

## **NORTH SOMERSET COUNCIL DECISION**



**DECISION OF:** COUNCILLOR ANNEMIEKE WAITE. THE EXECUTIVE MEMBER FOR CLIMATE, WASTE AND SUSTAINABILITY

**IN CONSULTATION WITH:** COUNCILLOR MIKE BELL AS LEADER (INCLUDING MAJOR PROJECTS), COUNCILLOR HANNAH YOUNG EXECUTIVE MEMBER FOR HIGHWAYS AND TRANSPORT AND COUNCILLOR MIKE SOLOMON EXECUTIVE MEMBER FOR CULTURE AND LEISURE

**WITH ADVICE FROM:** THE DIRECTOR OF PLACE

**DECISION NO:** 23/24 DP 68

**SUBJECT:** APPROPRIATION OF OPEN SPACE LAND BETWEEN LADYMEAD LANE AND BROADOAK ROAD INCLUDING OPEN SPACE TO HIGHWAY FOR PLANNING PURPOSES

**KEY DECISION:** NO

**REASON:** The decision will not result in the Local Authority incurring expenditure of over £500,000 and does not affect more than one ward.

### **BACKGROUND:**

- 1.1 **The Orders**
- 1.2 **The Council has made and submitted to the Secretary of State for Transport (“the SoS”) for consideration:**
  - (a) The North Somerset Council (Banwell Bypass and Southern Link) (Side Roads) Order 2022 (“**the SRO**”) and the North Somerset Council (Banwell Bypass and Southern Link) Compulsory Purchase Order 2022 (“**the CPO**”) on 6 October 2022 following decision COU37 taken on 12 July 2022 and the decision of the Leader of the Council and the Executive Member for Major Infrastructure Projects 22/23 DP241; and
  - (b) The North Somerset Council (Banwell Bypass and Southern Link) Compulsory Purchase Order (No.2) 2023 (“**the Supplemental CPO**”) following decision COU112 taken on 21 February 2023.

- 1.3 Together these are referred to as “**the Orders**”.
- 1.4 The Orders enable the Banwell Bypass and Southern Link highway improvements project (“**the Scheme**”), consented under planning permission 22/P/1768/R3EIA, which was granted on 16 March 2023 (“the Planning Permission”). The Council has identified that there is further land, already in the Council’s ownership, which is required to facilitate works for the Scheme. This further land comprises 0.03ha of land at **Ladymead Lane/ Broadoak Road path** which is illustrated shown shaded pink on the plan at **Appendix A** (“the Site”).
- 1.5 **The Site**
- 1.6 The Site, is illustrated shown shaded pink on the plan at **Appendix A** the title plan. The public right of way AX14/42/20 (**PRoW**) itself is adopted and registered under HM Land Registry Title Number AV139126 to Westbury Homes, but the Council owns the land either side of the PRoW under HM Land Registry Title Number AV212714 (**Appendix B**), which is currently used as open space. To enable the Council to widen, improve and re-classify the existing PRoW the Council wishes to seek authority to appropriate 0.03 ha of land to the north of the PRoW as per the plan at **Appendix A**. The Council’s records classify the Site (and the remaining land within the Council’s title) as open space under s122(2A) of the Local Government Act 1972 (“**the LGA 1972**”).
- 1.7 There are rights in favour of Westbury Homes (Holdings) Limited held over the Site contained in a transfer of part dated 4 September 1991 between Westbury Homes (Holdings) Limited and the Council’s predecessor Woodspring District Council. It is not considered that those rights relate directly to the Site, but rather bind other land in the immediate area. Therefore, no decision is being progressed under s.203 of the Housing and Planning Act 2016 to override those rights.
- 1.8 **Issue and Proposals**
- 1.9 The Council is required to use its statutory powers of appropriation to transfer the Site from one land use and internal accountancy holding to another. Under the Site’s

current designation as open space, the Council would not be able to carry out the works required for the Scheme in accordance with the Planning Permission.

