

**Appropriation of Land off Ipsley Church Lane, Redditch for Planning Purposes**

Relevant Portfolio Holder	Councillor Peter Fleming
Portfolio Holder Consulted	Yes
Relevant Head of Service	Guy Revans
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Wards Affected	All
Ward Councillor(s) consulted	No
Relevant Strategic Purpose(s)	
Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	

**1. RECOMMENDATIONS**

**The Executive Committee is asked to RESOLVE that**

- 1.1 The Land off Ipsley Church Lane as detailed in appendix 1 be appropriated under section 122 (2A) of the Local Government Act 1972 for planning purposes**

**2. BACKGROUND**

- 2.1 Redditch Borough Council as the Local Planning Authority granted planning permission in accordance with the Town and Country Planning Act 1990 and The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) for the proposal referenced 20/00863/FUL with a decision notice dated 26<sup>th</sup> April 2022. This permission was for change of use of land from open grassland to cemetery including burial of none-cremated and cremated remains. New vehicular access to Ipsley Church Lane.
- 2.2 The land is designated under local planning policy as primary open space (parks) pursuant to Policy 13, which identifies that 'Primary Open Space' comprises ten different typologies, including Allotments, Amenity Open Space, Churchyard/Cemeteries/Crematoria, Civic Square, Indoor Sports Facilities, Parks, Play Area Provision, School Grounds, Semi-Natural, Sports Facilities
- 2.3 The Council has statutory powers to acquire and allocate land for specific purposes including for the purposes of planning. If a Council

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.

- 2.4 A general power to appropriate land is conferred on councils under section 122 of the Local Government Act 1972. Section 122 (1) provides that a council may appropriate lands
- belonging to the 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
- 2.5 The council can only appropriate land under section 122 (1) if the land is no longer required for the purpose for which it is currently held. In reaching this decision, the council must consider the public need within the area for the existing use.
- 2.6 As the land in question is open space, it is categorised as a ‘special category of land’ under the 1972 Act and additional provisions apply under section 122 (2A). There is no limit on the size of the open space area that can be appropriated under this section.
- 2.7 Open space is defined in 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, or land which is a disused burial ground. It is important to note that the council’s own designation of the Land both current and proposed as open space does not impact the statutory definition provided in the 1990 Act and applied in the 1972 Act.

### **3. Appropriation Process**

- 3.1 Before appropriating open space land a council must
- advertise its intention to appropriate open space land for two consecutive weeks in a newspaper circulating in the local area as such notices were placed in the Redditch Standard on the 16<sup>th</sup> & 23<sup>rd</sup> September 2022 however the notice on the 16<sup>th</sup> of September had an incorrect email address to reply to therefore this was amended by the 23<sup>rd</sup> and an additional notice placed on the 30<sup>th</sup> September.
  - consider any objections to the proposed appropriation. The initial deadline for objections was set as the 21<sup>st</sup> of October but due to the notice error this was moved to the 28<sup>th</sup> of October 2022.

- 3.2 By appropriating the land under section 122 (2A) of the local government act 1972 the land would be released from any trust for the enjoyment of the public imposed by section 164 of the Public Health Act 1875 or section 10 of the Open Spaces Act 1906.

**Open Space Provision**

- 3.3 As detailed in the planning report submitted to the planning committee on 13<sup>th</sup> October 2021 the site in question falls under the Matchborough Ward. The most recent Open Space Needs Assessment from 2009 indicated that the Ward has an Open Space deficit of 2.13ha per 1000. However, the more recently updated Borough & Ward standards from 2011 shows this has fallen to 1.85ha per 1000. It is important to note that Borough & Ward standards exclude the Arrow Valley Park as it is classed as a sub-regional facility and has the potential to skew the local level Open Space data. As such the appropriation of this land for planning purposes has no impact on the open space deficit for Matchborough Ward.

**Primarily Open Space Provision**

- 3.4 The site is designated Primarily Open Space, Parks and whilst the typology would change under the current change of use permission reference 20/00863/FUL would remain as Primarily Open Space. This new typology would be Churchyard/Cemetery/Crematoria.
- 3.5 The National Planning Policy Framework (NPPF) defines open space as; 'All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can function as a visual amenity'. By appropriating the land for planning purposes and for the purpose of the planning 20/0086/FUL change of use to a cemetery would mean that the site would continue to function as an area of publicly accessible open space of public value.
- 3.6 Redditch Borough Council's Leisure & Culture Strategy document comprises details of the Parks & Open Spaces Strategy and demonstrates a commitment to understanding the current provision, key issues and priority needs along with the production of management plans for key sites. The planning decision referenced in 2.1 above shows that the site will remain designated as open space and therefore will remain part of the wider Leisure & Culture Strategy.

