

Report of:	Meeting	Date
Councillor Alan Vincent, Resources Portfolio Holder and Garry Payne, Chief Executive	Cabinet	27 March 2019

Appropriation of Land at Bourne Hill, Fleetwood
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1. Purpose of report

- 1.1 To consider the appropriation of land at Bourne Hill, Fleetwood (shown edged red on the plan annexed at Attachment 1) (“the Land”) under section 122(1) of the Local Government Act 1972 from its current purpose as a cemetery burial ground or crematorium, to planning purposes.

2. Outcomes

- 2.1 The appropriation of the Land for planning purposes will enable the council to deliver a suitable site for development in line with the Local Plan and to continue the economic growth in Thornton and Fleetwood, enhancing the Hillhouse Enterprise Zone and thus furthering the aims and objectives of the Councils’ Business Plan.

3. Recommendations

- 3.1 That Cabinet confirm that the Land currently held for use as a cemetery, burial ground or crematorium is no longer required for those purposes.
- 3.2 That Cabinet approves the appropriation of the Land to planning purposes to facilitate the carrying out of development of the Land in accordance with section 226(1)(b) Town and Country Planning Act 1990 and section 122 (1) Local Government Act 1972.

4. Background

- 4.1 The Land was acquired by the council by way of a Conveyance dated 7 December 1936 made between (1) Fleetwood Estate Limited (2) Wm Deacons Bank Limited and (3) Thornton Cleveleys Urban District Council. The Conveyance contained a number of covenants, in particular that “the

property shall not be used or permitted to be used for any purpose whatsoever other than that of a cemetery burial ground or crematorium". Therefore the Land was for use as a cemetery, burial ground or crematorium and remains so until appropriated for another purpose.

4.2 The restrictive covenants can be dealt with in one of two ways:

- (i) By application to the Lands Tribunal under section 84 Law of Property Act 1925 if it can be shown that the covenant is:
 - (a) Obsolete because of changes in character of the property/area;
 - (aa) impedes the reasonable use of the property; or
 - (b) Modification agreed by those who benefit from it; or
 - (c) Will not injure the persons with the benefit.

This is often a lengthy process which can take 12 months or longer. However current government policy supports granting applications where possible that deliver housing needs. Compensation is likely to be payable.

- (ii) Section 203 of the Housing and Planning Act 2016 provides that in circumstances where land has been appropriated for planning purposes and planning permission is granted for an appropriate purpose, such land can be used even though that use will interfere with third party rights or interests or breach a restriction as to use of the land. Again, compensation would be payable but an objector could not obtain an injunction, thus facilitating development of the Land.

4.3 If the appropriation recommended in this report is approved, then a detailed assessment of the most appropriate method of dealing with the restrictive covenants will be undertaken.

4.4 Section 122 of the Local Government Act 1972 provides the statutory power to appropriate land from one use to another. The key requirements of section 122 are:

- (a) That the land belongs to the council;
- (b) That the land is no longer required for the purpose for which it is held;
- (c) That it is for any other purpose for which it is authorised by statute to acquire land.

4.5 Wyre Borough Council is the registered proprietor of the Land which is registered at HM Land Registry with Title number LAN35532, therefore Section 122 (a) is satisfied.

4.6 Section 122(b) states that the land must no longer be required for the purpose for which it is held. It is for the local authority to determine whether the land in question is not required for the purpose for which it is

held immediately before its decision, and in reaching that decision the council must consider the public need within the area for the existing use.

- 4.7** The Land has been held by the council since 1936 during which time it has never been used as cemetery, burial ground or crematorium. .
- 4.8** The cemetery capacity based on current burial rates indicates that Fleetwood will provide a further 10.4 years capacity, Poulton 27.2 years and Preesall 16.7 years. There is no statutory requirement to provide burial space. However the Government's guidance "The Guide for Burial Managers" suggests that councils should forward plan available grave space for 10 years. Therefore based on current projections there is sufficient provision on a Borough wide basis that exceeds the Government's guidelines.
- 4.9** There is no statutory requirement to advertise or consult on a proposal or decision to appropriate land. However councils must adopt a "conscious deliberative process" to ensure that the statutory powers under which the land was held and the appropriation made is clear.
- 4.10** The new Wyre Local Plan 2011-2031 identifies the Land as Site SA1/3 allocated for residential development with potential to provide up to 153 new homes which would include circa 46 affordable homes and 20% of the housing to be adaptable for older people.
- 4.11** This is in line with the Council's Business Plan 2015 -2019 which includes priorities to promote housing growth and to support older people to remain independent.
- 4.12** During the Local Plan process, the Land was included as a proposed housing site in the 'Issues and Options' document published for consultation in 2015. Following publication only two representations were received (one from Thornton Action Group and one from a member of the Thornton Action Group) (precis attached at Appendix 2). Following examination by the Inspector, the Land was not subject to any Main Modification.
- 4.13** The council has statutory powers to appropriate land either by way of section 226(1) or section 227 of the Town and Country Planning Act 1990.
- 4.14** Section 226(1) gives statutory powers for the local authority to acquire compulsorily any land in their area:
 - (a) if the authority thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or
 - (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated; but a local authority must not exercise the power under

