

Report subject	<b>South Part of Beach Road Car park</b>
Meeting date	17 July 2024
Status	Public Report
Executive summary	<p>On 27 February 2024, Council approved the principle of disposal of the South Part of Beach Road Car Park on the open market, subject to a future Cabinet resolution to appropriate the site for planning purposes, once the South Car Park is formally closed. It also confirmed support for the reprovision of the car park and the development of a business case for the modernisation and improvement of the retained car parking area, based on the use of prudential borrowing. Where any part of the land being disposed of could comprise public open space, the statutory process governing these activities requires the proposal to be publicly advertised and for any objections to be duly considered. The purpose of this report is to set out the responses received to the public notices and provide an analysis of these responses for Members consideration.</p>
Recommendations	<p><b>It is RECOMMENDED that Cabinet recommends to Council having considered the responses received from the public notices to:</b></p> <ul style="list-style-type: none"> <li><b>(a) approve a resolution to appropriate for planning purposes, the south part of Beach Road Car Park (the site) shown outlined red in appendix 1, once it is formally closed and reaffirm the approval (given, in principle, on 27 February 2024) to proceed with disposal of the site pursuant to section 233 of the Town and Country Planning Act 1990.</b></li> <li><b>(b) delegate authority to the Corporate Property Officer, to record by way of memorandum the appropriation at the required time, which can be placed with the deeds for future reference.</b></li> <li><b>(c) reaffirm approval to delegate authority to the Corporate Property Officer, in consultation with the Director of Finance, the Director of Law and Governance and the Portfolio Holder for Dynamic Places, to select the preferred offer and finalise the detailed terms of the disposal.</b></li> </ul>

	<p><b>(d) to note that, subject to Cabinet approval of its forthcoming business case, it is the council's intention to make improvements to the retained rear public car parking area, including consideration of the scope to increase current capacity, provide more compliant spaces and improve accessibility and wayfinding, as well as consideration of a local traffic management scheme. The council and its consultant are now engaged in this process.</b></p>
Reason for recommendations	<p>The council considers that the south section of the car park is no longer needed for the purpose for which it is currently held by the public in the locality and considers that the appropriation for planning purposes will:</p> <ul style="list-style-type: none"> <li>• facilitate the carrying out of re-development which is likely to contribute to the economic, social or environmental wellbeing of the area, and is required in the interests of the proper planning of the area in which the land is situated.</li> </ul> <p>Further the disposal will:</p> <ul style="list-style-type: none"> <li>• Contribute to the council's corporate strategy priorities.</li> <li>• Optimise the use of a public land asset in accordance with its allocation in the Local Plan and ensure best value is achieved.</li> <li>• Encourage more sustainable forms of travel.</li> <li>• Generate a capital receipt to support the funding of the council's Transformation Investment Programme.</li> </ul>

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Wards	Canford Cliffs;
Classification	For Recommendation

## Background

1. On 27 February 2024, Council approved the principle of the disposal of the South Part of Beach Road Car Park on the open market, subject to a future Cabinet resolution to appropriate the site for planning purposes once the South Car Park is formally closed. It also confirmed support for the reprovision of the car park and the development of a business case for the modernisation and improvement of the retained north car parking area, based on the use of prudential borrowing.
2. The rationale for the disposal was set out fully in the approved Cabinet report dated 10 January 2024, included as a background paper.
3. Beach Road Car Park is a public pay and display surface car park in Canford Cliffs with c.316 car spaces currently marked out. As outlined in the table below, many of these spaces are not compliant with BCP Parking Standards and due to tree encroachment and related surface breakage, they are unfit for use, resulting in a current estimated capacity of around 196 compliant spaces across the whole of the existing site.

