

## Questions from Jayne Baker.

### To Councillor Toby Sturgis – Cabinet member for Spatial Planning, Development Management and Property

#### Question

1. Can Cabinet confirm that there have been precedents for selling land designated “in perpetuity” as an open space, and that the legality of such sales has been tested in the Courts?

#### Answer

In the original planning permission there was a planning obligation that public open space areas needed to be maintained in perpetuity. As a result of terms agreed in section 52 agreements as part of that permission the land was transferred to the Council as landowner. The Council then held the land for open space purposes to meet those planning obligations.

As stated in the report the Council as landowner does have obligations to maintain open space but that duty can be fulfilled elsewhere if there is adequate compensatory space offered in replacement.

The Planning Inspector confirmed in his decision dated 20<sup>th</sup> July 2016 that the replacement open space meets and exceeds the original planning obligations.

Provided the alternative open space is created and available to meet those planning obligations which must be held in perpetuity then the land does not have to be held for that purpose.

There have been precedents for selling land held as open space when that purpose is no longer needed or a suitable alternative provision to meet that community need is provided. This meeting today is part of the legal process so that the Council as land owner can satisfy itself that there is a suitable alternative space to allow appropriation under section 122 of the Local Government Act 1972.

#### Question

2. Are Cabinet aware that the Government website giving guidance on using planning permissions clearly states that “planning permission runs with the land and any conditions imposed on the permissions will bind future owners”? <https://www.gov.uk/guidance/use-of-planning-conditions> This clearly contradicts the statement in Paragraph 6 of the report presented to Cabinet stating the “S52 agreements are no longer considered to be extant for planning purposes as the site has been laid out and transferred to the Council”.

## **Answer**

The Cabinet is aware of the status of planning permissions and conditions. As indicated in the answer to the last question the planning obligation transferred to the Council when the land was transferred pursuant to section 52 agreements. That planning obligation remains with the land until it is no longer required or suitable alternative provision can meet those obligations. As the report sets out, a later planning appeal has granted outline planning permission for change of use including a recognition that the proposed open space meets or exceeds that obligation.

The report confirms that the Council has received legal advice from Counsel that the obligations in the S52 Agreements were no longer extant as they have been met.

The planning obligation which was created by the original permission for the land being proposed for appropriation itself was transferred to the Council as land owner. That planning obligation will continue to apply for the area accepted by the planning inspectorate as suitable alternative replacement.

## **Question**

3. Can Cabinet confirm that, in the event of a sale of the land, access by the local community, including the elderly living in residential accommodation, children and young people, to Marlborough Common as the nearest open space, would be made safe through the provision of a proper crossing?

## **Answer**

This question appears to be directed at access by local people to 'Marlborough Common' and whether the Council has any plans for 'the provision of a proper crossing' of the A346 Swindon Road. That would be a matter for highways, if the need arose, as there is no requirement in the planning permission for any such works.

## **Question**

4. Can Cabinet confirm that there would be safe access for the emergency services on to the compensatory space, such as at Bay Bridge, in the event of an incident requiring an emergency response?

## **Answer**

The compensatory space is not near Bay Bridge. There will be pedestrian access to the compensatory open space from the existing road at Rabley Wood View. The emergency services will be able to access the site from there.

Detailed plans of the layout, access, appearance, landscaping and scale will have to be submitted as part of the conditions of the outline planning permission before any development takes place.

**Question**

5. Can Cabinet confirm that, in the event of a sale of the land, Wiltshire Council would set up binding contracts with any future owners of the whole area to ensure the entire compensatory open space would be kept well-drained, safe and in good order?

**Answer**

In the event of a sale of the land, any contracts for sale will require the purchaser to comply with the conditions set out in the Planning Inspector's decision, which includes a management plan for the compensatory open space.

The planning permission requires details of the drainage strategy, including details of its maintenance and management after completion, to be agreed before development starts.