

Report of the Strategic Director Regeneration to the meeting of the Executive to be held on 14 June 2016.

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Subject:

**LAND AT TENNYSON ROAD/FAIR ROAD, WIBSEY (WIBSEY FAIRGROUND) –
OBJECTIONS TO PROPOSED APPROPRIATION OF LAND**

Summary statement:

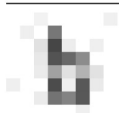
This report considers objections received to a proposal advertised under Section 122 of the Local Government Act 1972 (As Amended) for the appropriation of land for the creation of a car park on part of the Wibsey Fairground site.

Mike Cowlam
Strategic Director
Regeneration

**Portfolio: Regeneration Planning &
Transport**

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Overview & Scrutiny Area:
Environment and Sport



1.0 SUMMARY

- 1.1 This report considers objections received to a proposal advertised under the Local Government Act 1972 (As Amended) for the appropriation of land for the creation of a car park on part of the Wibsey Fairground site.

2.0 BACKGROUND

- 2.1 A petition (containing 972 signatures), requesting that the fairground site in Wibsey be used to create an additional parking area, was submitted to the Council in autumn 2013. The petition was presented to the Bradford South Area Committee at the meeting on 28 November 2013, by which time the number of signatures had risen to over 1500

- 2.2 The Area Committee on 28 November 2013 resolved:

That the Bradford South Area Committee requests the further development of proposals to introduce a parking area on Wibsey Fairground (to an agreed size as detailed in 3.2-3.4 to Document "A1").

That the completed proposals be brought to the March 2014 Committee meeting for consideration for funding in the 2014/15 financial year.

- 2.3 Following subsequent consideration of the proposal at meetings on 27 March 2014 and 25 September 2014, the Bradford South Area Committee has allocated funding to promote a car park scheme.
- 2.4 The proposed car park would occupy approximately 10% of the overall recreation site. Therefore, whilst this would provide additional parking for visitors to Wibsey centre, it would not compromise the site's historic use as a fairground. Furthermore, the parking facility would be available for use in association with the fairground. A location plan is attached as **Appendix 1**.
- 2.5 The proposed scheme features a porous grid system for the parking bays to minimise visual intrusion and environmental impact. However the car park access and aisle would be hard-surfaced to reduce the need for future maintenance on the mostly heavily trafficked areas. This would also resolve an existing issue with the surface of the site access, which can become muddy when HGV's associated with the fair enter and leave the site. A system of removable barriers would also be incorporated in the proposals, to prevent unwanted (day to day) access for vehicles other than cars and motorbikes, but allow HGV and service vehicle access when required.
- 2.6 Vehicular access to the site would remain as existing, from Tennyson Road. It is not anticipated that the proposal would generate an additional level of vehicular movements that would be detrimental to road safety.
- 2.7 Planning permission (ref 15/03060/FUL), for the scheme detailed on plan no. TDG/THS/102767/GL-1A, attached as **Appendix 2**, was granted on 14 October 2015. The proposal has also necessitated a process in accordance with Section 122 of the Local Government Act 1972 (As Amended) for the appropriation of land. This was advertised in August 2015. As a result of that process 4 letters of objection

have been received.

2.8 The objections relate to a number of areas including legal process, funding, land use and highway safety. Copies of the letters of objection are attached as **Appendix 3.**

2.9 In addition to making general objections amongst others as to highways concerns and there already being sufficient car parking in Wibsey, the representations raise objections of a legal nature as follows:-

i. The Council has failed to take account of the Localism Act 2011 parts 5 community empowerment and Part 6 Planning consultations (objects to report dated 25th September 2014)

ii. It is existing open space under section 10 Open Spaces Act 1906 (which prohibits its use as a car park).

iii. Existing rights/covenants/ charters exist as to the use of the land (which prohibits its use as a car park).

iv. Whether it is common land (which prohibits its use as a car park).

v. Whether it be designated under 164 Public Health Act 1875 (pleasure ground) (which prohibits its use as a car park)

vi. The Council has failed to comply with s 226 TCPA 1990

vii. The Council has failed to comply with section 99 Planning and Compulsory Purchase Act 2004

viii. The Councils Bradford South Area committee has acted ultra vires September 2014.

ix. Insufficient consultation.

2.10 Legal advice was obtained in respect of the objections and is set out in section 6 of this report

2.11 The objections, legal advice and the whole circumstances of the matter were given consideration by the Strategic Director Environment & Sport on 20 April 2016, who resolved that the appropriation should proceed. A copy of the decision sheet is attached as **Appendix 4.**

2.12 As a result of informing the objectors of that decision, two of the objectors have submitted further representations to confirm that they maintain their objections. In such circumstances the legal advice is that the matter is referred to the Executive committee for a final decision. The further representations are attached as **Appendix 5.**

3.0 OTHER CONSIDERATIONS

3.1 This report has not been included on the published forward plan as an issue for consideration however on the basis of:

i. Objections to the S122 Local Government Act advertisement have been outstanding since 2015.

- ii. There will be a significant lead-in time to project construction. Funding is allocated from the LTP 3-yr implementation plan for 2014-2017. There is a risk that any LTP funding not expended within this period could be re-profiled.

it is considered impractical to defer the decision until it has been included in the published Forward Plan. As such the report is submitted in accordance with paragraph 10 of the Executive Procedure Rules set out in the Council's Constitution.

- 3.2 Local ward members, bus operators and the emergency services have been consulted. Ward members have supported the proposal.
- 3.3 The proposals have also undergone successful consultation with the Showman's Guild, whom is a statutory consultee.

4.0 FINANCIAL AND RESOURCE APPRAISAL

- 4.1 The estimated cost of the scheme is £60,000. This has been allocated from the 2014/15, 2015/16 and 2016/17 Safer Roads budgets.

5.0 RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 There are no significant risks arising out of the implementation of the proposed recommendations.

6.0 LEGAL APPRAISAL

- 6.1 Planning Permission for the development was granted on the 14th October 2014 by the Bradford Area Planning Panel under number 15/03060/FUL.

Extracts from the officer's report are as follows:

"Site Description:

The site is an area of open informal recreational land on the fringe of Wibsey local centre, specifically the application relates to a 20 metre x 47.5 metre proportion in the north east corner adjacent to the junction of Fair Road and Tennyson Road.

Replacement Unitary Development Plan (RUDP):

Allocation

Recreational Open Space.

Publicity and Number of Representations:

The application has been publicised via site notice and individual neighbour notification letters. The publicity period expired on 26th August 2015. 14 objections have been received.

The Principle of the Development

The site is an allocated recreation open space on the RUDP and as such the proposal is subject to assessment against Policy OS2, which stipulates that development will not be permitted unless:

- a. The loss of the recreation open space does not lead to or exacerbate a local deficiency and the site could not be used to help to meet any deficiency in another type of open space, or
- b. The development proposal provides for equivalent alternative provision in terms of size and quality which is close to existing users
- c. And in either case it does not result in a significant loss of amenity.
- d. The development proposal is ancillary and supports the recreational use, and would not significantly affect the quantity and quality of open space, its recreational function or its character and appearance.

The above is also reflected in paragraph 74 of the National Planning Policy Framework (NPPF).