Beach Road Car Park	Compliant	Non Compliant	Total
South Site	105	39	144
North Site	91	81	172
<b>Total</b>	<b>196</b>	<b>120</b>	<b>316</b>

4. The whole of the car park is under-utilised and closed for six months of the year (1 October to 31 March each year) due to low occupancy levels and to achieve running cost efficiency. The south section of the car park, fronting Pinecliff Road was declared surplus by Cabinet on 8th March 2023.
5. The redevelopment potential of this site was first identified in the Sustaining Poole's Seafront Supplementary Planning Document, adopted in December 2015, which highlighted that there was spare parking capacity that could enable a release of the southern section of Beach Road Car Park for other uses such as residential. This was then reviewed during the Poole Local Plan process and the site was subsequently put forward for allocation in the Poole Local Plan and accepted as a suitable site through the Poole Local Plan examination process. The southern part of

the site is therefore formally allocated for residential development in the Poole Local Plan (adopted 2018) and specified as suitable to provide approximately 60 homes.

6. The need for some parking at this site was identified in the Parking & Servicing Management Strategy that was required by the planning consent for the refurbished Rockwater establishment at Branksome Chine – this replacement restaurant venue opened its doors last September. Subject to Cabinet approval of its forthcoming business case, it is the council's intention to make improvements to the retained car parking area, including consideration of the scope to increase current capacity, provide more compliant spaces and improve accessibility and wayfinding, so that it is fit for use by the elderly, disabled, and families with children.
7. The scope to improve the landscape and ecology aspects of the site, through careful planting, and management will also be considered, as well as the merits of keeping the retained and improved car park open all year.
8. A BCP wide Selective Parking Study commissioned by BCP Future Places in May 2023, identified that ticket data for the whole of Beach Road car park shows a much lower usage than locally reported but income data is very low per space. In normal circumstances, the low yield would suggest that a weak business case for replacement of the whole number of car park spaces. However, the report confirmed that it is difficult to make any firm conclusions about usage from the available data, given the number of resident permits and the fact that the car park is closed for six months of the year from 30 September to 1 April. To inform the data collection for the site further, the parking consultant undertook a follow up analysis during the peak summer period, in August 2023. This looked at the number of cars parked in the whole of the car park on three days in August when the weather was good, and an analysis of the results is shown in the table This information will assist to inform the number of spaces to be considered for retention in the retained rear car park, following a sale of the south section of the site, albeit the occupancy levels will be lower outside of the peak summer period.

<b>August 2023: Average no of occupied spaces: Good weather</b>			
<b>Time of day</b>	<b>Thursday</b>	<b>Saturday</b>	<b>Sunday</b>
<b>9am to 1pm</b>	<b>65</b>	<b>77</b>	<b>112</b>
<b>1pm to 5pm</b>	<b>87</b>	<b>135</b>	<b>227</b>

9. The business case for the rear car park will also consider the need for Parking Services and Traffic Management to consult on the creation of a local traffic management scheme which could include for further monitored on-street pay and display in nearby roads.

### **Rationale for Appropriation for Planning Purposes**

10. Local authorities must hold land for the statutory purpose that they originally acquired the land for. They can only change the purpose for which they hold land using their statutory powers of appropriation. In the absence of an appropriation for planning purposes, a disposal of the land under the power in Section 123 of the Local Government Act 1972 would be subject to all existing constraints. The car park at Beach Road is subject to historic restrictive covenants which may subsist and, if so, impede its development (further detail provided at exempt appendix 2). This will affect the desirability and therefore the value of the site.

11. To achieve the best possible consideration for the site, the council can take steps to exercise its statutory power to appropriate the land so that it is held for planning purposes to facilitate development. The interplay with Section 203 of the Housing and Planning Act 2016 overrides such restrictions on the grant of planning permission, converting the rights into a claim for compensation.
12. Any interference with easements or restrictive covenants by construction works on a site which has been appropriated for planning purposes is no longer injunctible and therefore the risk of development delays caused by injunctions are mitigated. The policy behind this is to bring forward development, which is in the interests of the proper planning of the area.
13. Where local authorities are considering whether to appropriate land in order to override easements and other rights, they will need to carefully consider the public interest of the locality and ensure their considerations are carefully documented.

