

CABINET
9 June 2016

Land at Isabella Road Tiverton

Cabinet Member: Councillor Ray Stanley

Responsible Officer: Head of Housing and Property Services – Mr Nick Sanderson

Reason for Report: To seek authorisation from the Cabinet to appropriate a parcel of land for planning purposes.

RECOMMENDATION:

That the Cabinet approves the appropriation of the land shown edged red on the plan annexed to this report ('the Land') for planning purposes in accordance with section 122 of the Local Government Act 1972 (LGA 1972).

Relationship to Corporate Plan: Appropriation for a planning purpose will facilitate the sale of the Land, which has been identified as being surplus to the Council's requirements. It accords with the principles of good asset management and will enable the provision of residential accommodation and will thus promote the economic well-being of the area.

Financial Implications: The cost of effecting the recommendation can be accommodated within the receipt that will be secured for the disposal of the Land and thus within the existing budget.

Legal Implications: It is necessary that the Land be appropriated to a specific planning purpose in order to engage the power contained in section 237 of the Town and Country Planning Act 1990 (TCPA 1990) to override any easements and other rights that might otherwise impede the ability to develop the Land.

Risk Assessment: The recommendation will minimise the risk of further setback in the sale of the Land and enable early receipt of the proceeds of sale with limited compensatory loss.

1. INTRODUCTION AND BACKGROUND

1.1 On 29 December 1983 the Council acquired the Land (with other small parcels of land) from Haven Development Company Limited following completion of its development of the Pinnex Moor Estate, for the purpose of maintaining it as a public open space.

1.2 The Land has not been used as a public open space and having become surplus to the Council's requirements it has been decided to dispose of it.

1.3 Negotiations commenced with a prospective buyer and planning permission was obtained on 13 December 2011 under reference 10/01547/FULL for the construction on it of a single private dwellinghouse. In the events that transpired negotiations for the disposal to that buyer were not concluded. In

order to preserve the planning permission the Council has begun development within the meaning of section 56 of the TCPA 1990, by means of the digging of a trench on the Land.

- 1.4 The Council has been notified by a third party of a claim to have acquired by prescription a right of way over part of the Land, that might prevent its development in accordance with the planning permission. The third party has not substantiated such claim and the Council is of the view that even if such a right exists its loss could be adequately compensated by a modest payment; the property for which the benefit of the right of way is alleged enjoys full access from the public highway.
- 1.5 For the reasons set out in paragraph 2 below appropriation is required to facilitate the sale of the Land and notice of the Council's intention to appropriate the Land has been duly advertised in accordance with section 122(2A) of the LGA 1972. Two objections to the proposed appropriation have been received to which consideration has been given in accordance with the said statutory provision.

2. PURPOSE OF REPORT

- 2.1 Section 237(1) of the TCPA 1990 (power to override easements and other rights) provides that if land has been validly appropriated for planning purposes the erection construction or carrying out or maintenance of any building or work on it by the Council or any person deriving title under the Council is authorised if it is done in accordance with planning permission notwithstanding that it may interfere with private rights such as restrictive covenants and easements.
- 2.2 Section 237(4) of the TCPA 1990 requires the Council to pay compensation to any persons whose rights have been interfered with pursuant to section 237(1) and provides for the amount of such compensation to be assessed on an injurious affection basis.
- 2.3 By appropriating the Land for planning purposes the risk of a third party preventing the proposed development and/or securing the payment of an unwarranted sum by way of compensation will be minimised.

3. Conclusion

- 3.1 An appropriation of land is an executive function under the Local Government Act 2000 and any decision to appropriate land requires to be taken by the Cabinet.
- 3.2 Authorisation is required to proceed with the appropriation of the Land in accordance with section 122 of the LGA 1972.

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Circulation of the Report: Councillor Ray Stanley, Cabinet Member for Housing, Management Team