steep hill with bridle paths. - Teignmouth Avenue & Cherry Avenue: small sites requiring adult supervision; not large enough for other uses. - Community orchard: only suitable for walking, trees prevent other uses. - Footpath to north is over farmland with restrictions associated with that. - Areas outside of East Clevedon require crossing of dangerous roads, in one case the M5 access road. 	<p>The Council is entitled to take a broad view of local needs when striking a balance between relative public interests and needs. The Council's area contains about 200 Ha of urban and rural green infrastructure. The possible loss of this site would represent a loss of 1% of the overall open space within North Somerset.</p> <p>In appropriating land, there is no legal requirement to ensure the availability of alternative or replacement open space.</p>

Ref	Issue	NSC response
12	Claim that other sites are not available is not accurate. Proper consideration has not been given to other suitable locations including Pennyfields [<i>note: understood this site is the Council's land adjacent to Churchill Avenue in Clevedon</i>], which was purchased and granted planning for a school, and Slade Road in Portishead, which was previously a school.	A detailed review of all possible sites was included with the planning application. The two sites mentioned are 1.1ha and 0.6ha respectively which is too small to meet the requirements of the SEND school proposal.
13	The location of the school should have been delayed until the completion of the North Somerset masterplan [<i>note: assumed author is referring to the Local Plan which is currently being prepared</i>] when a site convenient for all could have been chosen.	The need for a SEND school is urgent and cannot wait on the Local Plan, which will not be adopted until at least 2023. A very wide range of potential alternative sites have been considered.
14	Site was selected because it was council-owned, cheap and close to motorway so cheaper in transport terms	A detailed review of all possible sites was included with the planning application. Cost and location are reasonable and legitimate considerations to include in the selection of a site. Due to the urgency of need, the time to secure a site in private ownership, that may have needed to be compulsory purchased, adding to delays in delivery. It is therefore a less of a viable option due to time constraints, particularly as the school needs to be located in an existing community with good access to local amenities and such sites are not readily available or affordable.
15	Land dedicated for the use and welfare of the residents of the Brookfield Walk Estate is being removed without provision being made for a viable alternative nearby. Children on the estate and others living nearby are having a justifiable need for a safe Public Open Space removed in favour of a small need of Special Needs children who can easily be accommodated elsewhere.	The Council acknowledges the importance of this site to residents in the immediate vicinity and it does not take the decision to appropriate lightly. The matters raised in objections, including loss of recreation areas and the significance of the Site for the well-being of its users, have been carefully weighed. It is considered that the loss can be justified by the benefits to the wider community of the expansion of the Baytree Special School, being a highly-specialised and much-needed provision of extra capacity to care for children with the most acute needs in our area. The Council has a statutory duty to provide sufficient school spaces for these children, and this duty also needs to be weighed against the benefit of the open space to the area. It is considered that the need for extra special school provision is urgent, and outweighs the need for the open space provided at this Site.

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16	This is not the action of a caring council.	The Council has a statutory duty to provide sufficient school spaces for these children, and this duty also needs to be weighed against the benefit of the open space to the area. It is considered that the need for extra special school provision is urgent, and outweighs the need for the open space provided at this Site.
17	The school is being built in the wrong place for the wrong reasons and will be bitterly resented by most of those living near it.	<p>A detailed review of all possible sites was included with the planning application.</p> <p>The Council acknowledges the importance of this site to residents in the immediate vicinity and it does not take the decision to appropriate lightly. The matters raised in objections, including loss of recreation areas and the significance of the Site for the well-being of its users, have been carefully weighed.</p>
18	There is a 4" file on this matter submitted by opponents to the council which doubts the Executive Member will ever see.	All responses to the appropriation process have been shared with the Executive Member in full.