### **Public Consultation**

14. Public consultation was undertaken on a draft development brief for the site by the Borough of Poole in 2016 and Ward Councillors have been briefed. Whilst it is accepted that the car park is underutilised for most of the year, there remains concern that the car park should remain as an overflow facility, particularly for when Sandbanks car park is full. Further, comments received were that car parking is in short supply and a reduction in car parking is at odds with the council's ambitions to be a world class resort. In addition, feedback to Ward Councillors is that local residents are very concerned with the level of inappropriate and inconsiderate parking that takes place in the high season and the loss of part of Beach Road car park would exacerbate this.
15. A further public consultation took place in March 2024 in accordance with Section 122(A) Local Government Act 1972 and the responses are considered in paragraph 24 below.

### **Statutory Process and Test to be met.**

16. The criteria for appropriation are:
  - (i) The land must already belong to the Council.
  - (ii) The land must be no longer required for the purpose for which it is currently appropriated.
  - (iii) The purpose for which the Council is appropriating must be a purpose for which they would be authorised by statute to acquire the land by agreement.
17. **(i) Ownership:**

Evidence as to how the land is currently held is provided in Appendix 3 indicating that the site was appropriated for car parking by virtue of a Ministry Consent dated 18th March 1958. 67 years have since passed, and unfortunately, the hard copy of the letter referenced on the acquisition card and referenced on the plan attached to the Licence and deed of Covenant dated 18th March 1958 is missing. In addition, some of the border areas within the site may be considered to be held as public open space.
18. The statutory process to be followed for appropriating and disposing of land that includes common land or open space, requires that the authority advertise its

intention to appropriate such land for two consecutive weeks in a newspaper circulating in the local area, and consider any objections to the proposed appropriation. Adverts were placed in the local paper on 11 and 18 March 24 and in the online version for a period of 31 days from 11 March. In addition, several site notices, advertising both the proposed appropriation for planning purposes and disposal, were placed on and close to the site for two weeks from 11<sup>th</sup> March to 26<sup>th</sup> March 2024.

**19. (ii) No longer required:**

Case law has confirmed the following principles:

(1) Whether land is still or is no longer required for a particular purpose, meaning no longer needed in the public interest of the locality for that purpose, is a question for the local authority, subject to Wednesbury principles, and not the court.

(2) The statute is concerned with relative needs or uses for which public land has been or may be put. It does not require it to fall into disuse before the authority may appropriate it for some other purpose.

(3) The authority is entitled, when exercising its appropriation power, to seek to strike a balance between comparative local needs and the wider community interests at heart. It is for the authority to keep under review the needs of the locality and it is entitled to take a broad view of local needs.

20. The council must, acting in good faith, apply these principles in the evaluation of the appropriation proposal before it, and in doing so, consider the representations that have been received.

The council must consider whether, in the light of the public representations made, the south part of Beach Road Car Park is no longer required for the purposes for which it is presently held by applying the principles of a balanced broad view as noted above.

**21. (iii) Authority:**

The council has a power to acquire land for planning purposes under SS 226 and 227 Town and County Planning Act 1990. Accordingly, the council will be empowered to appropriate the land where satisfied that the appropriation will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land and as such contribute to the promotion or improvement of the economic, social or environmental wellbeing of its area.

**Analysis of representations**

22. It should be stressed that the consideration in this report is whether the proposed appropriation of the sites for planning purposes and subsequent disposal for housing development should proceed and the representations need to be considered in that context.
23. The responses received from the public are attached as Appendix 4 and are addressed in paragraph 24.
24. The council received 99 objections to the proposals. These can be broadly categorised as follows:

**1. Objection**

**97 respondents were concerned that the loss of spaces would cause parking chaos and gridlock in local roads. 17 of those highlighted that this problem would be exacerbated by the presence of the Rockwater restaurant venue that replaced the former Branksome Café venue in September 2023. Seven respondents also expressed concern that unsafe and illegal parking would be exacerbated on hot sunny summer days when demand for beach parking is higher. There was particular concern about the impact on residents of Lakeside Road who already experience problems with cars blocking their driveways at these peak times. Two respondents also stated that the wording of the Council motion approving the sale would allow the council to walk away from its “promise” to renovate the remaining part of the car park, leaving a stranded asset open to misuse.**

### **Response**

Over the last 10 years, for the months that the car park is open (April to September) Beach Road Car Park has consistently taken less than half the income of both Branksome Dene and Branksome Chine car parks, despite those car parks each having substantially less spaces. Beach Road is an overflow car park for the other Beach car parks during peak demand days in summer, when the weather is hot and sunny, and more visitors drive to the beach.

