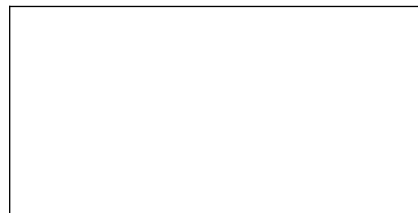


Calderdale MBC

Wards Affected Park Ward

Cabinet 12th February 2024



Appropriation of CMBC Land at Kingsley Place/Parkinson Lane

Report of Director, Regeneration and Strategy.

1. Purpose of Report

- 1.1 The purpose of this report is for Cabinet to consider the appropriation of Calderdale Council owned land at Kingsley Place/Parkinson Lane, Halifax (shown edged red on the plan attached at Appendix 1) ("the Land") from the current owning service, Economy, Housing and Investment to Children and Young People Services for the provision of exclusive use by Parkinson Lane school for additional car parking for the school.

2. Need for a decision

- 2.1 Cabinet approval is sought to agree to appropriate the Land. This is an internal transfer of land from one Council Department to another to ensure that the legislative holding power correctly reflects the newly identified statutory function of the land and this has been agreed by both Council Departments. The Land will remain in Council ownership following appropriation.

3. Recommendation

- 3.1 That Cabinet approves the appropriation of the Land under the powers inferred in Section 122 of the Local Government Act 1972 from the statutory holding powers of Economy, Housing and Investment under the Housing Act 1985 to Children and Young People Services under Section 14 of the Education Act 1996. (The appropriation would apply only to that area of Land shown edged red on the plan attached at Appendix 1).

4. Background and/or details

- 4.1 This land has been in use for a number of years as a tarmacadam surfaced free car park, while there is also a small, grassed area to the eastern side of the site fronting Kingsley Place.
- 4.2 The Council has been in discussion with Parkinson Lane School since 2018 regarding the potential transfer or lease of this Land to enable it to be used by the school for car parking.
- 4.3 Parkinson Lane School was granted planning permission on 27 November 2019 for a new car park entrance, fence and gates in accordance with the plans attached at appendix II.
- 4.4 It was originally proposed that the school governors at Parkinson Lane School would either purchase or lease the Land. However, the school was unable to proceed on this basis as its funding must be spent directly on the education of the children. So, it was proposed that the Land could be appropriated to Children and Young People Services to enable the service to allow the exclusive use of the land by Parkinson Lane School for additional school car parking.
- 4.5 Before the Land could be used by the school for the intended purpose, the land would need to be appropriated from its present statutory purpose to another statutory purpose, for use as additional car parking for Parkinson Lane School.
- 4.6 If a local authority acquires land for a statutory purpose, it must hold the land for that purpose until it either appropriates or disposes of the land in accordance with its statutory powers. Under Section 122 of the Local Government Act 1972, a Council may appropriate land for any purpose for which it is authorised by statute, providing that the land *is no longer required* for the purpose for which it is held immediately before the appropriation. 'Appropriation' in the legal context simply means transferring the function of the land from one statutory purpose to another.
- 4.7 The Land comprises two titles, WYK848748 and WYK240339, which are known as land on the south side of Parkinson Lane, Halifax. The majority of the Land was acquired under Part 3 of the Housing Act 1957 for the clearance of slum housing by virtue of the Halifax (Parkinson Lane) Compulsory Purchase Order 1972; and a smaller part of the Land was acquired under Part 5 of the Housing Act 1957 for the provision of housing accommodation. The Housing Act 1957 was repealed in whole by the Housing (Consequential Provisions Act) 1985 by virtue of section 3 and Schedule 1. The Housing Act 1985 replaced the former housing legislation before it as a consolidation Act and as such, the Council presently owns the Land comprised in titles WYK848748 and WYK240339 under the Housing Act 1985.
- 4.8 Under section 122(2A) of the Local Government Act 1972, the Council may not appropriate any land consisting or forming part of a public open space unless before appropriating the land they advertise notice of their intention to do so consecutively for two weeks in the local newspaper. It has been confirmed that none of the Land forms a public open space within the meaning of section 336 of the Town & Country Planning Act 1990 and therefore the publication of open space appropriation notices is not required.

4.9 A general power to appropriate land is conferred on principal councils under section 122 of the Local Government Act 1972, which provides that a principal council may appropriate land:

- belonging to that council;
- that is no longer required for the purpose for which it is held; and
- for any other purpose for which it is authorised by statute to acquire land.

4.10 The option to appropriate the Land can therefore be achieved under the Local Government Act 1972 as The Economy, Housing and Investment service has confirmed that the Land is no longer required by their service department and therefore it is no longer required to be held under the Housing Act 1985. The Economy, Housing and Investment Service has granted approval of the appropriation to Children and Young People Services.

4.11 Children and Young People Services have confirmed that they have no issues with the Land being appropriated to their service area, to be held under the Education Act 1996 for them to own and manage, and for the Land to be used by Parkinson Lane School for their exclusive use for school car parking.