Other Issues raised in the Representations to the appropriation under s122 LGA 1972

- 6.2 Consultation with residents has been raised in several of the representations. In terms of the planning application the publicity given to the application has exceeded the publicity requirements for this type of development. The process of appropriation of the land and consultation associated with this is a separate issue outside the remit of the planning process.
- 6.3 Whether the application site should be subject to legal direction or covenant is again beyond the remit of the planning process. The granting of planning permission does not supersede any legal direction or covenant on the land."
- 6.4 The minutes of the planning decision show a ward member spoke in favour but no objectors spoke. The officer recommendation was approved. The application was dealt with properly.
- 6.5 Part 6 of the Localism of the Localism Act 2011 (S.61W of the Town & Country Planning Act 1990 (T&CPA) does not apply. This provision only applies where the proposed development is of a description specified in a development order.
- 6.6 S.226 T&CPA (as amended by S.99 of the Planning & Compulsory Purchase Act) does not apply as this relates to the compulsory purchase of land for planning purposes.
- 6.7 The Council's planning service refer to the site as "open informal recreation land" This cannot be relied upon as a legal definition of the use of the land.

- 6.8 A search of the Councils Terrier (land owned by the Councils and the purpose for which it is held) has been undertaken to identify if the land use purposes link with the Public Health Act 1875 (the 1875 Act) or the Open Spaces Act 1906 (the 1906 Act). It should be noted after checking the purchase deeds that the land was not appropriated by the Council under either the 1875 and 1906 Acts as land to be used as open space.
- 6.9 It should also be noted that the holding department has concluded that the land is no longer required for its current use as open space and in any event the creation of the car park will enhance the use of the remaining open space by providing additional off road car parking but that is a relevant matter to be confirmed in the making of this decision..
- 6.10 A search of the Register of Common Land is conclusive as to whether or not the land is common land. The search revealed it is not common land under the Commons Registration Act 1965. A check of the Councils Terrier also confirmed that the proposed car park is not on registered common land.
- 6.11 In the course of the legal deeds check this revealed Wibsey Fair Ground was acquired by the Council in two transactions in 1976 and 1981, (although this matter concerns the northern part of the land) purchased for £24,000 in 1976 and registered under title WYK80960.
- 6.12 There are no covenants mentioned within the title deeds which affect its use, although there are entries relating to the maintenance of boundaries and rights of way to Cock Pit pond - part of the site to the south which the Council later acquired. There are no positive covenants e.g. that the land is to be used as a fairground and equally no negative covenants preventing its use for certain purposes e.g. as a car park. Whilst it is used for an annual fair, this is by an agreement each year.
- 6.13 The Council's legal service commissioned the Open Space adverts for the proposed appropriation of land for the car park in August 2015 upon instruction from the holding Department. The land appears as open space in its character notwithstanding the Council did not purchase it as such.
- 6.14 The advert referred to the Local Government Act 1972 (the 1972 Act) and stated it was in connection with the appropriation of public open space for use as car parking which although the advert did not specifically refer to s122 of the 1972 Act.
- 6.15 The advert refers to a grant of a lease of the land (rather than an intended appropriation) and states the address of the land and gave the opportunity for people to see a plan of the area concerned, thus providing notice to interested parties that there was a proposal to create car parking on part of the site which led to the objections. On balance Legal advises the notice is valid as the proposed appropriation has been brought to the attention of the public and objections and representations have been received.
- 6.16 Legal also advises that neither the decision of the planning committee nor the Area Committee is ultra vires. In any event, the time scale to challenge is normally six weeks by way of judicial review from the date of the decision.

7.0 OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

Due regard has been given to Section 149 of the Equality Act when determining the proposals in this report.

7.2 SUSTAINABILITY IMPLICATIONS

The proposal utilises a porous grid system for the parking bays to maximise sustainable drainage provision.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

There is no impact on the Council's own and the wider District's carbon footprint and emissions from other greenhouse gasses arising from this report.

7.4 COMMUNITY SAFETY IMPLICATIONS

The provision of an identified car parking area would reduce vehicle circulation within the district centre which would be beneficial in terms of road safety

7.5 HUMAN RIGHTS ACT

None.

7.6 TRADE UNION

None

7.7 WARD IMPLICATIONS

All ward members have been consulted on the proposals.

7.8 AREA COMMITTEE WARD PLAN IMPLICATIONS

- 7.8.1 The development and implementation of proposals included in this report supports priorities within the Bradford South Area Committee Ward Plans 2015-16.

8.0 NOT FOR PUBLICATION DOCUMENTS

- 8.1 None

9.0 OPTIONS

- 9.1 Members may propose an alternative course of action; in which case they will receive appropriate guidance from officers.

10.0 RECOMMENDATIONS

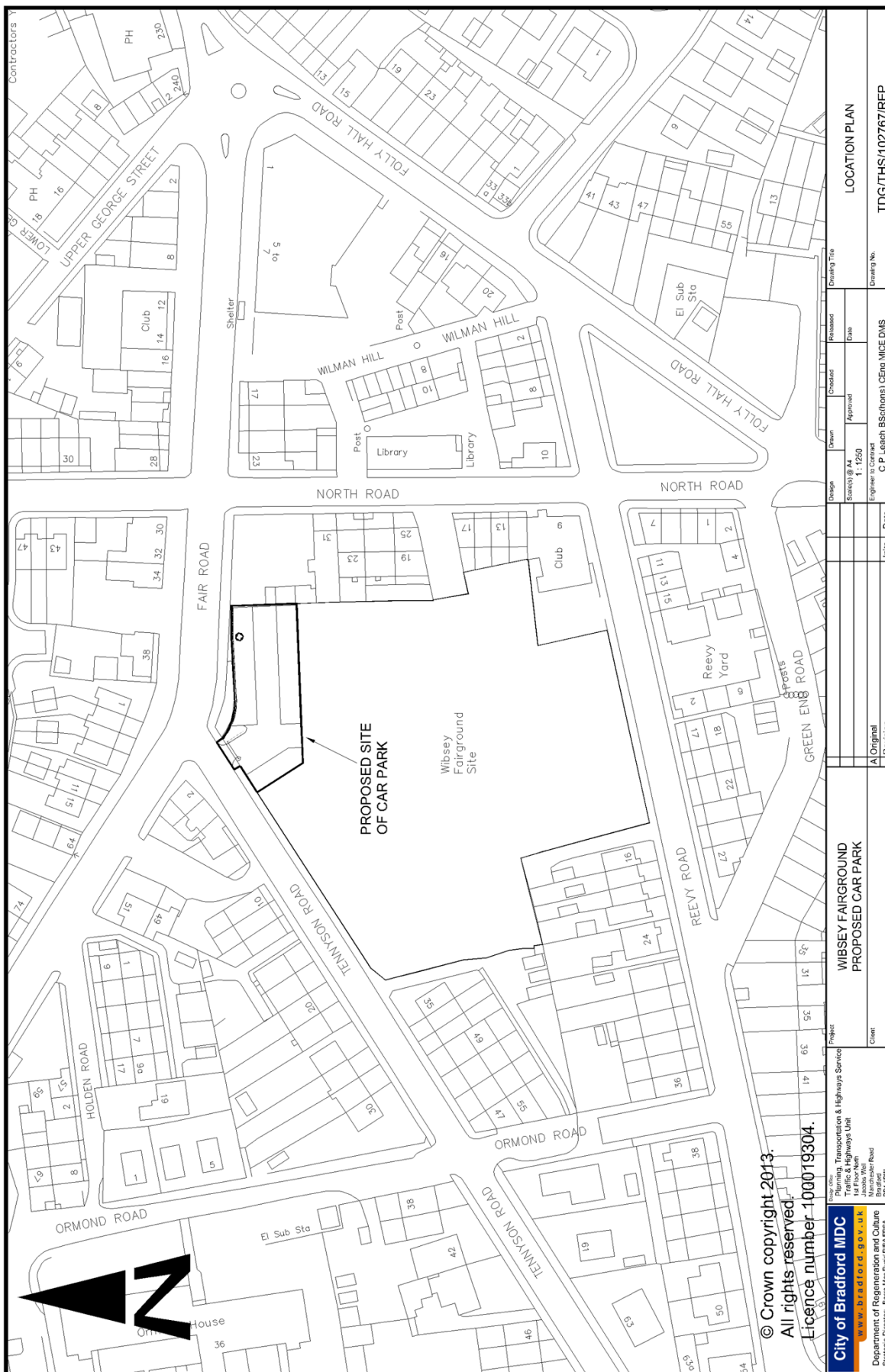
- 10.1 That the objections to the advertisement under S122 of the Local Government Act 1972 (As Amended) for the appropriation of land for the creation of a car park on part of the Wibsey Fairground site be overruled and that the appropriation be confirmed.
- 10.2 That the objectors be informed accordingly.

