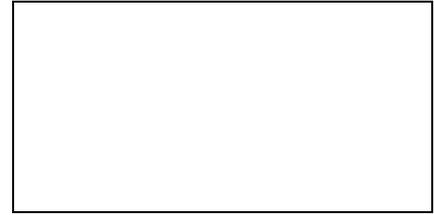


Calderdale MBC

Wards Affected Sowerby Bridge

Cabinet 11th July 2022



Appropriation of Land at Wharf Street Sowerby Bridge

Report of Director, Regeneration and Strategy

1. Purpose of Report

1.1 For Cabinet to consider the appropriation of Council owned land at Wharf Street Sowerby Bridge (shown edged red on the plan attached at Appendix 1) that is to comprise open space for use as a community square, ad hoc markets and public events.

2. Need for a decision

2.1 Cabinet approval is required so that the holding power correctly reflects the future use of the land.

3. Recommendation

3.1 That Cabinet approves appropriation of the land (shown edged red on the plan attached at Appendix 1), from the existing general holding powers under the Local Government Act 1972 to open space under the Open Spaces Act 1906. 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 In July 2020 Cabinet agreed to the demolition of Sowerby Bridge Market and the construction of a new high quality public square as envisioned by the Sowerby Bridge Master Plan (“the Scheme”).
- 4.2 The Scheme will be delivered and funded by the Corridor Improvement Programme which will provide vehicular, pedestrian, wheelchair and cycle improvements in the vicinity.
- 4.3 On or before completion of the Scheme the land will need to be appropriated from its present statutory purpose to another statutory purpose, being for an open space for use as a community square, ad hoc markets and public events.
- 4.4 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.
- 4.5 The land is currently held under the general holding powers under the Local Government Act 1972.
- 4.6 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;
 - for any other purpose for which it is authorised by statute to acquire land.
- 4.7 It is considered that there are two possible options for the appropriation of the land from its existing holding power under the Local Government Act 1972, to either a public recreation ground under the Public Health Act 1875, or to open space, under the Open Spaces Act 1906.
- 4.8 Section 164 of the Public Health Act 1875 states that, for the purpose of providing places of public recreation, "any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever. Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable".
- 4.9 Section 20 of the Open Spaces Act 1906 states that “The expression “open space” means any land, whether enclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole of the remainder of which is laid out as a garden or is used for purposes of recreation or lies waste and unoccupied.”
- 4.10 If the land is to be appropriated for the purposes of open space, not more than 1/20th part of the land so appropriated can be covered with buildings, otherwise it falls outside the legal definition of ‘open space’. As there are no permanent

structures planned for the site there will be no issues appropriating the land for the purposes of open space.

- 4.11 On their basic descriptions within the enactments, section 20 of the Open Spaces Act 1906 has a much broader definition than section 164 under the Public Health Act 1875 therefore it is recommended to appropriate the land from the existing general holding power under the Local Government Act 1972 to open space within the meaning of the Open Spaces Act 1906.

5. Options considered

- 5.1 Option 1 – remain under current holding power.

The land needs to be held under the correct holding power to reflect the future use of the land. The current holding power – the Local Government Act 1972 - does not correctly reflect the future use of the land.

- 5.2 Option 2 – appropriate to Public Health Act 1875.

Whilst it could be possible to appropriate to this Act, it is considered that the definition is too narrow to accurately reflect the future use compared to the Open Spaces Act 1906.

- 5.3 Option 3 – appropriate to Open Spaces Act 1906. Recommended option.

Due to the broader definition of this Act which will encompass the future use, it is recommended that the land is appropriated to the Open Spaces Act 1906.

6. Financial implications

- 6.1 There are no financial implications attached to the appropriation of the land referred to in Section 4 of the report. As commented upon in paragraph 4.2 of the report, the works undertaken on the land will be funded by the Corridor Improvement Programme and provide vehicular, pedestrian, wheelchair and cycle improvements in the vicinity.

7. Legal Implications

- 7.1 A principal council can only appropriate land under section 122(1) of the Local Government Act 1972 if the land is no longer required for the purpose for which it is currently held. In reaching this decision, the local authority must consider the public need within the area for the existing use. Therefore, as long as a permanent statutory function of open space has been identified and the land is no longer required to be held under the general holding powers of the Local Government Act 1972 then the land can be appropriated. The Council's power to acquire land for open space is under section 9 of the Open Spaces Act 1906 and as such the Council has the power to appropriate land to this purpose.
- 7.2 If a decision is taken to appropriate the land for the purposes of open space, the Council would need to be mindful of the requirements in section 10 of the Open Spaces Act which states:-

“10. Maintenance of open spaces by local authority.

A local authority who have acquired any estate or interest in or control over any open space under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—

(a) hold and administer the open space in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose: and

(b) maintain and keep the open space in a good and decent state and may enclose it or keep it enclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.”

- 7.3 Section 15 of the Open Spaces Act 1906 provides local authorities with special powers to make byelaws in relation to open spaces and this may be helpful to the Council with regard to the future use of the land as a community square and for ad hoc public events and markets following completion of the Scheme.

8. Human Resources and Organisation Development Implications

8.1 None.

9. Consultation

9.1 Not applicable.

10. Environment, Health and Economic Implications

10.1 None.

11. Equality and Diversity

11.1 Not applicable.

12. Summary and Recommendations

12.1 The appropriation of the land from its current holding power is required on or before completion of the Scheme to ensure it complies with the future use of the land.

12.2 It is recommended that the land be appropriated from the Local Government Act 1972 to the Open Spaces Act 1906, as this Act has the broader definition that reflects the future use of the land.

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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 above named person.

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