- 1.10 In order to deliver the Scheme as consented in the Planning Permission, the Council must use its statutory powers of appropriation to appropriate the Site to change the holding and use of the same from open space to highways purposes.
- 1.11 The purpose of this report is to seek authority to appropriate the land from its current use as open space to highway purposes in order to deliver the Scheme.
- 1.12 The Council requires the land for the widening and re-classification of the existing footpath to a shared use path as part of the Scheme.
- 1.13 As the Site is currently held as open space, the Council has followed the statutory Open Space procedure outlined in this report.
- 1.14 The Council cannot use its statutory appropriation powers to appropriate the Site from open space to highways purposes for the Scheme without following the open space statutory process. The purpose of this report is to note that the statutory process has been followed and to seek authority to appropriate the land for highways purposes in order to facilitate the carrying out of the Scheme.
- 1.15 **The council's Power to appropriate**
- 1.16 Section 122 of the LGA 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. Appropriation can be used for any purpose for which it is authorised by the LGA 1972 or any other enactment to acquire land by agreement.
- 1.17 Where the Council owns the freehold of the land in question, and is a 'principal council', the Council then needs to be satisfied that:
  - (a) The land is no longer required for the purpose for which it is currently held; and
  - (b) The purpose for which the Council is appropriating is one in respect of which the Council would be authorised by statute to acquire by agreement.
- 1.18 In relation to point (a) 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 (*Dowty Boulton Paul*

*v Wolverhampton Corporation (1973)*. 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.

- 1.19 The position is slightly different where land to be appropriated is Open Space. Open space is defined in s 336(1) of the TCPA 1990 as any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. If a principal council appropriates Open Space land under section 122(2A) of the LGA 1972, it is released from any trust for the enjoyment of the public imposed by s164 of the Public Health Act 1875 or s10 of the Open Spaces Act 1906 (s122(2B), LGA 1972).
- 1.20 The applicable principles for the Council in deciding whether or not the land is no longer required as Open Space were distilled by case law where it was confirmed that:
- (i) 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; and
  - (ii) 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.
- 1.21 Section 122(2A) of the LGA 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.
- 1.22 In accordance with the statutory procedures, public notices were advertised in The North Somerset Times on 31 May 2023 and 7 June 2023. The consultation period ran for 14 days for interested parties to submit representations to the Council. The period for submission of representations expired at 12 noon on 14th June 2023.
- 1.23 Appropriation of land under section 122 of the LGA 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.

- 1.24 The Council is entitled when exercising its appropriation power to seek to strike the balance between comparative local (public interest) needs, such as 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 it is entitled to take a broad view of local needs such as the benefits of the Scheme.
- 1.25 The Council is satisfied that this would apply to the appropriation of the Site to facilitate the Scheme.

#### **DECISION:**

##### 2.1

- (a) To consider the representations, along with the information contained in this report, received in respect of the intention to appropriate the open space land known as the Ladymead Lane/ Broadoak Road path shown shaded pink on the plan attached to this report at Appendix A ("the Site").
- (b) To agree that the Site, which is currently held by the Council for the purpose of open space, is no longer required to be held for that purpose and should be appropriated for highway purposes in accordance with s122 LGA 1972, in order to facilitate the Scheme.
- (c) To authorise the appropriation of the Site from open space for highway purposes in accordance with s122 of the LGA 1972 to facilitate the Scheme.