paragraph (1)(a) unless they think that the development, re-development or improvement is likely to contribute to (a) the promotion or improvement of the economic wellbeing of their area; (b) the promotion or improvement of the social wellbeing of their area; or (c) the promotion or improvement of the environmental wellbeing of their area.

4.15 Section 227 permits the council to acquire by agreement any land which they require for any purpose for which a local authority may be authorised to acquire land under section 226.

4.16 Officer recommendation is that the council appropriates the Land in accordance with section 226(1)(b) of the Town and Country Planning Act 1990, in order to achieve the proper planning of the area to meet the council's housing target and maintain a five year housing supply as identified in the Local Plan and as required by the National Planning Policy Framework.

5. Key issues and proposals

5.1 For the reasons set out above, it is considered that the Land is no longer required for the purpose for which it is currently held by the council and can be appropriated for planning use.

5.2 The council is subject to the Equality Duty and must, in the exercise of its functions, have due regard to (a) eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act; (b) advance equality of opportunity between people who share a protected characteristic and those who do not; and (c) foster good relations between people who share a protected characteristic and those who do not.

5.3 The council have carried out an Equality Impact Assessment process having full regard to the above. The agreed outcome was that there are no equalities implications at this time.

5.4 In making the recommendation, regard has been had to the extent to which this decision could ultimately impact upon third party rights and to the provisions of the First Protocol to the European Convention on Human Rights and that a fair balance is struck between the public interest and private rights. Officer view is that the balance weighs in favour of the public rights and therefore have recommended that the Land is appropriated in line with this report.

5.5 Any future proposals in respect of the land will be the subject of a further report as required under the Constitution.

Financial and legal implications	
Finance	There are no financial implications directly associated with this report. The land will be revalued internally in accordance with standard accounting practice.
Legal	<p>The proposal to appropriate must be the subject of a report and decision record or minute which must evidence that the Council formally appropriates the Land under section 122 of the Local Government Act 1972 and it must also be recorded that the Land is no longer required for the purpose for which it is currently appropriated and its future use will be amended to use for planning purposes under section 226 Town and Country Planning Act 1990.</p> <p>The report complies with these statutory requirements.</p>

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	✓
climate change	x
ICT	x
data protection	x

Processing Personal Data

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

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List of background papers:		
name of document	date	where available for inspection
None		

List of appendices

Appendix 1 Plan showing land at Bourne Hill

Appendix 2 Local Plan issues and options representations

dems/cab/cr/19/2703mh3

Fiona has reviewed the summary I&O and Publication representations to see if anyone has referred to cemetery provision on the Pheasant Wood Allocation SA1/3 and in general.

Issues and Options stage – two representations were submitted - Howard Phillip (ID 151) and TAG (687) (same person!) The representations refer to the site being earmarked for a cemetery. He also referred to fact that the site was earmarked for cemetery use as being a reason why the site to the south (IO_21 i.e. Rowland Homes development) passed the flooding sequential test (e.g. an alternative site outside the flood zone - IO_22 (Pheasant Wood) was needed for a cemetery.

I attach extracts from the Planning committee report and sequential test for 14/00131/LMAJ – referring to the Pheasant Wood site being unavailable which allowed the Rowland Homes site to pass the sequential test.

There were no other general references to cemetery provision in the representations.

Publication stage – There were no representations regarding cemetery provision on SA1/3 or any general references to cemetery provision in the borough. Howard Phillips / TAG representations at Publication stage do not refer to cemetery provision on SA1/3.