

Fradley Parish Council

Policy and Procedure - Land Disposal or Land Acquisition

Introduction

Fradley Parish Council is committed to developing its landholding for the benefit of its residents. From time to time opportunities may arise which will enable the council to acquire land, either through donation, purchase, or lease. The council may also decide to sell, or lease land should opportunities, which benefit residents, arise.

As custodians of the parish land for future generations such opportunities will be carefully considered, however decision making in this regard will be firmly predisposed towards retaining parish land in most instances.

The council will be especially disinclined to dispose of land when, if developed, there might be negative impacts on the well-being of residents, the environment and the character of the parish as a whole, including those areas in close proximity to the land in question.

Any acquisitions or disposals will be to support the aims of our Neighbourhood Plan, the Council's Vision and our residents.

Considerations in all circumstances

The parish council will need to consider and take into account the following:

1. That Government legislation (as detailed in this document) is understood and used as a basis for decision-making.
2. To consider best value for the public purse.
3. To consider how they will demonstrate that maximum consideration has been given to the disposal or sale of land.
4. To consider that land cannot be disposed of for less than it is worth without the consent of the Secretary of State so knowing the value of the land is important to establish in the first instance.
5. To consider an open and transparent bidding process where required and certainly when there is more than one party interested in the disposal.
6. To consider how and when they will advertise the disposal or sale.
7. To consider what the land is currently appropriated for.
8. To consider if the land falls within the exceptional reappropriations and disposals guidance.
9. To consider if such a disposal promotes economic, social or environmental wellbeing, with a limit of £2million between the unrestricted value and the disposal value? If not, the parish council could not dispose of the land without the permission of the Secretary of State and in any case would need to know the value of the land prior to considering any disposal, if for no other reason than to formally confirm the council are not breaching the £2million limit. The council would

need to contact either the District Valuer or a Land Consultant/Agent for a valuation.

10. To consider on a case by case basis the valuation of the land – the council could instruct and pay for the District Valuer or a Land Consultant/Agent to value the land.
11. To consider on a case by case basis and ask the proposed purchaser to pay for the valuation as this may demonstrate a commitment. The prospective purchaser would need to be fully informed however, that the final decision to dispose or sale of land would rest with the council as the Corporate Body, so in paying for the evaluation there is no guarantee a disposal of land for example by sale or swap would take place.
12. To consider if the land has recently been valued and proper advice already taken.

Section 1 – Acquisition of land

The parish council are happy to look at ways in which to increase their portfolio of parish council owned land/open space for the benefit of the community.

Opportunities to obtain further land can come from Developers or via the District or County Council. This land/open space is normally gifted to the parish council in most cases for the benefit of the community.

Where land is identified as open space not owned by the parish council but is not currently being maintained to the standard that we would hope. The council will often look to see if there is anything that can be done to improve the area in the first instance by contacting the owner.

Procedure for acquiring land for use of public open space

- 1) Any request to acquire land for the use of public open space will be added to the next available parish council agenda by the clerk.
- 2) The clerk will produce a report to council setting out the proposed acquisition, what the land is currently appropriated for, details of the current owner and what proper advice if any is recommended that the council should consider for example, to obtain a land valuation. The clerk will request a resolution from the council to that effect to be able to move forward.
- 3) The Clerk will also request a resolution as to how the residents are to be informed and consulted.
- 4) The clerk will also request a resolution from the council to make contact with the current owner to gauge their intention for the land and to establish its history for example, has it been used for storing toxic substances, are there any hazards, ponds etc, and to ask if the council could obtain the land for the benefit of the community.
- 5) Once the clerk received information from the current owner a report will be completed to council for their next Parish Council meeting. This will detail if a land acquisition is an option and under what terms. The clerk will ask the

council for an indication as to whether the council still wishes to proceed to the next stage, i.e. to acquire the land by resolution.

- 6) If the council do not wish to continue with a sale at this stage the process will stop, and the current owner will be informed that the parish council does not wish to proceed with the acquisition of the land.
- 7) If the council still wish to acquire the land, there is a need at this stage for the council to consider the future cost and upkeep of the land, the clerk will write a report for council for their next meeting.
- 8) If the council still wish to acquire the land, they will consider employing a Solicitor, the clerk will ask the council for a resolution to contact a Solicitor to deal with the acquisition of the land.
- 9) The council will then formally decide at the meeting whether it wishes to confirm its intention to acquire the land based on the solicitor's advice.
- 10) Once the formal resolution is made that the land is to be acquired, the clerk will request delegated authority to deal with the administrative matters of the acquisition through to its legal conclusion along with the Solicitor.