Its income fluctuates quite markedly each year reflecting the weather and when different events are held on the beach front resulting in more usage. For example, there was a particularly high usage in July and August of 2020 and 2021 due to the Pandemic and a large section of the public being furloughed as well as the releasing of lock down restrictions when many people, including from other towns and cities, visited Bournemouth and Poole's beaches in search of space and fresh air. The national vaccination programme and the reintroduction of international travel has addressed this issue.

The report to Cabinet on 10 January confirmed support for Officers to bring forward a business case for the improvement of the north car park to be retained at Beach Road in tandem with the sale process, including consideration of the scope to increase current capacity, provide more compliant spaces and the potential to keep it open all year round. These improvements will assist in addressing off street parking requirements in this location.

The business case will also consider the need for and the creation of a local traffic management scheme which could include for further on-street pay and display in nearby roads such as Lakeside Road. Monitored paid bays can be beneficial to residents in controlling the times of use and illegal parking in side streets.

## **2. Objection**

**13 respondents were concerned that the loss of spaces would have a detrimental impact on trade on the sea front and tourism.**

### **Response**

The Council's Seafront Strategy confirms that our coastline is highly vulnerable and sensitive to climate change, and we need to be flexible and responsive as we move towards a zero-carbon future.

There is a balance to be struck in terms of reducing car usage and encouraging the use of public transport and car sharing. The sea front strategy for the stretch

of coastline between Canford Cliffs and Durley Chine aims to improve vehicle drop off points and accessible parking. The provision of a fit for purpose and more accessible north car park at Beach Road and local traffic management scheme would align with this strategy and Officers are now engaged in preparing the brief for the business case to consider these improvements.

BCP Council's Tourism strategy confirms that growth has to be clean and sustainable as BCP Council works toward carbon neutrality by 2030 and the wider local economy aims to beat the UK's target of 2050. The visitor economy must also be sensitive to the needs of its residents.

### **3. Objection**

**7 respondents stated that the council's lack of maintenance of Beach Road Car Park and poor signage and awareness of its existence is the reason for its historic underuse rather than lack of demand.**

Beach Road car park is located further away from the beaches than other Chine car parks and, as outlined above, it serves as an overflow car park in the high season. Demand outside of the high season is very low and there is an operational cost saving in running it for half of the year only. For that reason, it is closed from 1 October to 31 March each year.

It is signposted as alternative parking from the other/closer seafront/beach car parks. When the Sandbanks car park is full, there are electronic signs that advise the public to use alternative parking. These are located as far back as Poole Civic Centre and County Gates Gyratory area and then repeated on the routes towards Sandbanks and Beach Road car park at Sandbanks Road near the Lilliput Road junction and the Avenue near the Buccleuch Road junction.

It is acknowledged that this car park is in poor condition due to tree encroachment and related surface breakage. As with all local authorities, council budgets are stretched and given the proposal to sell the south section of Beach Road car park has been proposed since 2015 (originally in the Sustaining Poole's Seafront Supplementary Planning Document, adopted in December 2015) investment beyond necessary maintenance to the car park has been deferred until the future strategy for the car park is approved by Council.

The business case for the retained rear car park will consider how access, signage and wayfinding can be improved.

### **4. Objection**

**Eight respondents raised concerns about the impact on wildlife and conservation through tree, woodland and green space loss associated with redevelopment of the car park.**

#### **Response**

Concerns relating to the impact of development on the site will be addressed through the planning process.