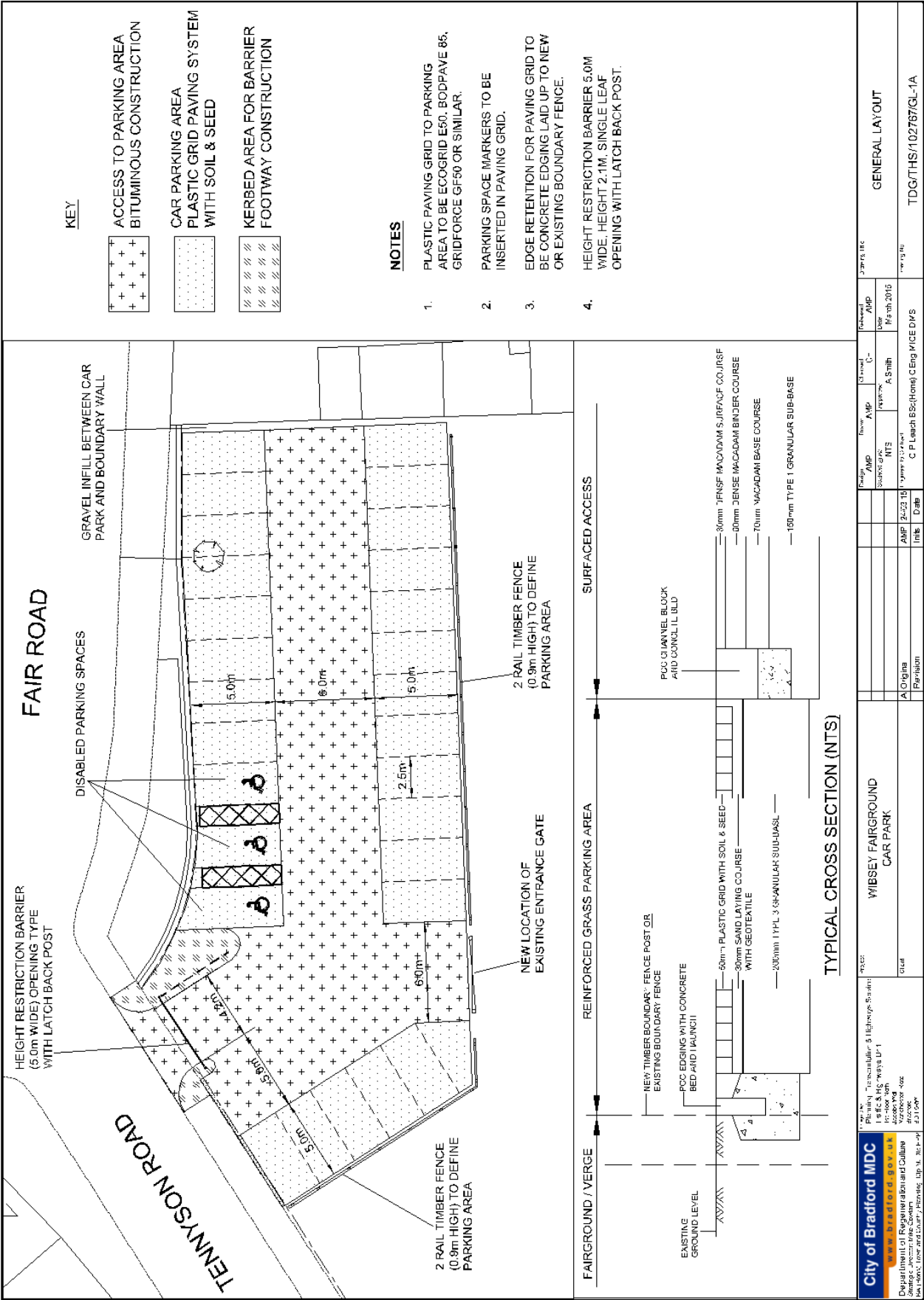
11.0 APPENDICES

- 11.1 Appendix 1 – Location Plan
- 11.2 Appendix 2 – Plan No TDG/THS/102767/GL-1A
- 11.3 Appendix 3 – Copies of submitted objections.
- 11.4 Appendix 4 – Copy of Strategic Director Environment & Sport Decision Sheet no.1/2016.
- 11.5 Appendix 5 – further representations

12.0 BACKGROUND DOCUMENTS

- 12.1 City of Bradford Metropolitan District Council File Ref: TDG/THS/102767
- 12.2 Reports to the Bradford South Area Committee on 28 November 2013, 27 March 2014, and 25 September 2014.
- 12.3 Report to the Area Planning Panel (Bradford) 14 October 2015
- 12.4 Planning Permission ref. 15/03060/FUL.





30th August 2015

Dear Sir or Madam,

Ref: LEG.PLKES.D32946

Proposed parking places on Wibsey 'Fabground'

With reference to the recent notice in the Telegraph & Argus, I wish to OBJECT to the proposal.

I collected a plan of the proposal and spoke to one of the legal officers. Yes, this junction of Tennyson Road and Fair Road is often very busy, and there is, of course, the working garage which is long established and well regarded in the village. Rather than relieve congestion at this junction and the area in general, I suggest that more activity and congestion is very likely to result if the proposed plan is implemented.

If, also, this proposal proceeds, and despite the fact that the area is a designated open space, this could be the thin edge of the wedge to taking more and more land on the generally named *fabground* for various purposes. This could ultimately result in:

- A. a further increased need for more parking spaces
- B. much reduced open space for Wibsey residents – the *fabground* currently provides something akin to an urban 'lung'
- C. the loss of a long established amenity (I know that the *fabground* has been so used at this location for probably 120/130 years and not in perpetuity as is sometimes said).

As a motorist, now in my 80's, arthritic and frequently very short of breath, and without a blue badge parking permit, I think that Wibsey has a good number of short term parking places available. These are usually well signed, be it one, two or three hours plus options to return after a proper time lapse.

Presumably the proposed parking would also be time/return limited, creating more activity. If it were to be unlimited all day parking, no doubt the 25 + 9 blue badge spaces would, most likely, be occupied very early in the day and not vacated until businesses closed around five or six pm.

Yours faithfully,

In this part of the village, Ormond Road (from Tennyson Rd to almost Fair Rd) has wide unkept verges. Could these verges be 'tamed' and then provide perhaps a dozen time/return limited spaces? Or would that necessitate the Council's adoption of the whole road and the subsequent need to make the road – and, therefore, in current circumstances a non-starter!

2 September 2015

Suzan Hemingway
City Solicitor
City Hall
BRADFORD BD1 1HY

Dear Madam,

Proposed Appropriation of Land at Tennyson Road/Fair Road, Wibsey
Ref. LEG.PL.KES.D32946

As a resident of Wibsey and also Chairman of Wibsey Local History Group I object to the appropriation for car parking purposes of part of the open space known locally as "The Fairground". This has been an open space in the centre of the village for centuries, and I see any appropriation of part of it as the thin end of the wedge.