#### **REASONS:**

- 4.1 A total of one representation was received in relation to the Site from Churchill Parish Council:-

*“all agreed to support the changes to the path. They have asked if signage can state priority to pedestrians and for it to be a bridleway for horses and riders as well.”*

- 4.2 The Council acknowledges the importance of this Site to interested parties in the immediate vicinity and it does not take the decision to appropriate lightly. 0.088ha will be left of open space land at the site. The matters raised in the representation have been considered. The proposal is to later dedicate a new bridleway on this land and the current PROW. User priority is dictated by the Highway code.
- 4.3 It is considered that the loss can be justified by the benefits to the wider community of the widening, improvement and re-classification of PROW to bridleway.
- 4.4 The Council has a statutory duty to provide housing, and this duty needs to be weighed against the benefit of the open space to the area. It is considered that the need for housing (and the infrastructure to support this), outweighs the need for the open space provided at this Site.
- 4.5 On balance, there are two other open spaces in the local area to the Northeast that can be access off Broadoak Road that are available to the local community, and therefore it is considered that the Site should no longer be designated as open space.
- 4.6 The highway purposes required by the Scheme that will be facilitated by the appropriation of the site will facilitate improved access.

#### **OPTIONS CONSIDERED:**

- 5.1 The Council has considered a range of alternatives for the Scheme and the final design, including the use of the Site, is the product of a considerable amount of evaluation. The final design of the Scheme has the benefit of Planning Permission and the improvement of the existing public right of way on the Site must be delivered as part of that consent.
- 5.2 Not appropriating the site for highways purposes would result in his element of the scheme not being deliverable and so is not recommended.

#### **FINANCIAL IMPLICATIONS:**

## **Costs**

- 6.1 There are no direct costs of the appropriation process in itself except relating to the costs of newspaper advertisements re-charged to the Banwell Bypass budget within the capital programme.

## **LEGAL POWERS AND IMPLICATIONS**

- 7.1 The legal powers and implications are dealt with in section 1.15-1.25 of this report.

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

- 8.1 The appropriation of the of the Site from its current use and holding to that of highways purposes (shared use path) will have no direct climate change and environmental implications.

## **CONSULTATION**

- 9.1 The Council has undertaken a wide range of statutory and non-statutory consultation with the public, statutory environmental bodies and other key stakeholders in relation to the Orders and the Planning Permission.
- 9.2 In addition, specific public consultation has been undertaken in relation to the Site as set out above in this report.
- 9.3 One representation was received in relation to the Site.

## **RISK MANAGEMENT**

- 10.1 The appropriation process in itself is a legal/administrative process and carries minimal other risks. The key risk to the Council is the risk of legal challenge to the way in which a decision is taken, mitigated by following the statutory process.
- 10.2 Risks to the Scheme have been considered as part of the reporting and governance for the Scheme. A detailed risks register is maintained and managed for the Scheme.

## **EQUALITY IMPLICATIONS**

- 11.1 Have you undertaken Equality Impact Assessment? Yes, an assessment was undertaken as part of the planning application (Appendix C).

## **CORPORATE IMPLICATIONS**

- 12.1 The site is required to facilitate the scheme and scheme supports the North Somerset Council Corporate Plan 2020-2024
- 12.2 The Corporate Plan has a priority of a transport network that promotes active, accessible and low carbon travel. The Scheme includes infrastructure which enhances routes for walking, cycling and equestrian use. It also includes mitigation measures to improve highway safety, and environmental mitigation to reduce the Scheme's impact on the environment.
- 12.3 The Corporate Plan places a priority on delivering the Banwell Bypass by 2024 to ensure that the Council can support a policy of supplying quality and affordable homes to ensure a five year supply is in place. An objective of the Scheme is to deliver infrastructure that enables housing (subject to the new Local Plan process), and so in this way the Scheme supports the provision of new housing.

## **APPENDICES**

- 13.1
- (i) Appendix A- Ladymean Lane/ Broadoak Road appropriation plan.
  - (ii) Appendix -B Ladymead Lane/ Broadoak Road title plan
  - (iii) Appendix C- Equality Impact Assessment for the Scheme (June 2022)

## **BACKGROUND PAPERS**

None



SIGNATORIES:

DECISION MAKER(S):

Signed: *Amuwaite* Executive Member for Climate, Waste and Sustainability

Date: 20 July 2023

WITH ADVICE FROM:

Signed: *Lucy Shomali* Director of Place

Date: 4 July 2023