In terms of the disposal, the new local plan will require biodiversity net gain. Further, the planning development brief for the site dated December 2023 (Appendix 5) provides some guidance as follows:

#### Trees



“A large number of trees exist around the edge of the site and there are some isolated trees within the parking area. The majority of the trees on the site are Category B Trees of moderate quality. These trees contribute to wider environmental and visual amenity objectives, as well as increasing the attractiveness of the site.

#### Ecology and biodiversity

A biodiversity assessment report has been undertaken. The report notes that the site is close to the Poole and Bay Cliffs SSSI; and the Luscombe Valley SSSI and concludes that the site is used by nesting birds and roosting, feeding and commuting bats. It is therefore recommended that the majority of the woodland should be retained, both the tree canopy and the shrub layer, as far as possible. The report specifically notes that trees with holes and splits should be retained for roosting bats. Overall provided that future proposals retain the wooded slope area, the ecology of the site need not pose a constraint to development”.

Further the forthcoming business case will consider the scope to improve the landscape and ecology aspects of the site, through careful planting, and management.

### **5. Objection**

**10 respondents raised concern about the particular impact on the disabled, elderly and families of losing spaces to park near the beach.**

#### **Response**

The current proposal is to appropriate and dispose of part of the car park. The business case for the rear car park (to be retained) will consider the provision of compliant disabled spaces and improvements to ensure it is fit for purpose for the disabled, elderly and families. Further, the Planning Development Brief which developers of the south section can refer to for guidance confirms that a safe pedestrian route from the remaining car park area to the beach will be required, including the safe crossing of Pinecliff Road.

### **6. Objection**

**Seven respondents were concerned about the impact of the housing development that would replace the south car park, including concern that it would lead to unoccupied second homes, luxury homes that are not needed and other environmental impacts such as noise during construction and light pollution following occupation.**

#### **Response**

This is a prime residential location and inevitably a developer will deliver high quality housing at the higher price end of the market, but through the planning process a developer will be required to make an affordable house contribution to support affordable housing provision elsewhere in the town.

The council has limited control over the purchase of second homes, but these will be subject to a 200% premium for Council tax purposes from April 2025, which will assist as a disincentive. The properties are particularly likely to appeal to older families downsizing as their children leave home.

The environmental impacts of construction and light pollution following occupation will be addressed through the planning process. However, the

Planning Development Brief dated December 2023 does recommend that the majority of the woodland should be retained, both the tree canopy and the shrub layer, as far as possible. This will ensure that new development will to that extent be shielded from neighbours.

## **7. Objection**

**One respondent commented that the housing development could lead to land slips in the rear car park due to increasing rainfall and could exacerbate cliff side erosion.**

The current decision relates to the appropriation of the site for planning purposes. An engineering solution would be explored by the residential developer of the south site and the council will consider the same for the north site, including suitable foundations and retaining walls.

## **8. Objection**

**Four respondents commented that the sale of the land without planning permission will mean that BCP's rate payers will not get best value from the transaction.**

### **Response**

As outlined in paragraph 10 above, the decision to appropriate the site for planning purposes will remove the uncertainty around third party rights, enhancing value and desirability.

Whilst the council could seek outline or detailed planning consent and market the site with the benefit of that consent, this will result in additional costs and a delay in bringing the site to market. An application is likely to be controversial and would best sit with the private sector to ensure transparency. In addition, any developer will want its own bespoke design to maximise value.

The Planning Development Brief dated December 2023 will help guide potential developers on planning requirements, improve efficiency of the planning and development process and improve the quality of development by setting out expectations from the outset.

## **9. Objection**

**One respondent commented that the loss of car spaces will result in parking and traffic issues that could lead to a reduction in property values of existing properties.**

A claim for a reduction in property value would have to demonstrate a causal link with any overall reduction in car park spaces. Conversely, there could be an increase in property values because of the enhancements that will follow to the site. In mitigation, the business case for the rear car park, to be retained, will consider redesign and improvements to create a fit for purpose car park with improved accessibility and signposting to address high season demand. In addition, consideration will be given to operating it all year round. Further, a local traffic management scheme, which could include for further on-street pay and display in nearby roads, will be considered as part of the business case.