It will be expensive at a time when the Council is cutting back on essential services, and the funds could be put to better use.

It is also unnecessary. A few vociferous shopkeepers have clamoured for more parking space, but the Council's actions of restricting street parking in Wibsey has made the matter worse. Oakroyd Road, which is very close to the shops of the High Street, is but one example. All the houses have drives, and there used to be plenty of space there for short-term parking. I walk round the village from time to time looking for parking spaces and have no problem finding some.

At the moment the Fairground is closed off except when a Fair is held. Leaving it open for parking will also leave it open for "travellers". And we know what happens when they settle on city car parks!

I hope that the lease of land will be turned down.

Yours sincerely,



Re : LEG PL KES D 32947 Appropriation of Land Wibsey Fair

4th September 2015

Dear Ms Hemmingway

I object to on the following grounds that the council cannot reasonably demonstrate, that the land in question (to which they have a material commercial gain in changing its use) is no longer required, in so far as there is an annual and traditional fairs held of diverse nature and where there remains alternative options or unequivocal view to the land use

That in doing so no impartial material consultation presenting all of the material facts relevant to open space was provided before the making of the proposed order, that such notifications where not made or given to all (SS 2:3 Directors report), residing in the South Bradford Neighborhood or represented by the same and would be such to prejudice or unduly influence impartial outcome. I refer to the promotion of a car park by financial inducement

That there are extant rights for avoidance of doubt (entitled) or as a Fair by the Public or in the alternative as a Public Open Space or designated Play Area, and in the impartial examination, report or any other committee designated should without prejudice be obliged under constitution to be clear on what Charter, Covenants or other Inherent rights exist. For avoidance of doubt I refer to email of the same requesting information regarding rights, covenants charter and designated use of the land. That such a report should pre date the making of any order so informed objection or decision may be made without prejudice and comply with any current direction given by government

In the advertisement and notification the authority has not been express in stating under what section of Local Government Act 1972 that the authority seek to determine the matter. I assert the council failed to duly advertise. I refer to the councils response in regard to the advertised matter. Section 122 Local Government Act, in the event that your intention is unclear and nothing therein constitutes the making of an order under the council's delegated powers, there is nothing therein to restrict objection hereafter.

"I am not sure if this is what you are referring to in your email as the Order." Council Officer advertising the same

In the event the council seek to utilize SS 122 (1a)(1b) of the LGA 1972 in placing the order has not expressly defined the material area of land it intends to appropriate. It also follows the same regarding open Space 2(a) and has not consulted in regard to any statutory direction

In the making of the order the right to object is prejudiced because the authority has failed to inform the public of all the relevant material facts (its designated and current use) and the method and reason for appropriating the land

That you cannot lease the land before it is in fact appropriated or dealt with according to government direction on open space , that no reference or information on material basis to any lease has been provided , in order to which to comment and to which no unequivocal resolution has been made

Neither is it clear which of the diverse acts would take precedent over any other , or whether in fact section 10 of the Open Spaces Act 1906 would extinguish any common right in regard to the method of seeking the order by virtue of it being leased . In the advertisement and notification it is not express in stating under what section of Local Government Act 1972 that the authority seek to determine the matter

(a) Whether it be Common

(b) 164 of the Public Health Act 1875 (pleasure grounds); or

(c) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds).

In its implied form the order refers to Public Open Spaces which are subject to any conditions under which the estate, interest, or control was so acquired and with a general term used "with a view to, the enjoyment" whether that view in law is superceded as an entitlement by virtue of the land being ascribed as an ancient Fair is a vexed question and any right to carry out practice or provide a trade , service or product as a historical consequence by diverse people.

That it would not be in the Public Interest to have notice served section 68 of the Lands Clauses Consolidation Act 1845 and section 10 of the Compulsory Purchase Act 1965 in the event of any aggrieved party to be settled by arbitration or jury, at the option of the party claiming compensation. ~~ing Travellers Extant Right to apply Trade . Human Rights act Applicable~~

I refer to the email dated 1⁴ September 2015 and to which notice was duly raised prior to the closure date seeking outstanding material information relevant to the making of objection and the provision of material facts of which the authority are obliged to provide in the Public Interest

I am not satisfied that you have provided , in the public interest , details or appraisal of all rights , covenants , charter , easements or other considerations in balance to the same . In order to make informed appraisal of appropriation of the land at any time considered time close to making the order

I am not satisfied that you have undertaken any detailed or impartial appraisal relating to the principle issue of appropriating the land. You have not alluded to the legal definition of Fairground as given by charter or any other extant market right

That in conclusion that the process is flawed and the council also the agent should withdraw any planning application without prejudice until such times as appropriation is duly made , that to proceed on any planning decision that can not be practically implemented , is in fact detrimental to the public purse and public interest

In the matter of any document you the Council, may rely upon Report of the Strategic Director of Regeneration and Culture to the meeting of Bradford South Area Committee to be held on 25th September 2014,

- (1) A petition (containing 972 signatures), requesting that the fairground site in Wibsey be used to create an additional parking area, was submitted to the Council in autumn 2013 and alleged to be 1500 signatures. It has been drawn to the attention of the Council that this petition was flawed as the Ward was incorrectly titled. That a request to view or source the same has not been met
- (2) That no such petition can be readily sourced and in marked contrast to the petition opposing the same was not provided in outline within the said report
- (3) That a number of Council members had a material interest that remained undeclared in so far as they have roles or been involved with the Wibsey urban Village Group convener of the proposals for, and in conflict with members Code of Conduct
- (4) That such a report contains a secondary petition which states clearly a well considered case against
- (5) That there is therefore no unequivocal resolution on this matter
- (6) That reference That the Bradford South Area Committee requests the further development of proposals to introduce a parking area on Wibsey Fairground (to an agreed size as detailed in 3.2-3.4 to Document "A1"). Would be contrary elements of appropriation defined within the section of LGO relating to area of land to be appropriated

In matters influencing the appropriation of land, the Bradford South Area Committee, acted ultra vires, and with prejudice in allocating funding to a material decision not duly made, that in the allocation of substantive public monies, they were remiss, to assign over two budgetary years funding that could have been better spent in matters of Public safety. That the spending of public money on any land to be subsequently leased for commercial gain by any third party by contract concerning, That any budget allocations should be properly the subject of scrutiny of the District Auditor

In the alternative, it is properly the role of Full Cabinet to make a decision on Public Land through the appropriation procedure and not solely for South Bradford Area Committee to misappropriate public funding on a decision not duly made or deprive the public at large of use of public space on the notion of a private businessman aspiration to park at his commercial premises some substantive distance away from any business activity in Wibsey

I am minded to comment that enquiries were reasonably made to your office in good time regarding material facts relevant to the matter and as such at the time of writing remain outstanding. I wish to be kept informed about any material development or outcome relating to this matter.

I remain

Yours sincerely

Objections to the Proposed Appropriation Ref LEG.PLKES.D32946

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL LOCAL GOVERNMENT ACT 1972 (AS AMENDED) PROPOSED APPROPRIATION OF LAND AT TENNYSON ROAD/FAIR ROAD WIBSEY BRADFORD

I would like to object to the above proposals on the following grounds

Firstly, The council has failed to take in to account the Localism ACT (2011) specifically to Parts 5 Community Empowerment- Chapter and Part 6 –Planning- Chapter 4-Consultation

The council has failed to comply with the requirements of the Act and in particular has failed to consult extensively on all aspects of plans in the neighbourhood for avoidance of doubt I refer to section 2.3 Report of the Strategic Director of Regeneration and Culture to the meeting of Bradford South Area Committee to be held on 25th September 2014.

