

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is a Key Decision within the Council's definition and has been included in the relevant Forward

**REPORT OF THE PLACE
EXECUTIVE DIRECTOR
TO CABINET
10th July 2019**

Appropriation of Land at Penny Pie Park for Highway Purposes

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform Cabinet of the responses received from members of the public following the appropriation consultation procedure carried out under Section 122 of the Local Government Act 1972 as agreed in the approved A628 Dodworth Road / Broadway Junction Improvement cabinet report (Cab.25.07.18/15). In addition, this report outlines to Cabinet, the considerations of whether approximately 1.133 hectares (11,330 square metres) of Penny Pie Park is no longer required for the purposes for which it is currently held and may be used instead, for highway purposes.
- 1.2 This report sets out the officer assessment and consideration of the representations / objections received from members of the public and the recommended conclusion after taking account of these representations.

2. RECOMMENDATIONS

- 2.1 **It is recommended that Cabinet:**
- 2.2 **Decide, under Section 122 of the Local Government Act 1972, having considered and assessed the representations received that the open space shown in Appendix 1 forming approximately 1.133 hectares (11,330 square metres) of Penny Pie Park, is no longer required for the purposes for which it is currently held and may be used instead for highway purposes.**

3. INTRODUCTION

- 3.1 In July 2018, Cabinet approved the A628 Dodworth Road / Broadway Junction Improvement scheme (Cab.25.07.2018/15 refers) which considered the options and outlined the preferred solution to address congestion on the A628 Dodworth Road / Broadway Junction, between the town centre and M1 Junction 37. That approved in principle the appropriation of up to 6 hectares of land. The Service Director for Regeneration and Culture, was authorised to undertake the statutory consultation and then report the results of that consultation to Cabinet, assessing the representations received and making a recommendation as to whether, in the light of the representations, the land should be appropriated or not. The land now

proposed to be appropriated consists of a smaller area of Penny Pie Park, which is identified on the plan attached at Appendix 1 from public open space to highway purposes.

Planning Permission

- 3.2 On Tuesday, 18th December 2018, the Council's Planning Regulatory Board (PRB) resolved to grant a planning application (Ref - 2018/0965) to make improvements to the A628 Dodworth Road, Broadway junction, layout attached at Appendix 2. Prior to the application being considered by PRB, a request was made to the Secretary of State, to ask him to "call in" the application, meaning that he would become the decision maker. In light of this request, the Council agreed not to issue the decision, pending confirmation from the Ministry of Housing, Communities and Local Government, as to whether or not the Secretary of State has decided to call in the application. Following the Secretary of State's decision not to call in the planning application, the planning decision notice was made public on 18th February 2019.

Appropriation Notice

- 3.3 It is a legal requirement that the Council designates the land on which the works are to be carried out for the relevant statutory purpose; which in this case is for highway purposes. This is known as "Appropriation". The appropriation process is a standard procedure, separate to the planning process, that the Council has to carry out. There is a legal requirement under the Local Government Act 1972 to issue a public notice and to consider any representations or objections.
- 3.4 The Council published a notice of the proposed appropriation in the Barnsley Chronicle on both the 8th and 15th March 2019, as required by Section 122 of the Local Government Act 1972, inviting representations to be made in writing to the Council no later than 8th April 2019. The notice and plans were advertised on the Council's website. Copies are attached at Appendix 3 to this report.

Consultation responses

- 3.5 105 letters were received in response to the Council's notice.
- 3.6 A summary of all the responses is set out in Appendix 4. All the letters received are available for the decision makers to view via Barnsley MBC Legal Services.
- 3.7 The grounds of objections regarding the perceived specific impact on the proposed appropriation are summarised as follows:
- Noise nuisance;
 - Loss of mature trees;
 - Impact on conservation areas;
 - concerns of potential increased parking and how traffic congestion will affect locals;
 - Concerned that this initial 'land grab' will be followed by further appropriations;
 - That the park is a public amenity that gives pleasure to thousands of people;

- That the park is used by considerably more people in the local community than the number who may benefit from any proposed school expansion;
- That the area is deficient in public open space, some parts being more than 800m from a public park or garden. Many local dwellings are flats or houses with limited garden.