4.12 Following the appropriation of the Land, should the Council identify a different statutory use for the Land in the future and/or propose to dispose of the Land, then it will need to obtain the relevant consent from the Department for Education in accordance with the School Standards Framework Act 1998 and the Academies Act 2010. Furthermore, should the school in question become an academy school, then it is likely that the Land would be lost by the Council to the prospective academy as it would form part of a long leasehold interest to the Academy.

5. Options considered

5.1 Option 1 – remain under current holding power.

The land needs to be held under the correct legislative holding power to reflect the identified use of the land. The current legislative holding power under the Housing Act 1985 does not currently reflect the newly identified use of the Land under the Education Act 1996.

5.2 Option 2 – appropriate the Land under Section 122 of the Local Government Act 1972 from the Housing Act 1985 to the Education Act 1996 for the benefit and use of the Children and Young Peoples Service. **(Recommended option)**

Due to the broader definition of this Act, which will encompass the newly identified statutory function and use, it is recommended that the Land is appropriated under the statutory powers conferred in Section 122 of the Local Government Act 1972.

6. Financial implications

- 6.1 As detailed in paragraph 4.3 of the report the initial proposals allowed for the school to purchase or lease the site. The recommended option detailed in paragraph 5.2 of the report allows for the site to be appropriated to Children and Young People Directorate to facilitate additional car parking spaces for the school on the site.
- 6.2 As commented upon in paragraph 4.11 of the report it is likely that the site would no longer be owned by the Council if the school obtained academy status.

7. Legal Implications

- 7.1 Under Section 122 of the Local Government Act 1972, a Council may appropriate land for any purpose for which it is authorised, providing that the land *is no longer required* for the purpose for which it is held immediately before the appropriation. 'Appropriation' in the legal context simply means transferring the function of the land from one statutory purpose to another. Section 122 contains no prescribed formula for the procedure to be adopted when a Council appropriates land from one statutory purpose to another. It does however require a Council to determine whether the Land is still required for the current purpose for which it is held. In that respect, the Council must carry out a conscious deliberative process concluding that it no longer requires the Land for the statutory purpose for which it was holding it up to the point of that appropriation.
- 7.2 Provided that the resolution is not made in bad faith and it is not a decision that no reasonable authority could possibly take, then the decision to appropriate land for a different statutory purpose is entirely up to the Council to determine. Section 122(2A) of the Local Government Act states that the Council may not appropriate any land consisting or forming part of an open space unless before appropriating the land, the Council gives notice of its intention to do so, however, it has been confirmed that this Land does not form part of an open space and therefore the advertisement of open space appropriation notices are not required.
- 7.3 Section 122 of the Local Government Act 1972 allows a Council to "appropriate for any purpose for which the council are authorised by the Local Government Act or any other enactment, any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation". As the Land is intended to be used as for purposes ancillary to and for education, the Land can be appropriated from its current holding power, the Housing Act 1985 to the newly identified statutory purpose under the Education Act 1996.
- 7.4 In addition, as noted above, should the Council in the future identify a different statutory use for the Land and/or propose to dispose of the Land, then they will need to obtain the relevant consent from the Department for Education in accordance with the School Standards Framework Act 1998 and the Academies Act 2010 . Also, if the school becomes an academy school in the future then it is likely that the Land would be lost by the Council to the prospective academy as it would form part of a long leasehold interest to the Academy.

8. Human Resources and Organisation Development Implications

- 8.1 There are no Human Resources and Organisation Development Implications.

9. Consultation

- 9.1 In September 2018, it was confirmed that Ward Members were happy to proceed with this transfer provided that residents could use the park on an evening when the school is not using the site.
- 9.2 However, it later became clear that the school wanted exclusive use of the Land for car parking and wanted to carry out improvements, including new fencing and a gate to secure the Land. In July 2020 it was agreed by Ward Members that they would be happy to proceed on the basis of a transfer of this Land to the school for their exclusive use and occupation of this Land.
- 9.3 No further consultation has taken place since this time as the intention is still for the school to have exclusive use of the Land, it is the process of allowing this to proceed that has changed from a transfer of the Land to an appropriation of the Land.

10. Environment, Health and Economic Implications

- 10.1 There has been an issue with cars being parked along Parkinson Lane and other streets nearby, particularly at busy times when school opens/closes. The provision of this additional car parking for the school is intended to ease this situation by allowing staff to park in a secure car park and not on nearby streets, which would improve the general environment around Parkinson Lane School and help to improve road safety.

11. Equality and Diversity

- 11.1 No implications.

12. Summary and Recommendations

- 12.1 The appropriation of the Land from its current statutory holding power is required to enable the school to use the Land exclusively for car parking for the school.
- 12.2 It is recommended that the land be appropriated under the powers inferred in Section 122 of the Local Government Act 1972 from the statutory holding powers of Economy, Housing and Investment under the Housing Act 1985 to Children and Young People Services under Section 14 Education Act 1996
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The documents used in the preparation of this report are:

1. Various documents.

The documents are available for inspection by contacting the named above person.

Appendix 1



Appendix II

Proposed plans for car park (see attached)