In the matter of consultation on the loss of open space the Authority failed to duly consult all members of the public representative of the Bradford South Area. For avoidance of doubt in the matter of appropriation the test before you is to provide evidence contrary to section 2.3 that the material matter of public open space was properly consulted and not restricted by any limited or chosen proximity

That the open space is still used for recreation by local residents and that it is safe for those using it. The council has failed to show that this Public open space is surplus to requirements

The council has failed to consider or take into account any damage to verges and other grassed areas will incur due to an increase in vehicle usage.

Increase in traffic volume and the effect on public transport, have not been taken into account neither has the impeding pedestrian visibility.

The land concerned is needed for its existing purpose (as public open space)

The Council has failed to consider the impact of the loss of public open space and in doing so the council has failed consider the comparative needs of the local community and whether the public interest favours appropriation of the land for the proposed planning purposes.

The council has failed to comply with section 226 (1) of the TCPA 1990 as amended by section 99 of the Planning & Compulsory Purchase Act 2004 requires Cabinet to conclude both that the appropriation will facilitate the carrying out of development, redevelopment or improvement on the

land in question and that the appropriation of the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area, before the Council may lawfully appropriate the land for planning purposes, that any interference with third party rights which might occur is disproportionate

The land is subject to easements covenants and charters which affect the use of the land and to which I have requested the material facts.

In matters influencing the appropriating land, the Bradford South Area Committee, acted ultra vires, and with prejudice in allocating funding to a material decision not duly made, that in the allocation of substantive public monies, they were remiss, to assign over two budgetary years funding in the alternative, it is properly the role of Full Cabinet to make a decision on Public Land through the appropriation procedure and not solely for South Bradford Area Committee to misappropriate public funding on a decision not duly made or deprive the public at large of use of public space on the notion of a private businessman's aspiration to park at his commercial premises some substantive distance away from any business activity in Wilbsey

The Council has acted unreasonably by failing to answer material concerns given in good time. The council acted unreasonably by providing a consultation not fit for purpose

I wish to be informed of any meetings, minutes or decision relating to the above



DECISION SHEET

(for no spending, revenue spending or capital expenditure of less than £75,000)

PLAN/DRAWING NOS: TDG/THS/102767/REP. TDG/THS/102767/GL-1A

APPENDIX 3 OBJECTION LETTERS

MATTER FOR CONSIDERATION:

The proposed appropriation of land at Tennyson Road Wibsey (known as part of Wibsey Fair Ground) Bradford from the Councils Holding Department Sport and Culture to the Receiving Department Neighbourhoods and Customer Services.

RESOLUTION

I, Steve Hartley, Strategic Director (Environment & Sport) to the City of Bradford Metropolitan District Council, pursuant to Article 14.20 of the Constitution hereby resolve: -

- i) I having fully considered the whole of the circumstances behind this proposal and the objections to the advertisement under S122 of the Local Government Act 1972 (As Amended) for the appropriation of land for the creation of a car park on part of the Wibsey Fairground site hereby confirm ~~OR reject~~ the proposed appropriation (~~delete as applicable~~ for the reasons as set out below

[illegible]

- Dated this 20th day of April 2016
Signed [Signature]
Steve Hartley, Strategic Director (Environment & Sport)

BACKGROUND INFORMATION:**PROGRAMME:** Bradford South – Safer Roads**PROGRAMME YEAR:** 2014-15/2015-16/2016-17**LOCATION:** Land off Tennyson Road, Wibsey
ISSUE:**PROJECT NO:** 102767

A petition (containing 972 signatures), requesting that the fairground site in Wibsey be used to create an additional parking area, was submitted to the Council in Autumn 2013. The petition was presented to the Bradford South Area Committee at the meeting on 28 November 2013, by which time the number of signatures had risen to over 1500.

The Area Committee resolved to investigate the development of a proposal to develop car parking on the fairground site and, following subsequent consideration of the proposal at meetings on 27 March 2014 and 25 September 2014, has allocated funding to promote a scheme.

PROPOSAL:

The proposed car park would occupy approximately 10% of the overall recreation site. Therefore whilst this would provide additional parking for visitors to Wibsey centre, it would not compromise the site's historic use as a fairground. Furthermore, the parking facility would be available for use in association with the fairground.

The proposed scheme features a porous grid system for the parking bays to minimise visual intrusion and environmental impact; however the car park access and aisle would be hard-surfaced to reduce the need for future maintenance on the mostly heavily trafficked areas. This would also resolve an existing issue with the surface of the site access, which can become muddy when HGV's associated with the fair enter and leave the site. A system of removable barriers would also be incorporated in the proposals, to prevent unwanted (day to day) access for vehicles other than cars and motorbikes, but allow HGV and service vehicle access when required.

DRAWING NOS: (attached):

Appendix 1: TDG/THS/102767/REP (location plan)

Appendix 2: TDG/THS/102767/GL-1A (scheme details)

SUPPORTING INFORMATION:

The proposals have undergone successful consultation with local ward members and the Showman's Guild (who are a statutory consultee).

REPRESENTATIONS:

The proposal has necessitated a process in accordance with Section 122 of the Local Government Act 1972 (As Amended) for the appropriation of land. In this instance this relates to the transfer of land allocation from open space to car park. This was advertised via press notice in August 2015. As a result of that process, 4 letters of objection have been received.

The objections relate to a number of areas including legal process, funding, land use and highway safety. Copies of the letters of objection are attached as Appendix 3

It should be noted that the objections as well as making general objections amongst others as to highways concerns and there already being sufficient car parking in Wibsey raise objections of a legal nature as follows:-

1. The Council has failed to take account of the Localism Act 2011 parts 5 community empowerment and Part 6 Planning consultations (objects to report dated 25th September 2014)
2. It is existing open space under section 10 Open Spaces Act 1906 (which prohibits its use as a car park).
3. Existing rights/covenants/ charters exist as to the use of the land (which prohibits its use as a car park).
4. Whether it is common land (which prohibits its use as a car park).
5. Whether it be designated under 164 Public Health Act 1875 (pleasure ground) (which prohibits its use as a car park)
5. The Council has failed to comply with s 226 TCPA 1990
7. The Council has failed to comply with section 99 Planning and Compulsory Purchase Act 2004
8. The Councils Bradford South Area committee has acted ultra vires September 2014.
9. In sufficient consultation.

Legal advice has been obtained which is set out below.

Legal advice.

Planning Permission for the development was granted on the 14th October 2014 by the Bradford Area Planning Panel under number 15/03060/FUL.

Extracts from the officer's report are as follows:

"Site Description:

The site is an area of open informal recreational land on the fringe of Wibsey local centre, specifically the application relates to a 20 metre x 47.5 metre proportion in the north east corner adjacent to the junction of Fair Road and Tennyson Road.

Replacement Unitary Development Plan (RUDP):

Allocation

Recreational Open Space.

Publicity and Number of Representations:

The application has been publicised via site notice and individual neighbour notification letters. The publicity period expired on 26th August 2015. 14 objections have been received.

The Principle of the Development

The site is an allocated recreation open space on the RUDP and as such the proposal is subject to assessment against Policy OS2, which stipulates that development will not be permitted unless:

1. The loss of the recreation open space does not lead to or exacerbate a local deficiency and the site could not be used to help to meet any deficiency in another type of open space, or

2. The development proposal provides for equivalent alternative provision in terms of size and quality which is close to existing users
3. And in either case it does not result in a significant loss of amenity.
4. The development proposal is ancillary and supports the recreational use, and would not significantly affect the quantity and quality of open space, its recreational function or its character and appearance.

The above is also reflected in paragraph 74 of the National Planning Policy Framework (NPPF).