Section 2 - Disposal of land

The Parish Council will not actively seek to dispose of land unless there are sound justifications, as set out below, to do so. The Parish Council values its land/open spaces as part of the fabric of the village and in most cases the monetary value of the land cannot match the amenity value to local residents.

A. Procedure if the Parish Council is approached or chooses to sell land

- 1) The request/proposal will be added to the next available Parish Council agenda by the clerk.
- 2) The clerk will produce a report to council setting out the proposal, what the land is currently appropriated for and what proper advice is recommended that the council should consider for example a valuation of the land and/or instructing a Land Agent.
- 3) If in the first instance a valuation of the land is required, the clerk will request a resolution from the council to that effect and will then arrange for the land to be valued as soon as possible.
- 4) Once the clerk received the valuation a report will be completed to council for their next parish council meeting. This will detail the proposal to dispose, the intended use once disposed and the price of the land. The clerk will ask the council for an indication as to whether the council still wishes to proceed to the next stage, i.e. to establish by resolution the council's intention to dispose of the land by way of a sale as set out in the report.
- 5) If the council do not wish to continue with a sale at this stage the process will stop, and the prospective buyer will be informed that the parish council does not wish to proceed with the sale of the land.

- 6) If the council still wish to sell the land, there is a need at this stage to choose and employ a Land Agent, the clerk will ask the council for a resolution to contact a Land Agent to deal with the sale of the land.
- 7) The council will then formally decide at the meeting whether it wishes to confirm its intention to sell the land based on the valuation, the nature of the proposed use of the land, any objections received and any other factors the council considers relevant.
- 8) Once the formal resolution is made that the land is to be sold, the council will follow the process below.

The Parish Council will consider which method to adopt when offering land for sale:

When it comes to selling land, there are a variety of different methods and strategies the Parish Council could use to achieve the highest price and best value for the community. One of these options is to work with a Land Agent and the Parish Council will rely upon professional advice. Generally, the Parish Council will prefer to sell by way of informal tender unless advised to use another sale process.

Procedure for the disposal of Parish Council Land by way of swapping for other land, leasing etc.

On the receipt of a request/proposal for the Parish Council to dispose of land, the following procedure should be followed:

- 1) The request/proposal will be added to the next available Parish Council agenda by the clerk.
- 2) The clerk will produce a report to council setting out the proposal, what the land is currently appropriated for, what rights and restrictions affect the land, what restrictions could be placed on the land, and what proper advice is recommended that the council should consider, for example, obtaining a valuation of the land.
- 3) If in the first instance a valuation of the land is required, the clerk will request a resolution from the council to that effect and will then arrange for the land to be valued as soon as possible.
- 4) Once the clerk has received the valuation, a report will be completed to council for their next Parish Council meeting. This will detail the proposal to dispose, the intended use once disposed, swap/lease length/rent etc. The clerk will ask the council for an indication as to whether the council still wishes to proceed to the next stage, i.e. to establish by resolution the council's intention to dispose on the terms as set out in the report.
- 5) If the council do not wish to continue with the disposal at this stage the process will stop and the prospective person will be informed that the parish council does not wish to proceed with the disposal of the land. The council will list any reasons for the rejection as per the considerations below.
- 6) If the council still wish to dispose of the land, there is a need at this stage to advertise the intention to dispose of the land for two consecutive weeks in a local newspaper and on the Parish Council website, notice boards and

Facebook page inviting any objections to be submitted to the clerk. The clerk will ask the council for a resolution to advertise the disposal of the land and then arrange for this to be carried out as soon as possible.

- 7) Once the deadline for responses has passed the clerk will draw up a further report to council ready for their next meeting, including any objections submitted (redacted under GDPR) or confirm that no objections have been received.
- 8) The council will then formally decide at the meeting whether it wishes to confirm its intention to dispose of the land based on the valuation, the nature of the proposed use of the land, any objections received and any other factors the council considers relevant.
- 9) Once the formal resolution is made that the land is to be disposed, the clerk will request delegated authority to deal with the administrative matters of the lease, swap etc, through to its legal conclusion along with the appropriate solicitors.

When coming to a decision about the disposal of land, the council will use the criteria below, along with any other factors tabled at the time of debate, to reach a balanced judgement as to whether a disposal should be made.