4. PROPOSAL AND JUSTIFICATION

Statutory Powers and the Law

- 4.1 Section 122 of the Local Government Act 1972 provides that “the Council may appropriate for any purpose which the Council is authorised by statute, to acquire land by agreement, any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation”.
- 4.2 The key procedural points are;
1. The land must already belong to the Council;
 2. The land must be no longer required for the purpose for which it is currently appropriated; and
 3. The purpose for which the Council is appropriating must be authorised by statute.
- 4.3 The case of **Dowty Boulton Paul v Wolverhampton Corporation** (1973) established that the local authority is the sole judge of whether or not the land in question is not required for the purpose for which it is held immediately before the appropriation and its decision cannot be challenged in the absence of bad faith.
- 4.4 The principles of the Dowty decision were examined in the relatively recent case of **R (Maries) v Merton LBC** (2014) EWHC 2689 (Admin) and the judge distilled the principles which apply to the consideration of any such appropriation. These are as follows:-
- 1) Whether land is still or is no longer required for a particular purpose, meaning no longer *needed* in the public interest of the locality *for that purpose*, is a question for the local authority, subject to *Wednesbury* principles, and not the court;
 - 2) The statute is concerned with relative needs or uses for which public land has been or may be put. It does not require it to fall into disuse before the authority may appropriate it for some other purpose; and
 - 3) The authority is entitled, when exercising its appropriation power, to seek to strike the balance between comparative local (public interest) needs: between the need for one use of the land and another with the wider community interests at heart. It is for it to keep under review the needs of the locality and is entitled to take a broad view of local needs.
- 4.5 The Council must apply these principles in evaluation of the appropriation proposal before it. In doing so, the Council is required to consider objections to its view on whether the land is required for its present purpose, as well as objections to its view that it should be appropriated for a new purpose.

- 4.6 As with most administrative decisions made by public authorities, the decision to appropriate land is subject to challenge by judicial review. The Council must be able to demonstrate the purpose for the appropriation and that it has taken all of the relevant considerations into account and not taken any irrelevant considerations into account. In particular, the Council must consider, having regard to the proposed new facilities for park users, and in the light of the representations made following the consultation exercise, whether the part of Penny Pie Park to which the proposed appropriation relates, is no longer required for the purposes for which it is presently held by applying the principles noted above.
- 4.7 The Council's decision must be based on the available evidence and be rational in the sense that it cannot be said that no reasonable local authority could, on the evidence before it, have arrived at that decision: **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** (1948) 1 KB 223).

Historic Uses of the Land

- 4.8 The Council's statutory predecessor (The Mayor Aldermen and Burgesses of the County Borough of Barnsley) acquired the large majority of the land forming Penny Pie Park by way of conveyance dated 30th June 1948. At that time, the land was former brickworks as mentioned above. The land conveyed by the 1948 conveyance is not subject to restrictive covenants in favour of the former owner and the land is not held subject to charitable trusts. At a point in the 1960s or 1970s (exact date unknown), it appears that the Council took the decision to lay out the park in its current form and its use has been as public open space since then. The park was registered voluntarily at HM Land Registry in 2007 and the Official Copies and Plan, together with a 1931 conveyance mentioned (now land under Pogmoor Road) is contained within Appendix 5. The historical timeline is detailed below:
- 1861-1872: It is understood anecdotally that between 1861-1872, White Hill or Penny Pie Colliery was located within the site boundary, assumed to be centred around the two shafts seen on the 1893 map (contained within Appendix 5). Due to the dates of the maps available, this colliery does not appear on any of the maps, so it is not known where the colliery buildings were located.
 - 1893: The next map, dated 1893, shows the site to be occupied by a brick works (contained within Appendix 5). This is located against the northern site boundary, with a branch line from the railway line leading to the brickworks. To the south and east of the brickworks, two clay pits are labelled, which occupy most of the site between the brickworks and Dodworth Road to the south. A tramway is shown which connects the clay pits to the brickworks. Two old shafts are also shown in the centre of the site.
 - 1906: The map of 1906 (contained within Appendix 5) shows the clay pits and tramway have extended, with the tramway now shown to pass underneath Dodworth Road to a new pit in the southeast corner of the road. The map of 1931 (contained within Appendix 5) shows the clay pits to have extended further east and south, beyond the site boundary, and the tramway has been repositioned and now passes beneath Dodworth Road further west than it did previously. Several houses are shown along the south side of Dodworth Road, adjacent to the crossroads.

- 1956: The map of 1956 (contained within Appendix 5) shows the beginning of the closure of the brickworks, with the tramway and western clay pits no longer shown on the maps. By the 1960 map (contained within Appendix 5), the buildings associated with the brickworks have been removed, and the portion of the site to the northeast of the crossroads appears to have been infilled, with no clay pits shown. It is understood anecdotally that the clay pits on site were backfilled with domestic waste. The two old shafts in the centre of the site are still shown, and are now labelled as disused. The branch line from the main line to the south has also been removed. In the south east corner of the site, south of Dodworth road, disused clay pits are still shown. The entrance road into the brickworks from Dodworth Road is still shown. At this time, Pogmoor Road and Broadway have been constructed.
- 1969: The next map, dated 1969-1980 (contained within Appendix 5) shows a filling station on the south side of Dodworth Road, in the southeast corner of the site. To the south of this filling station, the former clay pits are labelled as a refuse tip. An electricity substation is also shown just north of the crossroads, on the east side of Pogmoor Road.
- 1973-1978: The 1973-1978 map (contained within Appendix 5) shows that factories have been built on the refuse south of the filling station. A model railway is shown towards the north of the site with a few new buildings adjacent. The two shafts in the centre of the site are no longer shown.
- 1983-1991: On the 1983-1991 map (contained within Appendix 5), the area to the northeast of the crossroads is labelled as recreation grounds, with trees located along Pogmoor Road and Dodworth Road. The crossroads have also been modified and enlarged slightly, with a left turn lane from Broadway west onto Dodworth Road.
- 2000: The map of 2000 (contained within Appendix 5) no longer shows the model railway.
- 2017: The map dated 2017 (contained within Appendix 5) shows the filling station to have been removed and replaced with a car park which serves a school to the south.
- 2019: The most recent image from Google Maps attached at Appendix 6, dated 2019 shows the current features within the park.