**Objections to the appropriation**

3.6 Details of the objections are summarised as follows

- 69 people objected 68 by email 1 by letter

of the objections they are broken down into the following categories

	Category	Number
1	Loss of recreational space	60
2	Loss of Open Space	38
3	Water logging issues	9
4	Close to housing	2
5	Highways issues	17
6	Groundwater issues	3
7	Inappropriate gradient	8
8	Damaging the local ecology	25
9	More people use it now than will as a cemetery	1
10	Anti-burial	5
11	Potential increased flood risk	2
12	Noise pollution from surrounding sites	3
13	Potential conflict between different users	3
14	Lack of public transport links	7

3.7 Items 2 – 14 are all items that have been dealt with via the planning application of the 13<sup>th</sup> of October 2021 and therefore in granting the permission the planning authority has satisfied itself that these matters are compatible with the use of the site. As such they are not matters for consideration in this appropriation process.

**4. Loss of Recreational Space**

4.1 With regards to the 60 objections that listed loss of recreational space as an objection the main reason given were as follows

- Used for walking with family
- Run a dog walking business and use site daily
- Sledging in the winter
- Kite & model aircraft / drone flying
- Paragliding
- Running
- Picnics
- Dog walking
- Mental health

4.2 This site being considered for appropriation is 4.60 hectares and is surrounded by a further 55 hectares within 1 kilometre from the centre of the site. So, of the circa 60 hectares available to the public in this area appropriation of this land equates to 8% of the land leaving 92% still available for recreational use.

4.3 Across the wider Arrow Valley Park there is circa 364 hectares with a wide range of facilities compatible with its use as a leisure and recreation facility. Therefore, the appropriation of this land equates to 1.3% of the overall available land and consequently leaving 98.7% available.

**5. FINANCIAL IMPLICATIONS**

5.1 There are no direct financial implications with regards to this decision however if the choice is made to not appropriate the land, then all existing expenditure with regards to the potential cemetery site will have been lost. This equates to circa £60,000

5.2 If the decision is challenged via a judicial review then additional costs would be incurred by the council.

**6. LEGAL IMPLICATIONS**

6.1 The main governing instruments for local authority cemeteries are currently Section 214 and Schedule 26 of the Local Government Act 1972 and the Local Authorities Cemeteries Order Act 1977 (as amended)

- 6.2 There is no statutory obligation on the local authority to make provision for burials so a local authority can cease offering new full and cremated remains graves although this would not affect the use of existing graves in current cemeteries in the Borough.
- 6.3 As stated above at 2.4 a general power to appropriate land is conferred on councils under section 122 of the Local Government Act 1972. Section 122 (2A) provides that a council may appropriate lands
- belonging to the 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

**7. STRATEGIC PURPOSES – IMPLICATIONS**

**Relevant Strategic Purpose**

- 7.1 **Living independent, active & healthy lives.** The appropriation of the land would not have any impact on the council's strategic purposes

**Climate Change Implications**

- 7.2 The decision to appropriate land will not have a direct impact on the council's climate change commitments.
- 7.3 As this land can continue to be included in the Parks & Open Space Strategy it can follow the recommendations made in the report from September 2022.
- Recommendation 1 requires a better understanding of the biodiversity of the open spaces within the Borough
  - Recommendation 3 requires a clear approach to Biodiversity net gain and providing a measurable approach to the management of the land
  - Recommendation 5 requires identification of further carbon capture and natural capital gains
- 7.4 The commitment made via the planning process referred to in 2.1 above has already demonstrated a desire to enhance the biodiversity within the local area and not just the site in question and conditions have been placed on the permission to this effect.

**8. OTHER IMPLICATIONS**

**Equalities and Diversity Implications**

- 8.1 The decision to appropriate land will not have a direct impact on the council's equality and diversity commitments.

**8. RISK MANAGEMENT**

- 8.1 The authority may be at reputational risk if the decision to appropriate the land for planning purposes is challenged via a judicial review.

**9. APPENDICES and BACKGROUND PAPERS**

- 9.1 Appendix 1 – Site Location

**Executive Committee**

13<sup>th</sup> December 2022

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**9. REPORT SIGN OFF**

<b>Department</b>	<b>Name and Job Title</b>	<b>Date</b>
Portfolio Holder		
Lead Director / Head of Service		
Financial Services		
Legal Services		
Policy Team (if equalities implications apply)		
Climate Change Officer (if climate change implications apply)		