Other Issues raised in the Representations to the appropriation under s122 LGA 1972

Consultation with residents has been raised in several of the representations. In terms of the planning application the publicity given to the application has exceeded the publicity requirements for this type of development. The process of appropriation of the land and consultation associated with this is a separate issue outside the remit of the planning process.

Whether the application site should be subject to legal direction or covenant is again beyond the remit of the planning process. The granting of planning permission would not supersede any legal direction or covenant on the land."

The minutes of the planning decision show a ward member spoke in favour but no objectors spoke. The officer recommendation was approved. The application was dealt with properly.

Part 6 of the Localism of the Localism Act 2011 (S.61W of the Town & Country Planning Act 1990 (T&CPA) does not apply. This is only where the proposed development is of a description specified in a development order.

S.226 T&CPA (as amended by S.99 of the Planning & Compulsory Purchase Act) does not apply as this relates to the compulsory purchase of land for planning purposes.

Planning refer to the site as "open informal recreation land" This cannot be relied upon as a legal definition of the use of the land.

A search of the Councils Terrier (land owned by the Councils and the purpose for which it is held) has been undertaken to identify if the land use purposes link with the Public Health Act 1875 (the 1875 Act) or the Open Spaces Act 1906 (the 1906 Act)..

It should be noted after checking the purchase deeds that the land was not appropriated by the Council under either the 1875 and 1906 Acts.

It should also be noted that the holding department has concluded that the land is no longer required for its current use as open space and in any event the creation of the car park will enhance the use of the remaining open space by providing additional off road car parking but that is a relevant matter to be confirmed in the making of this decision..

A search of the Register of Common Land is conclusive as to whether or not the land is common land. The search revealed it is not common land under the Commons Registration Act 1965. A check of the Councils Terrier also confirmed that the proposed car park is not on registered common land.

In the course of the legal deeds check this revealed Wibsey Fair Ground was acquired by the Council in two transactions in 1976 and 1981, (although this matter concerns the northern part of the land) purchased for £24,000 in 1976 and registered under title WYK80960.

There are no covenants on the title deeds which affect its use, although there are entries relating to the maintenance of boundaries and rights of way to Cock Pit pond - part of the site to the south which the Council later acquired. There are no positive covenants e.g. that the land is to be used as a fairground and equally no negative covenants preventing its use for certain purposes e.g. as a car park. Whilst it is used for an annual fair, this is by an agreement each year.

Legal commissioned the Open Space adverts for the proposed appropriation of land for the car park in August 2015 upon instruction from the holding Department.

The advert referred to the Local Government Act 1972 (the 1972 Act) and stated it was in connection with the appropriation of public open space for use as car parking which although the advert did not specifically refer to s122 of the 1972 Act.

The advert refers to a grant of a lease of the land (rather than an intended appropriation) and states the address of the land and gave the opportunity for people to see a plan of the area concerned, thus providing notice to interested parties that there was a proposal to create car parking on part of the site which lead to the objections. On balance Legal advises the notice is valid.

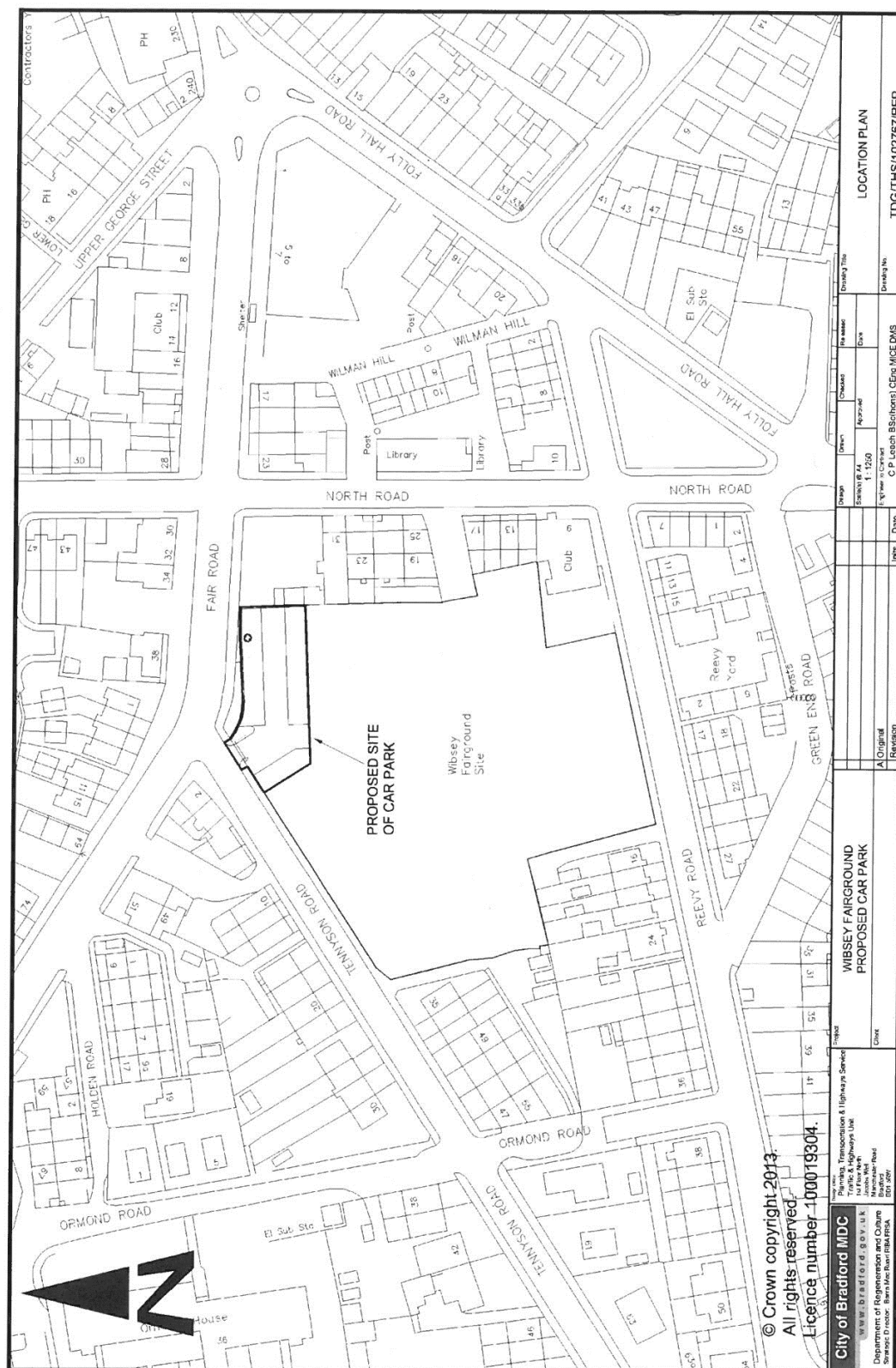
Legal also advises that neither the decision of the planning committee nor the Area Committee is ultra vires. In any event, the time scale to challenge is normally six weeks by way of Judicial review from the date of the decision.

OTHER CONSIDERATIONS:

Planning permission, for the scheme detailed on plan no.TDG/THS/102767/GL-1A, attached as Appendix 2, was granted on 14 October 2015.

SCHEME ESTIMATE:

The estimated cost of the scheme is £60,000. This has been allocated from the 2014/15, 2015/16 and 2016/17 Safer Roads budgets.



City of Bradford MDC

www.bradford.gov.uk

30th August 2015

Dear Sir or Madam,

Ref: LEG.PLKES.D32946

Proposed parking places on Wibsey 'Fairground'

With reference to the recent notice in the Telegraph & Argus, I wish to OBJECT to the proposal.