Current Land Use

- 4.9 Penny Pie Park occupies large grounds amounting to 4.59 hectares of land. It is well provided for by trees around the edges. However, the majority of the park is open grassland in the central areas. It is relatively level throughout with no significant topographical undulations. In the north west corner, it contains an equipped children's play area and a multi used games court. A footpath is located around the edges. In close proximity to the crossroad it hosts an electricity substation which comprise two single storey buildings within a compound. In the south east part of the site there is ambulance transfer pad and an associated access onto Dodworth Road for when the Embrace Children's Charity helicopter air ambulance is required to land within the park. A further non signal controlled

crossing point, which includes a pedestrian refuge in the centre of the road, is located nearby provides a crossing point to the opposite side of Dodworth Road and Horizon Community College. Both Dodworth Road and Pogmoor Road have bus stops along the sections of the road passing next to the park. These are marked out within the road and are without a dedicated layby.

Usage Surveys

4.10 Two neutral days were identified to carry out usage surveys within Penny Pie Park. The surveys were carried out on Thursday 16th May 2019, a typical term time / working, spring, week day and Saturday 18th May 2019 between 8.30am and 7pm early evening which took place on a typical spring weekend, not coinciding with any public bank holidays / school holidays / football matches. Times were picked to coincide with expected busy park times in the day including pre-work and pre-school in the morning, lunch time, post-school afternoon and post work later afternoon / early evening.

4.11 The weather conditions for both days, as per BBC Weather forecast:

Thursday 16 th May 2019	7c to 16c with sunny intervals with a moderate breeze
Saturday 18 th May 2019	8c to 16c with light clouds and light winds

4.12 The surveys were carried out by physically walking around the park and making notes of activity / usage. On Thursday 16th May 2019, one officer carried out the usage surveys, on Saturday 18th May 2019 two officers carried out the surveys, one officer located in the vicinity of the MUGA / Children's play area and one officer on the flexi pave to the south east entrance, accessed from Dodworth Road, to ensure that all activity was accounted for, however this may have potentially resulted in some double counting in the numbers and activity.

4.13 A summary of the findings is shown below:

Activity type	Date and Time of Observation:				Date and Time of Observation:			
	Thursday 16 th May 2019				Saturday 18 th May 2019			
	08:30 to 09:00	12:30 to 13:00	15:30 to 16:00	18:30 to 19:00	08:30 to 09:00	12:30 to 13:00	15:30 to 16:00	18:30 to 19:00
Dog Walking	2	7	5	4	8	13	13	1
Activity on the Multi Use Games Area (MUGA)	7	0	4	0	0	4	17	5
Children's using the Play Area	0	2	0	8	0	4	17	0
People using the outdoor gym	2	0	0	0	0	0	3	0
People counted using / within the story trail / natural area	2	0	0	0	0	1	3	23
Resting on the grass / Using Benches	0	0	0	0	0	4	6	0
General public walking through the park (which is also used as short cut / to	2	3	11	10	2	14	24	4

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the convenience store on Pogmoor Road)								
School Children walking through the park to & from Horizon Academy	19	4	108	0	0	0	0	0
Total	34	16	128	22	10	38	83	33

General Observations:

- There was high activity in the week day at school finishing time by pupils and late afternoon early evening on the Saturday by adolescent teenagers.
- There was a steady flow of dog walkers, particularly on the Saturday, as well as the park being used as a short cut from / to Dodworth Road to Pogmoor village or convenience store which is located on Pogmoor Road adjacent to the park.

4.14 From the observations, Penny Pie Park is perceived to be used principally for informal recreational use, dog walking and as a walk through from residential areas, convenience store, school, bus stops and town centre.