### **Reasons for recommendation to appropriate the land for planning purposes.**

25. The council considers that the south section of the car park is no longer needed for the purpose for which it is currently held by the public in the locality and considers

that the appropriation will facilitate the carrying out of development, re-development or improvement which is likely to contribute to the economic, social or environmental wellbeing of the area, and is required in the interests of the proper planning of the area in which the land is situated.

26. The south section of the car park is allocated in the Poole Local Plan (adopted 2018) for 60 homes, demonstrating that the proposed appropriation is in the interests of the proper planning of the area. The local plan states as follows: "Majority of site laid out as hard standing for car parking with limited recreational value. Open Space Needs Assessment identifies a surplus of open space within the ward. To be included as part of a specific allocation to allow for new homes, with car parking retained on land to the north." Further Policy PP9 confirms Beach Road car park as an Urban Allocation outside the town centre and a site that will contribute to meeting Poole's objectively assessed need over the period to 2033.
27. The Government publishes annually the housing delivery test that sets out how Poole compare against housing targets over the previous 3 years. The requirements are set out in the National Planning Policy Framework. The 2021 housing delivery test results show that the housing completions in the Poole area are below target at 80%.
28. The BCP and Dorset Local Housing Needs Assessment (November 2021) identifies demand for medium-sized properties (2- and 3-beds) from older households downsizing and looking to release equity in existing homes, but still retaining flexibility for friends and family to come and stay.
29. It is government policy that local authorities should dispose of under-used land and property wherever possible. Section 3 of the Local Government Act 1999 provides (among other things) that a best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Replacing part of this underutilised overflow car park with the opportunity to develop it for housing at a time when the projected housing supply is not achieving government targets will contribute to the economic and social wellbeing of the area.
30. The development of housing on the south site will assist in the creation of sustainable communities that attract investment and jobs and can reduce our carbon footprint and improve the environment.
31. The new Local Plan that will be in place by the time a planning application is made for this site is proposing that all new homes must demonstrate that they will be 'zero carbon ready' by reducing the operational carbon emissions of a building in use by only using electricity or renewable energy. Other proposals in the new local plan that will impact this site are for minimum internal space standards, water efficiency standards of 110 litres per person per day, the incorporation of urban greening/tree planting and that studio and one-bedroom homes do not exceed 5% of the total provision and at least 30% of the total provisions are homes with 3 or more bedrooms. There will also be requirements for biodiversity net gain.
32. Further, local job opportunities will be created during the construction period and the supply of new housing will also increase income spend in the local area from the new residents and council tax contributions that will support the delivery of front-line services. It will also secure financial contributions for health, education and affordable housing delivery, the latter assisting in personal and social wellbeing of the area.

33. The capital receipt from the disposal will support the council's transformation and investment programme that will see a slimmer, more cost-effective organisation, closing the budget gap and allowing it to invest in frontline services and regeneration.
34. Only part of the car park is being closed and the remainder will continue to operate as an overflow car park.
35. Under section 122 of the LGA 1972, appropriation may be made where the land is no longer needed in the public interest of the locality for the purpose for which it is held immediately before appropriation. A broad view of local need (taking account of the interests of all residents in the locality) must be taken and officers consider that this test has been met.

### **Additional Comments**

36. The improvements to be considered to the rear public car park in the forthcoming business case, will provide beach goers with fit for purpose car park facilities, particularly for hot weather days in the summer when the beach experiences a greater number of visitors than usual. This latter will contribute to the wellbeing of the community, particularly for the disabled, families with young children and the elderly.
37. Like many sea side towns, there is a short spike in demand for parking in all beach car parks and for parking in local streets close to the beach on hot summer days and the council needs to strike a balance between delivering its climate change objectives (by encouraging the use of public transport, walking, car sharing and dropping off and reducing car usage) with having a reasonable provision of fit for purpose off and on street parking options.
38. To address illegal parking in high season, a local traffic management scheme, which could include for further monitored on-street pay and display in nearby roads, will be considered as part of the forthcoming business case.