I collected a plan of the proposal and spoke to one of the legal officers. Yes, this junction of Tennyson Road and Fair Road is often very busy, and there is, of course, the working garage which is long established and well regarded in the village. Rather than relieve congestion at this junction and the area in general, I suggest that more activity and congestion is very likely to result if the proposed plan is implemented.

If, also, this proposal proceeds, and despite the fact that the area is a designated open space, this could be the thin edge of the wedge to taking more and more land on the generally named *fairground* for various purposes. This could ultimately result in:

- A. a further increased need for more parking spaces
- B. much reduced open space for Wibsey residents – the *fairground* currently provides something akin to an urban 'lung'
- C. the loss of a long established amenity (I know that the *fairground* has been so used at this location for probably 120/130 years and not in perpetuity as is sometimes said).

As a motorist, now in my 80's, arthritic and frequently very short of breath, and without a blue badge parking permit, I think that Wibsey has a good number of short term parking places available. These are usually well signed, be it one, two or three hours plus options to return after a proper time lapse.

Presumably the proposed parking would also be time/return limited, creating more activity. If it were to be unlimited all day parking, no doubt the 25 + 3 blue badge spaces would, most likely, be occupied very early in the day and not vacated until businesses closed around five or six pm.

Yours faithfully,

In this part of the village, Ormrod Road (from Tennyson Rd to almost Fair Rd) has wide uncramped verges. Could these verges be 'tamed' and then provide perhaps a dozen time/return limited spaces? Or would that necessitate the Council's adoption of the whole road and the subsequent need to make the road – and, therefore, in current circumstances a non-starter!

Metropolitan District Council

FINALDRAFTWibsey Fairground car park S122 objections240316asrw-9



2 September 2015

Suzan Hemingway
City Solicitor
City Hall
BRADFORD BD1 1HY

Dear Madam,

Proposed Appropriation of Land at Tennyson Road/Fair Road, Wibsey
Ref. LEG.PL.KES.D32846

As a resident of Wibsey and also Chairman of Wibsey Local History Group I object to the appropriation for car parking purposes of part of the open space known locally as "The Fairground". This has been an open space in the centre of the village for centuries, and I see any appropriation of part of it as the thin end of the wedge.

It will be expensive at a time when the Council is cutting back on essential services, and the funds could be put to better use.

It is also unnecessary. A few vociferous shopkeepers have clamoured for more parking space, but the Council's actions of restricting street parking in Wibsey has made the matter worse. Oakroyd Road, which is very close to the shops of the High Street, is but one example. All the houses have drives, and there used to be plenty of space there for short-term parking. I walk round the village from time to time looking for parking spaces and have no problem finding some.

At the moment the Fairground is closed off except when a Fair is held. Leaving it open for parking will also leave it open for "travellers". And we know what happens when they settle on city car parks!

I hope that the lease of land will be turned down.

Yours sincerely,

Re : LEG PL KES D 32947 Appropriation of Land Wibsey Fair

4th September 2015

Dear Ms Hemmingway

I object to on the following grounds that the council cannot reasonably demonstrate, that the land in question (to which they have a material commercial gain in changing its use) is no longer required, in so far as there is an annual and traditional fairs held of diverse nature and where there remains alternative options or unequivocal view to the land use

That in doing so no impartial material consultation presenting all of the material facts relevant to open space was provided before the making of the proposed order, that such notifications were not made or given to all (SS 2:3 Directors report), residing in the South Bradford Neighborhood or represented by the same and would be such to prejudice or unduly influence impartial outcome. I refer to the promotion of a car park by financial inducement

That there are extant rights for avoidance of doubt (entitled) or as a Fair by the Public or in the alternative as a Public Open Space or designated Play Area, and in the impartial examination, report or any other committee designated should without prejudice be obliged under constitution to be clear on what Charter, Covenants or other Inherent rights exist. For avoidance of doubt I refer to email of the same requesting information regarding rights, covenants charter and designated use of the land. That such a report should pre-date the making of any order so informed objection or decision may be made without prejudice and comply with any current direction given by government

In the advertisement and notification the authority has not been express in stating under what section of Local Government Act 1972 that the authority seek to determine the matter. I assert the council failed to duly advertise. I refer to the council's response in regard to the advertised matter. Section 122 Local Government Act, in the event that your intention is unclear and nothing therein constitutes the making of an order under the council's delegated powers, there is nothing therein to restrict objection hereafter.

"I am not sure if this is what you are referring to in your email as the Order." Council Officer advertising the same

In the event the council seek to utilize SS 122 (1a)(1b) of the LGA 1972 in placing the order has not expressly defined the material area of land it intends to appropriate. It also follows the same regarding open Space 2(a) and has not consulted in regard to any statutory direction

In the making of the order the right to object is prejudiced because the authority has failed to inform the public of all the relevant material facts (its designated and current use) and the method and reason for appropriating the land

That you cannot lease the land before it is in fact appropriated or dealt with according to government direction on open space, that no reference or information on material basis to any lease has been provided, in order to which to comment and to which no unequivocal resolution has been made

Neither is it clear which of the diverse acts would take precedent over any other, or whether in fact section 10 of the Open Spaces Act 1906 would extinguish any common right in regard to the method of seeking the order by virtue of it being leased. In the advertisement and notification it is not express in stating under what section of Local Government Act 1972 that the authority seek to determine the matter

(a) Whether it be Common

(b) 164 of the Public Health Act 1875 (pleasure grounds); or

(c) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds).

In its implied form the order refers to Public Open Spaces which are subject to any conditions under which the estate, interest, or control was so acquired and with a general term used "with a view to, the enjoyment" whether that view in law is superceded as an entitlement by virtue of the land being ascribed as an ancient Fair is a vexed question and any right to carry out practice or provide a trade, service or product as a historical consequence by diverse people.

That it would not be in the Public interest to have notice served section 68 of the Lands Clauses Consolidation Act 1845 and section 10 of the Compulsory Purchase Act 1965 in the event of any aggrieved party to be settled by arbitration or jury, at the option of the party claiming compensation. Fg Travellers Extant Right to apply Trade. Human Rights act Applicable

I refer to the email dated 1⁴ September 2015 and to which notice was duly raised prior to the closure date seeking outstanding material information relevant to the making of objection and the provision of material facts of which the authority are obliged to provide in the Public Interest

I am not satisfied that you have provided, in the public interest, details or appraisal of all rights, covenants, charter, easements or other considerations in balance to the same. In order to make informed appraisal of appropriation of the land at any time considered time close to making the order

I am not satisfied that you have undertaken any detailed or impartial appraisal relating to the principle issue of appropriating the land. You have not alluded to the legal definition of Fairground as given by charter or any other extant market right

That in conclusion that the process is flawed and the council also the agent should withdraw any planning application without prejudice until such times as appropriation is duly made, that to proceed on any planning decision that can not be practically implemented, is in fact detrimental to the public purse and public interest

In the matter of any document you the Council, may rely upon Report of the Strategic Director of Regeneration and Culture to the meeting of Bradford South Area Committee to be held on 25th September 2014,

- (1) A petition (containing 972 signatures), requesting that the fairground site in Wibsey be used to create an additional parking area, was submitted to the Council in autumn 2013 and alleged to be 1500 signatures. It has been drawn to the attention of the Council that this petition was flawed as the Ward was incorrectly titled. That a request to view or source the same has not been met
- (2) That no such petition can be readily sourced and in marked contrast to the petition opposing the same was not provided in outline within the said report
- (3) That a number of Council members had a material interest that remained undeclared in so far as they have roles or been involved with the Wibsey urban Village Group convener of the proposals for, and in conflict with members Code of Conduct
- (4) That such a report contains a secondary petition which states clearly a well considered case against
- (5) That there is therefore no unequivocal resolution on this matter
- (6) That reference That the Bradford South Area Committee requests the further development of proposals to introduce a parking area on Wibsey Fairground (to an agreed size as detailed in 3.2-3.4 to Document "A1"). Would be contrary elements of appropriation defined within the section of LGO relating to area of land to be appropriated

