

Appendix 3 - Legal Process

The land includes but is not limited to the freehold interest in Cantley Recreation Grounds as open space, defined under section 336(1) of the Town and Country Planning Act 1990 as “any land laid out as a public garden or used for the purposes of public recreation...”. Where a Council proposes to appropriate open space it must advertise its intention to appropriate for two consecutive weeks in a newspaper circulating in the area in which the land is situated and consider any objections which may be made to them.

The Council is authorised to appropriate land that it owns for planning purposes under Sections 122(1) and (2A) of the Act and Section 233 of the Town and Country Planning Act 1990 (as amended) which, subject to a number of provisions, allows “a principal Council to appropriate land which belongs to the Council and is no longer required for the purpose for which it was held immediately before the appropriation....”

Analysis of Issues

Appropriation of land is an Executive function under Section 9D of the Local Government Act 2000.

Section 122 of the Act enables the Council to ‘appropriate’ to another purpose/use any land owned by the Council which the Council no longer needs for the purpose the land was originally held or acquired by the Council. Section 233 of the Town and Country Planning Act 1990 (as amended) provides for appropriation for planning purposes.

The land must no longer be required for the purpose for which it is held immediately before appropriation. Once the appropriation is effected, the appropriated land will be held for planning purposes.

Section 122(1) of the Act entitles a Council to appropriate, for any purpose for which it is authorised, land which belongs to it and which is no longer required for the purpose for which it was held immediately before appropriation.

Section 122(2A) of the Act requires a Council to advertise its intention to dispose of land designated as public open space in a local paper for two consecutive weeks and to consider any objections to the proposal. The small area of land proposed for appropriation forms the edge of Cantley Recreation Grounds.

The proposed construction of the NDR is supported by the Council and part of Core Strategy Policy CP20 of the development plan identifies a requirement to improve transport capacity to enable the development of the North Wokingham Strategic Development Location (SDL). The development plan has been adopted by the Council and was subject to extensive consultation. Improved transport infrastructure and in particular the construction of the NDR is required to enable residential, community and commercial development within the North Wokingham Strategic Development Location (SDL). Planning permission has been granted under planning reference 161839 for the detailed alignment of a section of the NDR at Bell

Foundry Lane and further planning applications are imminent. The provision of new homes for local residents will improve the economic, social and environmental well-being of the local area within the SDL. Further the provision of new mixed tenure homes and the redevelopment of land within the SDL for community and commercial uses are likely to bring substantial benefits for economic, social and environmental conditions within the SDL.

The Council when appropriating land for planning purposes needs to be satisfied that it will facilitate the carrying out of development, redevelopment or improvement on or in relation to land and that it is likely to contribute to the achievement of namely the promotion or improvement of the economic, social or environmental well-being of the whole or part of its area and that there is a compelling case in the public interest for doing so. In this case the alignment of the NDR has been approved and detailed planning permissions will determine the precise details. A section of the NDR at Bell Foundry Lane has the benefit of planning permission (planning reference 161839) and deemed consent and that section is likely to come forward for appropriation first.

In terms of the substantive requirements, the Council has to resolve that a particular piece of land is no longer required for the purposes for which it was used immediately prior to the appropriation. In reaching this decision the Council must consider the public need within the locality for the existing use. However provided that the resolution is not made in bad faith, considers fully the representations made and it is not a decision that no reasonable authority could possibly take, then this is up to the local authority to determine. (See *Dowty Boulton Paul Ltd v Wolverhampton Corporation* (no2) [1973] 2 All ER 491).