The council will be inclined to dispose of land when one or more of the following apply:

1. the financial advantage for the parish meets the financial tests described above.
2. the council's current or future liability for maintenance and repair outweighs the current or future amenity the land provides for residents.
3. disposal facilitates broader projects which the council deems to be for the benefit of residents.
4. disposal allows other recognised charitable or not for profit organisations to consolidate landholding for the public good. e.g. Woodlands Trust, Canals and Waterways, National Trust etc.
5. the parish land provides no current discernible amenity to residents nor uncommon environmental advantage for flora or fauna.
6. the value of the land is unlikely to increase beyond inflation, taking into account current market forces, foreseeable additional local developments and national initiatives.
7. disposal will contribute to the vision of the council, goals of the agreed Neighbourhood Plan and the councils' medium-term planning objectives.

The council will be disinclined to dispose of land when one or more of the following apply:

1. the land's location and current condition add visual amenity.
2. the land has potential to provide opportunity for sport, leisure, or recreation activities
3. the land contributes to the environmental distinctiveness of the area.

4. the land or and its current condition adds to the cultural and heritage dimension of the landscape.
5. the land currently provides useful access routes to residents.
6. acquisition of the land by a third party is likely to facilitate land use which conflicts with the principles established in the Council's Vision Statement, Neighbourhood Plan or Lichfield District Council Local Plan

These lists are for guidance purposes and not exhaustive.

Legislation

Ordinary Appropriation: Land acquired for a purpose is said to be appropriated to that purpose, and can be used for no other purpose, unless the Law permits it, but with certain exceptions a local council, with the Secretary of State's consent, may reappropriate any land not required for the purpose for which it was acquired or appropriated to some other purpose, subject, to the rights of other persons over the land. Appropriation and reappropriation must be made by resolution and are, in their nature, meant to be long lasting. There are no special restraints on the reappropriation of compulsory purchased land as such. [Local Government Act 1972 s126 \(1\)-\(3\)](#)

Ordinary Disposal of Land: Under [Local Government Act 1972 ss127 \(1\) and 131 \(3\)](#), provides that a parish council may dispose of land held by them in any manner they wish, but they must secure the best consideration that they can. (The same provisions in relation to the disposal of land by principal councils are contained in [s 123.](#))

If the land is not held in charitable trust and the disposal is less than the land is worth. The Secretary of State's consent is needed, unless either the disposal is by way of short tenancy, that is a term not exceeding seven years or the assignment of a term with no more than seven years still to run [Local Government Act 1972 s127 \(2\) and \(5\) Local Government Act \(Miscellaneous Provisions\) Act 1976](#). The Secretary of State has given a general consent for the disposal of land at less than full value where:

- A) The council considers that the purpose for which the land is to be disposed is likely to contribute to the achievements of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:
 - i. the promotion or improvement of economic well-being
 - ii. the promotion and improvement of social well-being
 - iii. the promotion or improvement of environmental well-being; and
- B) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 [Local Government Act 1972 s127 \(2\) and \(5\); Department of communities and Local Government Circular 06/03; Local Government act 1972; General disposal consent \(England\) 2003; disposal of land for less than the best consideration that can reasonably be obtained.](#)

Exceptional reappropriations and disposals: In some cases (apart from special covenants) a council owes a duty to the public that land in its possession shall be used for the purpose for which it was acquired. Reappropriation and disposal can threaten that purpose and therefore special formalities must be observed before they can take place.

Open Space: A council cannot reappropriate or, save by way of short tenancy, dispose of any open space or part of it without first advertising its intention for two consecutive weeks in a local newspaper and considering any objections. Such a disposal or reappropriation frees the land from any trust arising solely from its being held in trust for the enjoyment of the public under the [Public Health Act 1875, s164](#), or [Open Space Act 1906 s10](#)

Commons and Allotments: A council wishing to reappropriate land forming part of common or field garden allotments must first advertise its intention for two consecutive weeks in a local newspaper and consider objections. The council then makes the reappropriation by order which has to be confirmed by the Secretary of State, unless the area to be appropriated does not exceed 250 square yards. [Town and County Planning Act 1971 s121](#), amended by the [Local Government Act 1972 s126 \(4\)](#).

Cycle and car parks: A council may, with the Secretary of State's consent, appropriate for the purpose of a cycle or car park any part of a recreation ground , open space or land acquired under repealed [Physical Training and Recreation Act 1937 s 4](#), or its successor, the [Local Government \(Miscellaneous Provisions\) Act 1976 s19](#), provided that the land does not exceed the lesser of one-eighth of the total area or 800 square feet. [Road Traffic Regulations Act 1984 s51](#).

Parking spaces may be let for periods not exceeding seven days, but without prejudice to the council's right to let the land, of which they form a part, for a longer period. [RTRA 1984 s57 \(7\)](#)

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