The Proposed Scheme and its Objectives

Alleviate Congestion

- 4.15 As detailed in the A628 Dodworth Road / Broadway Junction Improvement cabinet report (Cab.25.07.18/15), AECOM were commissioned in 2016 to carry out an assessment of the A628 Dodworth Road / Pogmoor Road crossroads to ascertain the current capacity of the junction, and also it's the future capacity having regard to current committed growth as well as additional planned future growth aspirations. This report concluded that the Dodworth Road / Pogmoor Road crossroads junction is at full capacity once committed developments in the vicinity (such as employment sites nearest to M1 Junction 37 Capitol Business Park) are factored in. In addition, a continued increase in traffic congestion could well jeopardise progress being made in the reduction of air pollution concentrations in the Air Quality Management Area (AQMA) between M1 J37 and Dodworth Road / Pogmoor Crossroads. Section 5.3 of this Appropriation of Land at Penny Pie Park for Highway Purposes cabinet report also provides details of the active travel initiative being promoted to encourage modal shift and also an update on the current situation of bus / rail patronage. The council is committed to continuing the delivery of initiatives to encourage active travel and modal shift, however it is recognised that it is unlikely that the modal share of active travel within the borough will increase to such an extent that it would not be necessary to improve the capacity of the Dodworth Road/Broadway/Pogmoor Road junction.
- 4.16 In addition, to the environmental impact of the congestion and any potential safety benefits, it is also important to recognise the detrimental impact on productivity as a result of increased journey times and the potential adverse impact on the town centre, which has previously experienced significant leakage of retail expenditure to out of town destinations such as Meadowhall. To address this the Council is

investing substantial amounts into regenerating the town centre but for the benefits of these investments to be fully realised it will be important to ensure that key radial routes into and out of the town centre remain relatively free-flowing, particularly during peak times.

- 4.17 The evidence therefore shows that there are compelling reasons to increase the capacity of the Dodworth Road/Broadway/Pogmoor Road junction based on existing congestion and committed development alone. Accordingly, encroachment into the public open space is unavoidable to address existing congestion and committed development. The increased capacity would also help accommodate further anticipated growth across the borough as identified in the Council's previous Core Strategy and recently adopted Local Plan (cab12.12.2018/8) and the aspirations of the borough as identified in the Council's Economic and Housing Strategies, further strengthening the case to appropriate the land for highway purposes.
- 4.18 Therefore to address the congestion issues at A628 Dodworth Road / Pogmoor Road crossroads, a scheme has been approved that replaces the existing signal controlled crossroads with a new multi lane gyratory road system, which would be built within Penny Pie Park that is located immediately adjacent to the crossroads.
- 4.19 It is evident that the existing crossroads junction operates over capacity at the present time, resulting in substantial queuing in all directions during peak hours. This would be addressed by removing the conflict that occurs between the right turns onto Broadway from the A628 Dodworth Road and the westbound movement towards the motorway from Pogmoor Road. It is predicted that this would greatly improve capacity for traffic on Dodworth Road in both directions, which would lead to less queuing.
- 4.20 The new road system would see the road system widened to up to 3 lanes of traffic. The road system has been designed as a one way loop. 3 lanes of traffic would feed into the gyratory from Dodworth Road inbound towards the town centre. A left turn lane would provide access to Pogmoor Road. Inbound from Pogmoor Road, 3 lanes would feed into the system with one lane going onwards into the town centre and 2 lanes coming back around to connect with Dodworth Road heading westbound to the M1 and new left turn lanes to Horizon and Broadway.

Improved Crossing Points

- 4.21 New traffic signal controlled junctions and toucan / pelican crossings would be installed in each of the 3 corners of the new road system and at the reconfigured junction with Horizon Community College. The existing section of Pogmoor Road adjacent to the park would be downgraded and replaced by the new road system for through traffic. Those properties and Whitehill Avenue would connect to the gyratory via provision of a dedicated left turn lane and a new left turn only junction.

Shared Footway / Cycleway

- 4.22 The gyratory would include a 3m wide shared footway and cycleway located around all sides and passing through the middle of the retained parkland in the centre of

the gyratory. In addition, the introduction of signalised Toucan crossing points will, provide safe routes for pedestrians and cyclists in the area encouraging modal shift.

Noise Reduction Measures

- 4.23 A 1m high gabion wall would be built along the northern and eastern edge of the new road for sound attenuation purposes. The plans also include fencing to separate the retained areas of park from the road system. Additional noise mitigation measures are shown to the west and north adjacent Pogmoor Road and the boundary with the railway line/Pogmoor Recreation Ground in the form of 1.5m high gabion basket wall and to the east in the form of 3m acoustic fence which would sit alongside the existing vegetation on that boundary to limit noise affecting the houses beyond this boundary located on Grosvenor Walk and Dodworth Road. A similar 2.4m high fence would then be built in the grass verge further to the south on the other side of Dodworth Road for the purposes of reducing sound levels at Firs Care Home at the side of the existing entrance to Horizon.

Loss of Greenspace Mitigations

- 4.24 To compensate for the impact of the scheme on the greenspace known as Penny Pie Park, the facilities currently on offer will be enhanced, and a high quality, functional and attractive environment for the neighbourhood area will be created. A plan showing the proposed improvements to Penny Pie Park, which have been developed in consultation with the Friends of Penny Pie Park, who are a constituted community group, is attached at Appendix 7. Consultation with this established community group will continue during design refinements and delivery.