In matters influencing the appropriation of land, the Bradford South Area Committee, acted ultra vires, and with prejudice in allocating funding to a material decision not duly made, that in the allocation of substantive public monies, they were remiss, to assign over two budgetary years funding that could have been better spent in matters of Public safety. That the spending of public money on any land to be subsequently leased for commercial gain by any third party by contract concerning, That any budget allocations should be properly the subject of scrutiny of the District Auditor

In the alternative, It is properly the role of Full Cabinet to make a decision on Public Land through the appropriation procedure and not solely for South Bradford Area Committee to misappropriate public funding on a decision not duly made or deprive the public at large of use of public space on the notion of a private businessman aspiration to park at his commercial premises some substantive distance away from any business activity in Wibsey

I am minded to comment that enquiries where reasonably made to your office in good time regarding material facts relevant to the matter and as such at the time of writing remain outstanding. I wish to be kept informed about any material development or outcome relating to this matter.

I remain

Yours sincerely

Objections to the Proposed Appropriation Ref LEG.PLKES.D32946

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL LOCAL GOVERNMENT ACT 1972 (AS AMENDED) PROPOSED APPROPRIATION OF LAND AT TENNYSON ROAD/FAIR ROAD WILBSEY BRADFORD

I would like to object to the above proposals on the following grounds

Firstly, The council has failed to take in to account the Localism ACT (2011) specifically to Parts 5 Community Empowerment - Chapter and Part 6 -Planning- Chapter 4-Consultation

The council has failed to comply with the requirements of the Act and in particular has failed to consult extensively on all aspects of plans in the neighbourhood for avoidance of doubt I refer to section 2.3 Report of the Strategic Director of Regeneration and Culture to the meeting of Bradford South Area Committee to be held on 25th September 2014.

In the matter of consultation on the loss of open space the Authority failed to duly consult all members of the public representative of the Bradford South Area. For avoidance of doubt in the matter of appropriation the test before you is to provide evidence contrary to section 2.3 that the material matter of public open space was properly consulted and not restricted by any limited or chosen proximity

That the open space is still used for recreation by local residents and that it is safe for those using it. The council has failed to show that this Public open space is surplus to requirements

The council has failed to consider or take into account any damage to verges and other grassed areas will incur due to an increase in vehicle usage.

Increase in traffic volume and the effect on public transport, have not been taken into account neither has the impeding pedestrian visibility.

The land concerned is needed for its existing purpose (as public open space)

The Council has failed to consider the impact of the loss of public open space and in doing so the council has failed consider the comparative needs of the local community and whether the public interest favours appropriation of the land for the proposed planning purposes.

The council has failed to comply with section 226 (1) of the TCPA 1990 as amended by section 99 of the Planning & Compulsory Purchase Act 2004 requires Cabinet to conclude both that the appropriation will facilitate the carrying out of development, redevelopment or improvement on the

land in question and that the appropriation of the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area, before the Council may lawfully appropriate the land for planning purposes, that any interference with third party rights which might occur is disproportionate

The land is subject to easements covenants and charters which affect the use of the land and to which I have requested the material facts.

In matters influencing the appropriating land, the Bradford South Area Committee, acted ultra vires, and with prejudice in allocating funding to a material decision not duly made, that in the allocation of substantive public monies, they were remiss, to assign over two budgetary years funding in the alternative, it is properly the role of Full Cabinet to make a decision on Public Land through the appropriation procedure and not solely for South Bradford Area Committee to misappropriate public funding on a decision not duly made or deprive the public at large of use of public space on the notion of a private businessman's aspiration to park at his commercial premises some substantive distance away from any business activity in Wilbsey

The Council has acted unreasonably by failing to answer material concerns given in good time. The council acted unreasonably by providing a consultation not fit for purpose

I wish to be informed of any meetings, minutes or decision relating to the above

From:
Sent: 18 May 2016 17:03
To:
Cc:
Subject: Re Wibsey Fairground

Dear
Re Wibsey Fairground -Proposed Car Park
Section 122 Local Government Act 1972 (As Amended)

I refer to your letter received April 2016 n respect of the above

Please be aware that any objections I sent still stand and that I have never wished NOT to continue or I wouldn't have objected in the first place

I am a little concerned that you feel a officer decision made can be implemented on the councils behalf and therefore I would ask you to clarify this by return post .I would also like to request that you send copies of any lease relating to the above .Can you also clarify how you (the council) intend to deal with the Royal Charter that is associated with the Faire Please feel free to contact me if you have any further questions regarding my objections I would also request as I have done previously that you keep me informed on any decisions /process/meeting re the above

Kind Regards

From:
Sent: 16 May 2016 07:59
To:
Cc:
Subject: Wibsey Fairground

Dear

I refer to your correspondence sent regarding the lawful appropriation of Wibsey Fairground

I draw to your attention that the process has not been lawfully completed in accordance with the Local Government Act 1973

In the matter of exhaustive consultation you have failed to contact the objectors and in addition satisfied the provision that the same or equivalent can be made within the locality additionally you have failed to address the meaning of "Fairre" as given by Royal prerogative

I understand in the making of the order the matter to be consulted on was one of lease which is not that which should be made or given regarding the removal of Public Open Space

I understand Suzan Hemmingway or in the alternative you the council failed to contact the objectors when you the Council told the press that would be the case and in accordance with lawful process. I note Paul Dwyers continued failure to advise on the process of property transfer within the council when asked to do so in the public interest and attendant to due process. I note also your role in transferring public in the fashion ascribed Re Woodside Play Area and would advise that if lawful challenge arises we would issue charges of misconduct in Public Office additional to the case

I therefore request that the CEO Ms England delegate this matter competently to your legal services team I not that is changing in May from Sullivan-Gould to Akhtar

For avoidance of doubt I therefore advise you that the objections duly made stand, and that it is properly a matter for the council to address them as part of the duty inherent with process. In the matter of setting monies aside outside process that is properly a matter for the District Auditor to identify but could be better spent addressing the danger to infants from precarious parking at Woodside Primary School and to which

17/05/2016

the South Bradford Councillor contingent seems to know little about

I note your signatory on the document to affirm the position . I draw your attention to your appraisal claiming no outstanding legal advise on the matter and draw your attention to the significant contrasting issues and advice given by your own legal at Planning, I put it to you that you either have been wrongly advised or in the alternative are failing in your understanding and the implications of it

Please acknowledge in writing your intention to procede by service to the above address .

The Wibsey Fair is an important historic and traditional matter affecting Yorkshire and our City , we therefore seek to retain our rights in accordance with law and for the betterment of Yorkshire not the behest of a businessman who has alledgely parking issues half a mile up the road

It is somewhat ironic that our first action will be to conduct a Fairre to raise funding for Judicial Review in order protect our rights to so do

I hereby request the CEO Kristen England to address the following FOI , In the matter of housing stock transfer to which *substantive* Land transfer was made at the same time and to which the process excluded home Owners by a notional ballot . Please under the Freedom of Information Act provide a copy of the advertisement made under SS 122 of the Local Government Act relating to the removal of land used as public open Space including dates and advertised context. I understand that the Royds Community Association undertook this process of consultation on Stock transfer , Please confirm any conflict of interest that this exited SRB Company may have had , for avoidance of doubt any land assets that the RCA stood to gain from the process

I remain

Yours sincerely

Objector to the loss of Fair Space