

Leyfields and Netherstowe Lessons

Learned

Cllr Doug Pullen , Leader of Council

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Agenda Item: 4

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Key Decision? NO

Local Ward Full Council

Members



CABINET

1. Executive Summary

- 1.1 In September 2018 a Cabinet decision was made to enter into a contract for the sale of two pieces of District Council owned open space known respectively as Leyfields and Netherstowe subject to relevant planning permission being obtained.
- 1.2 An independent external investigation was commissioned to uncover what, if any, errors were made in the process of this proposed disposal legal advice was sought as to the status of the consultation undertaken which revealed that the consultation process was challengeable in law as the contract had already been signed prior to consultation being undertaken.
- 1.3 This coupled with the Cabinet desire to see the subject land remain as open space gave rise to a negotiation with Bromford to cancel the contract by mutual agreement with Lichfield District Council paying compensation for costs reasonably expended. This agreement is currently being finalised following withdrawal of the planning applications for the two sites.
- 1.4 Following publication of the external investigation at Audit and Member Standards Committee in April (attached in Background papers) this report sets out the lessons learned and any actions the council has and will take to prevent such issues occurring in the future.

2. Recommendations

- 2.1 That Cabinet accept the recommendations arising from the external investigation
- 2.2 That Cabinet approve the proposed Action Plan to resolve those recommendations as set out in Appendix 1 and refer this to Audit and Member Standards Committee to monitor the implementation of these measures.
- 2.3 That Cabinet approve the Disposal Policy at Appendix 2.

3. Background

- 3.1 As has been stated in previous reports to Cabinet no Council would wish to find themselves in this position. Mistakes were made in the consultation process to sell the public open space that led to distress for members of our community and wasted time, energy and abortive costs for a valued partner. This is genuinely regretted and all officers involved in dealing with this issue going forward are committed to exposing any weaknesses in our existing systems and ensuring these are mitigated to prevent any such event occurring in future.
- 3.2 There are a number of lessons for the Council to note and learn from to improve our processes. Chiefly it is clear is that the obligations of s123 of the Local government Act 1972 should have been met in

2018 before the decision was made by Cabinet to dispose of the land for development, subject to planning consent and factored in to the decision making process.

- 3.3 Consultation and engagement with all member and our citizens is now a primary focus for this authority, as demonstrated through our strategy approved in December 2020.
- 3.4 Senior Officers in post at the time of the decision should have been aware of the requirements to undertake consultation for it to be meaningful before the decision was taken. This requirement has been built into a robust policy and procedure document to ensure future disposals are lawful.
- 3.5 At no point in the 18 months following the decision was the agreed sale figure reviewed to ensure it still met best consideration.
- 3.6 At the point of entering into the contract the sealing process was not robust enough to prevent the procedural error being detected.
- 3.7 Following the withdrawal of the agreement to sell the land to Bromford, a linked sale that was necessary to allow access to a local resident to their property, must now also be halted. As a result the abortive legal costs for the transaction must now also be paid to the resident concerned.

4. External Investigation Recommendations

- 4.1 An external investigation in to why the situation has arisen was reported to Audit and Member Standards on 27 April 2021.
- 4.2 It confirmed that the Cabinet decision in 2018 to dispose of the land was unsafe as the obligations of s123 of the Local government Act 1972 should have been met and considered as part of that decision.
- 4.3 The report set out nine recommendations which are detailed in the Action plan attached at Appendix 1. All recommendations have been accepted with the exception of the last in terms of how to safely proceed with disposal which is now not applicable given the recent Cabinet decisions respect of the sale.
- 4.4 The Action Plan will be referred to the Audit and Member Standards Committee for ongoing monitoring of its implementation and effectiveness.

5. Disposal Policy

- 5.1 As set out in the recommendations a clear procedure to dispose of assets safely and legally is a critical part of the improvements needed. The proposed policy and procedure to do this is set out as Appendix 2.
- 5.2 The policy has been developed with advice from legal professionals and other authorities in relation to how they go about disposals. Where applicable best practice has been adopted.

Alternative Options	1. Alternative options have been considered to resolve these issues, however those recommended for approval are deliverable within existing officer resources.
Consultation	1. Advice has been sought from legal professionals and other authorities in relation to how they go about disposals. Where applicable best practice has been adopted.
Financial Implications	1. None specifically arising from the report and the adopted approach, the additional processes can be absorbed within existing budgets but may mean a reduction in response times and de-prioritisation of other tasks and potential delays to sign off procedures as officers adjust to the new process and undertake training.

	2. An additional fee of circa £900 has been identified to pay abortive legal fees for a linked sale to allow access to a property at the Leyfields site. Now that the land is not being sold, these fees must be refunded to the resident where instructions had been made to their legal representative. This can be met from existing budgets.
Contribution to the Delivery of the Strategic Plan	Being transparent and open, acknowledging mistakes, and seeking to improve governance from a full assessment and investigation when things go wrong is part of being a Good Council
Equality, Diversity and Human Rights Implications	None.
Crime & Safety Issues	None .
Environmental Impact	The policy sets out a clear rationale to consider the impact of the loss of public open space remains and that any disposal meets the needs of the local community.
GDPR/Privacy Impact Assessment	There are no GDPR or privacy impact issues associated with this report as it contains no personal data or reference to personal data.

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Reputational risk	Being open and transparent.	Likelihood : Material Impact : Material Severity of Risk : Material
B	That recommended approach does not prevent future reoccurrence.	The external investigation sets out the issues and recommendations clearly, these have all been addressed.	Likelihood : Tolerable Impact : Tolerable Severity of Risk : Tolerable
C	That adopting the recommendations becomes onerous and time consuming.	Due diligence must take precedence when entering into contracts and disposing of assets.	Likelihood : Tolerable Impact : Tolerable Severity of Risk : Tolerable
D	That adopting the recommendations reduces capacity for other issues to be addressed	Re-prioritise work, reduce capacity for other areas of lesser priority and increase response times.	Likelihood : Material Impact : Material Severity of Risk : Material
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<p>Background documents</p> <p>Item 11 Final Investigation Report for AMS 27.4.21.pdf (lichfielddc.gov.uk)</p> <p>https://lichfieldintranet.moderngov.co.uk/documents/s10704/Item%20%20-%20Netherstowe%20Leyfields%20Open%20Space%20-%20cabinet%20report%20-%20final.pdf</p>
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<p>Relevant web links</p>