Enhanced Children's Play Area

- 4.25 The current play area is a local equipped play area (LEAP) and has 5 items of play equipment, but as part of the proposals would be upgraded to Neighbourhood Equipped Play Area (NEAP). This means that it would have no less than 8 items of play equipment, and would be designed to serve a substantial residential area with a minimum play zone of 1,000sqm. The NEAP would be located in the retained section of the park that would be preserved to the north of the new road system, which is the approximate location of the current play area.
- 4.26 The nature story trail is largely unaffected by the proposals, but where necessary any features that need to be moved will be re-sited within the park.

New Multi Use Games Area

- 4.27 As part of the proposals, a new multi-use games area will be provided in the section of the park that would be preserved to the north of the new road system in the vicinity of the children's play area, this has a catchment area of 1200 meters

Outdoor Gym

- 4.28 The current Outdoor Gym will be re-sited in the section of the park that would be preserved to the north of the new road system in the vicinity of the children's play area and new multi-use games area.

Improvements to Pogmoor Recreation Ground and Sugden's Recreation Ground

- 4.29 Furthermore enhancements will be provided at Pogmoor and Sugden's Recreation Grounds located nearby, shown on plan attached at Appendix 8. This would consist of the upgrade of the equipped children's play area from Equipped Play Area (EPA) to Neighbourhood Equipped Area for Play (NEAP) standard at Sugden's Recreation Ground at Stocks Lane, which has a wider catchment area of 1,000 meters, as opposed to 400 meters. Pogmoor Recreation Ground will benefit from improved pedestrian access with provision of footpath, benches and dog fouling bins.

	Current Situation	Proposed Scheme / Impact / Mitigations
Size of park	4.59 hectares	3.46 hectares
Crossing points	5 pedestrian signalised crossing points 1 uncontrolled crossing points	14 toucan (pedestrian and cycle) signalised crossing points
Trees	<u>Penny Pie Park:</u> Current number of trees = 239 (including recently planted community orchard of mixed trees).	<u>Penny Pie Park:</u> Removal of 75 trees (table 4 - tree survey, planning documents reference: 2018/0965) Planting of over 100 new extra heavy standard trees (landscape architect's current estimate) There will be a minimum of 264 trees in Penny Pie Park after completion of the works and we are still working with the landscape architect to see if this can be increased and incorporated into the design / usage.
On-site play provision	<u>Penny Pie Park:</u> The local equipped play area (LEAP) with a catchment area 400 meters 5 number of equipment pieces Multi Use Games area (which has a catchment area of 1200 meters) Story trail Outdoor Gym Equipment	<u>Penny Pie Park:</u> Upgraded to a Neighbourhood Equipped Play Area (NEAP) with a catchment area 1000 meters 8 number of equipment pieces New Multi Use Games area (which has a catchment area of 1200 meters) Story trail retained with some pieces re-sited Outdoor Gym Equipment retained and re-sited

	Current Situation	Proposed Scheme / Impact / Mitigations
On-site footpaths	<u>Penny Pie Park:</u> Flexi-pave to the north of the park from Grosvenor Walk, behind the nature trail and play equipment linking to Pogmoor Road.	<u>Penny Pie Park:</u> Flexi-pave to the north of the park from Grosvenor Walk, behind the nature trail and play equipment linking to Pogmoor Road. In addition, the creation of a new flexi-pave 3 metre shared foot / cycle path to follow current desire line through the central park area linking Pogmoor Road to Dodworth Road providing a clear dedicated route.
Off-site provision	<u>Pogmoor Recreation Ground:</u> Football Pitch	<u>Pogmoor Recreation Ground:</u> Retained Football Pitch Improved pedestrian access with provision of footpath, benches and dog fouling bins.
Off-site provision	<u>Sugden's Recreation Ground:</u> Equipped Play Area (EPA) with a catchment area of 400 meters 3 pieces of equipment	<u>Sugden's Recreation Ground:</u> Upgraded to Neighbourhood Equipped Play Area (NEAP) with a catchment area 1000 meters 8 number of equipment pieces

Air Quality

- 4.30 Version 2 of the air quality assessment was submitted in July 2018, in support of planning application 2018/0965 and the impact on air quality was a key consideration for Planning Regulatory Board. The air quality implications of the proposal have been explored, given that vehicle emission levels along Dodworth Road because of its heavy use and the amount of queuing traffic, have resulted in it being designated an Air Quality Management Area. Again, in principle, enabling traffic to flow more freely through this area has the potential to deliver air quality benefits to the existing residents in the immediate vicinity. This is not straight forward however as the results of the modelling has shown that whilst some locations, especially those nearest the crossroads would be benefitted, conditions would be worsened where the properties are located on the approach to the gyratory on Dodworth Road from the town centre.
- 4.31 However, these increases have been assessed as “slight adverse” and in those locations predicting an increase in concentrations of nitrogen dioxide gas, these concentrations would remain within the air quality objective. Elsewhere, the scheme is predicted to have “negligible” or a “slight to substantial beneficial” impact. For this reason the Air Quality Pollution Control Officer has resolved not to object to the

application. Accordingly, where emissions are forecast to increase, because they will remain within the objective, the effects are not considered to be sufficient to warrant objection. Moreover, in the areas where the modelling exercise predicted concentrations to be currently above the objective, residents stand to benefit from the scheme. Accordingly, the proposal complies with Core Strategy policy CSP41 and Local Plan policy AQ1.

Summary

- 4.32 The decision to award the planning decision was made in accordance with the development plan considering the need for the proposal and existing highway conditions, the assessment of alternatives including modal shift, impact on Penny Pie Park and other material considerations including residential amenity, visual impact, highway and pedestrian safety, climate change, flood risk and biodiversity.
- 4.33 Having regard to the above matters and all others raised in representations, Planning Regulatory Board considered that the benefits of the scheme attract great weight, primarily due to the lack of viable, alternative options. Although the scheme regrettably gives rise to a number of significant adverse impacts and although these can be mitigated to some extent, they nonetheless attract substantial weight. On balance therefore, whilst the proposal did not comply with the development plan, the great weight attributed to the benefits of the scheme was considered to outweigh the substantial weight given to the adverse impacts. Accordingly, other material considerations exist to justify a departure from the development plan and the application was therefore approved subject to the necessary conditions.
- 4.34 The council holds land for various statutory purposes in order to provide its functions. Such land is used only for the purpose of the function for which it was originally acquired until such time as the land is disposed of or “appropriated” for another purpose. Appropriation is the statutory procedure to change the purpose for which land is held from one statutory purpose to another provided that the land is no longer required for the purpose for which it was held immediately before the appropriation.
- 4.35 Based on the evidence provided in this report, and given the comparative needs for the alternative use of 1.133ha of the currently designated public open space, it is considered that there is a compelling case in the public interest that the 1.133ha of land identified in Appendix 1 is no longer required for the purposes of public open space and that the council appropriates from public open space to highway purposes.

5. CONSIDERATION OF ALTERNATIVE APPROACHES

- 5.1 A comprehensive analysis of all the alternative approaches that were considered and discounted during the development of the preferred scheme design were included in the approved A628 Dodworth Road / Broadway Junction Improvement cabinet report (“Cab25.07.2018/15”). The detail is summarised below:
- 5.2 Do nothing: The current congestion levels and capacity constraints, in addition the level of traffic that will be generated from current planning permissions and together with the employment and housing opportunities identified in the existing Core Strategy, means that without highways improvements or a massive shift from private car usage to public transport and active travel (which the council are fully

committed to encouraging), the future growth aspirations of the borough, i.e. the current Core Strategy will be unable to be accommodated.

- 5.3 Modal Shift: The starting point for the council when seeking to address capacity issues on the network is to consider whether or not it would be possible to achieve the necessary modal shift from private car usage to more sustainable modes of transport such as public transport or active travel (cycling & walking).
- 5.4 In terms of active travel, the Council is involved in a number of initiatives to promote walking and cycling. As detailed in section 4.13 of Cab.25.07.2018/15, over the past 4 years, £3.9m external capital funding has been secured and provided improved and new cycleways with the borough and £1.1m external revenue funding has been secured to promote and encourage active travel in the borough. The Council is currently developing its Active Travel Strategy and will seek to ensure that walking and cycling routes are considered and promoted throughout the design and delivery of any potential highway improvements in the borough. However it is recognised that it is unlikely that the modal share of active travel within the borough will increase to such an extent that it would not be necessary to improve the capacity of the Dodworth Road / Broadway / Pogmoor Road junction.
- 5.5 Public Transport, Bus Patronage: As identified in section 4.14 of Cab.25.07.2018/15, bus patronage has been falling within the borough and this mirrors both the national and regional trend. To address this, the Barnsley Bus Partnership was established and is working with the commercial and statutory public transport sector to enhance the bus network, services and ticketing initiatives. However, the increasing congestion on Dodworth Road affecting journey times for buses using this corridor between Barnsley Town Centre and Dodworth Road not only makes bus use less attractive as a potential travel mode to members of the public, but in a deregulated bus market, the financial viability of providing a bus service along Dodworth Road becomes more difficult to justify. In addition to the above, the Dodworth Road corridor does not benefit from any bus priority measures largely due not being able to be accommodated within the confines of the existing highway. The Council acquired a parcel of land at the time when the Dodworth bypass was constructed, for a potential park and ride. Regrettably, due to the confines of the site, the unfeasibility of providing bus priority measures in the vicinity and park and ride not proving to be as effective as was originally envisaged elsewhere within the borough, the proposal could not be progressed.
- 5.6 Public Transport, Rail Patronage: In contrast, the borough has seen a notable increase in rail patronage which mirrors the national trend. This has been particularly evident of the Hallam Line which can in part be attributed to the introduction of the fast Sheffield to Leeds service via Meadowhall, Barnsley and Wakefield Kirkgate. As detailed in 4.15 of Cab.25.07.2018/15, the Council published its Rail Vision in 2015, which is in the process of being updated to reflect significant changes that are likely to emerge through Northern Powerhouse Rail and HS2 as well as the commitments contained within the various franchises. Significant engagement with Network Rail, South Yorkshire Passenger Transport Executive, both city regions, rail operators and numerous other stakeholders has taken place. The outcome being that it is not possible to significantly increase rail frequencies along the Penistone Line to encourage modal shift for those commuting

into the borough from the West. In addition there are no proposals to increase the frequency of services along the Hallam Line within existing franchises so there is no prospect in the short to medium term of delivering rail improvements that would sufficiently offset car journeys along Dodworth Road during peak times.

- 5.7 Based on the above, the existing highway network has to be expanded to increase capacity. In terms of design options, BMBC Highways, Engineering and Transportation Service produced a number of alternative options to alleviate the congestion issues. (A summary of the options tested and discounted is shown below; full details are within the associated appendices).
- 5.8 **Option A** (see Appendix 3 of previously approved report Cab.25.07.2018/15) - The construction of a roundabout in the greenspace between roadway and Horizon Community College and a diverted Pogmoor Road (16 variants were tested). The short and limited stacking space for queuing vehicles limits capacity of this option for certain movements, and coupled with three adjacent road junctions, present co-ordination challenges.
- 5.9 **Option B** (see Appendix 4 of previously approved report Cab.25.07.2018/15) - The construction of left turn flares at the existing crossroads (4 variants were tested). This option requires Compulsory Purchase of third party land, along with development in the greenspace and did not resolve all forecast issues.
- 5.10 **Option C** (see Appendix 5 of previously approved report Cab.25.07.2018/15) - The construction of a roundabout in the greenspace, linking into the access to Horizon Community College and a diverted Pogmoor Road (8 variants were tested). This option presents navigational challenges for pedestrians and cyclists and does not resolve all forecast capacity issues.
- 5.11 **Option D** (see Appendix 6 of previously approved report Cab.25.07.2018/15) - The construction of a roundabout to replace the existing crossroads. This option requires Compulsory Purchase of third party land, along with development in the greenspace and did not resolve all forecast capacity issues.
- 5.12 **Option E** (see Appendix 7 of previously approved report Cab.25.07.2018/15) - The construction of a gyratory in the greenspace, with a diverted Pogmoor Road. This option did not resolve all forecast capacity issues.
- 5.13 **Option F** (see Appendix 8 of previously approved report Cab.25.07.2018/15) - The construction of a left turn flare from Dodworth Road (West) into Pogmoor Road. This option requires Compulsory Purchase of third party land to accommodate the flare, and would severely impact on residents' vehicle movements to access / egress their properties, in addition, this option did not resolve all forecast capacity issues.
- 5.14 **Option H** (see Appendix 9 of previously approved report Cab.25.07.2018/15) - Dualling of Dodworth Road between the crossroads and junction 37 of the M1, with additional short turn left flares from Dodworth Road in to both Pogmoor and Broadway. This option requires Compulsory Purchase of significant third party land to accommodate the flare and additional lanes and in addition, this option did not

provide a comparable level of capacity when compared to the preferred option G (Appendix 1 of previously approved report Cab.25.07.2018/15).

6. IMPLICATIONS FOR LOCAL PEOPLE/ SERVICE USERS

- 6.1 One of the Council's key priorities is to create a thriving and vibrant economy, create more and better jobs, good business growth, and to connect local people with these opportunities.
- 6.2 The delivery of the proposed scheme is expected to secure the facilitation of employment and housing opportunities identified in the existing Core Strategy, contributing to the provision of employment land to attract new investment and / or allowing existing businesses to stay in the area and expand.
- 6.3 The delivery of any highway improvement scheme will impact on the road users during construction. However, once completed, the scheme will:
- reduce congestion and queue lengths leading to time saving benefits for road users;
 - improve safety in the vicinity of Horizon Community College;
 - improve cycling and walking routes in the vicinity

7. FINANCIAL IMPLICATIONS

- 7.1 Consultations have taken place with representatives of the Service Director – Finance (S151 Officer).
- 7.2 The preferred scheme has been previously approved by Cabinet (Cab.25.07.2018/15 refers). There are no expected direct financial implications as a result of this report.
- 7.3 It should be noted, however, that should the appropriation decision be challenged on a legal basis, then the associated legal costs in relation to this would be incurred but are obviously unquantifiable at this stage.

8. EMPLOYEE IMPLICATIONS

- 8.1 There are no issues arising directly from this report

9. COMMUNICATIONS IMPLICATIONS

- 9.1 A robust communications plan has been developed with representatives from Executive Director of Core Services. This will be reviewed continually throughout the delivery of the project to ensure that timely and accurate information is provided through appropriate press releases via local press, social media/website updates, local member briefings, public information events and engagement with key stakeholders.

10. CONSULTATIONS

- 10.1 Discussions have been held with local members regarding the scheme.

- 10.2 The council published a notice of the proposed appropriation in the Barnsley Chronicle on 8th and 15th March 2019 as required by section 122 of the Local Government Act 1972 inviting representations to be made in writing to the Council no later than 8th April 2019. The notice and plans were advertised on the council's website. A copy of the notice is attached at Appendix 3.
- 10.3 105 letters were received in response to the council's notice, a summary of all the responses is set out in Appendix 4 and the letters are available to the decision makers as per section 3.6 of this report.
- 10.4 Consultation has taken place with the Friends of Penny Pie Park, who are a constituted community group, with regards to the redevelopment designs for the remaining park area. Consultation with this established community group will continue during design refinements and delivery.
- 10.5 Consultation has taken place with representatives of Core Services Directorate regarding the financial implications, asset management and risk management issues.
- 10.6 Consultation has taken place with representatives of Communities Directorate, Core Services Directorate and Place Directorate regarding the greenspace implications and potential compensatory measures.

11. THE CORPORATE PLAN AND THE COUNCIL'S PERFORMANCE MANAGEMENT FRAMEWORK

- 11.1 The scheme will contribute to the delivery of the overarching '**Thriving and Vibrant Economy**' priority set out in the Council's Corporate Plan 2015 - 2018.
- 11.2 The scheme was designed in the short term to ensure delivery of council's Core Strategy, which was the current development plan for the borough until 2026, this has now been superseded by the Local Plan (adopted 03.01.2019) up to 2033. The scheme will also provide better access to the redeveloped Town Centre from the M1 and western side of the borough, contribute delivering the following outcomes:
- Create more and better jobs and good business growth; and
 - Create more and better housing.
 - Develop a vibrant Town Centre, and
 - Strengthen our visitor economy.

12. PROMOTING EQUALITY, DIVERSITY AND SOCIAL INCLUSION

- 12.1 Better connectivity, affordable and inclusive travel, a cleaner environment and a healthier population are all key aims of the Barnsley Transport Strategy 2014 – 2033, and once completed will provide better connectivity and opportunities for local people to access work and assisting in addressing social exclusion.

13. RISK MANAGEMENT ISSUES

- 13.1 The project benefits from a detailed risk register which is reviewed on a regular basis by officers and the Council's Strategic Risk and Governance Manager

- 13.2 At the moment the main risk relating to this proposed development is that this report is not approved, and the council is unable to appropriate the 1.133 hectares of land for highway purposes and is unable to deliver the scheme set out in section 4.15 - 4.26. At that point, it may therefore be appropriate to consider the alternative approaches, set out in section 5 of this reports, some of which will have higher (or 'worse') risk profiles than the preferred proposal.
- 13.3 A project risk register has been developed, and risks relating to land usage; funding, consultation and traffic management issues as a result of the development have been identified. It is envisaged that if approval to appropriate the 1.133 hectares of land for highway purposes, a detailed project risk register will be produced which will become a valuable governance tool for the Strategic Sites Board.

14. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES

- 14.1 Health and safety has been considered carefully in the development of the Project, Health and Safety issues will be identified during scheme preparation and addressed as part of the Construction (Design and Management) Regulations 2015. Road Safety Audits are undertaken at various stages of the highway improvement scheme and comprise:-Stage 1 – Completion of preliminary design, Stage 2 – Completion of detailed design, Stage 3 – Completion of construction and Stage 4 – Monitoring (12 months and 36 months)

15. COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

- 5.1 The delivery of the proposed scheme does not interfere with private property rights. The rights of individuals are safeguarded through the statutory planning process of securing planning consent and authority to modify the highway network.

16. LIST OF APPENDICES

Appendix 1 – Plan showing the area of land proposed to be appropriated from public open space to highway purposes

Appendix 2 – A628 Dodworth Road / Broadway Junction Improvement scheme layout

Appendix 3 – Copy Appropriation notice and accompanying plans

Appendix 4 – Summary of Appropriation Notice Consultation responses

Appendix 5 – containing Land Registry Official Copies, conveyance details and historical maps

Appendix 6 - Plan showing current features in Penny Pie Park

Appendix 7 - Plan showing the proposed improvements to Penny Pie Park

Appendix 8 - Plan showing location of Pogmoor Recreation Ground and Sugden's (Stocks Lane) Recreation Ground that will also benefit from improvements as part of the mitigations .

17. BACKGROUND PAPERS

The full 105 responses are available to the decision makers to view via Barnsley MBC Legal Services.

A628 Dodworth Road / Broadway Junction Improvement approved Cabinet report (Cab.25.07.2018/15)

A628 Dodworth Road / Broadway Junction Improvement Planning Application Reference: 2018/0965

Jobs and Business Plan 2014 – 2017 (3 year review)

Housing Strategy 2014 -2033

Adoption Of The Local Plan Cabinet report (cab12.12.2018/8)

Barnsley’s Adopted Local Plan and Policies Map

If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made

Financial Implications/Consultation



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(To be signed by senior Financial Services officer where no financial implications)