### **Human Rights**

39. Reliance on s203 of the Housing and Planning Act 2016 to override any evidenced third party rights over the land that may exist on an appropriation of land for planning purposes, is dependent upon the requirements in s226 Town and Country Planning Act 1990 (TCPA), having been satisfied that there is a compelling case in the public interest for the appropriation of this land, having regard to the European Convention on Human Rights.
40. The Housing and Planning Act 2016 does not set any specific procedure for implementing the powers of section 203. However, it is recommended that a process similar to the Compulsory Purchase Order process is used and the council should attempt to identify all the rights which may be infringed and seek a release of those rights.
41. Exempt Appendix 2 sets out the positions on the historic covenants and the negotiations which have been possible to date.
42. The covenants were drawn up more than 90 years ago at a time when the area was sparsely developed. The nature of the area has changed significantly during the interim and the land is now surrounded by blocks of flats varying in height between 4 and 7 storeys. The development brief prepared by the local planning authority envisages a flatted development no higher than the tree canopy, in keeping with

surrounding development. Any development will therefore be screened by mature trees approximately 20m in height and will not be visible to adjacent buildings. A development of this height would not cause injury to any existing adjoining owners who may claim to be beneficiaries of the restrictive covenant, which may subsist. It is therefore not possible to envisage circumstances whereby overriding restrictive covenants on this site would cause injury to the surrounding occupiers.

## **Conclusion**

43. Officers are satisfied that there is a compelling case in the public interest for the use of the council's power of appropriation for planning purposes and disposal of this site; the loss of car spaces and adjoining minimal public open space from the south section of the site would be proportionate to achieve the wider benefits for the community listed above.

## **Options Appraisal**

44. Do nothing option:

If the council decides not to appropriate the land for planning purposes, the disposal of the land could progress pursuant to Section 123 of the Local Government Act 1972 (following a further consultation in respect of the area of open space.)

The disposal would be subject to any easements, covenants and other rights which are subsisting and there is a risk that those parties claiming to have the legal benefit of restricted covenants (should they still subsist) could attempt to bring injunction proceedings which could stop the construction of development or significantly delay its delivery.

This would create uncertainty and potentially impact the marketability and price achieved for the disposal of the site.

## **Summary of financial implications**

45. There are no direct financial implications associated with the proposed appropriation for planning permission and those associated with the disposal were set out fully in the report to Cabinet on 10 January 2024 included as a background paper.

## **Summary of legal implications**

46. The legal implications of the appropriation of the land were dealt with in the previous report to Cabinet on 10 January 2024. These remain relevant to the current decision.
47. As part of the site is held as public open space it is a requirement pursuant to Section 122(2A) of the Local Government Act 1972, that the proposal is advertised, and any objections received are considered prior to the decision being made. The Council's decision must be based on the available evidence and be rational in the sense that it cannot be said that no reasonable local authority could, on the evidence before it, have arrived at that decision.
48. Land held as open space is subject to a statutory trust pursuant to the Open Spaces Act 1906. Under sections 124-127 of the 1972 Act, a local authority can dispose of land, freeing it from the statutory trust in the process, if it does so at the best price which can reasonably be obtained: having advertised its intention to dispose of the land in a local newspaper for at least two consecutive weeks; and having considered any objections to that disposal.

### **Summary of human resources implications**

49. Sufficient staff resource from Estates will be made available to document the appropriation, procure agents for the disposal and oversee the transaction from negotiation to completion of the legal documentation.

### **Summary of sustainability impact**

50. The council has signed up to the climate change emergency and as such it is critical that decision makers consider the sustainability impact of their decision.
51. A new Decision Impact Assessment (ID 659) has been completed for this project which identifies both positive and minor negative impacts. A copy of this assessment is attached at Appendix 6.
52. The DIA recognises that the current use of this land as a surface-level car park laid out as hardstanding does not make a significant contribution to the local environment. Its redevelopment will allow high-quality, energy-efficient housing to come forward in a sustainable location with biodiversity net gain.

### **Summary of public health implications**

53. The proposal will kickstart the regeneration of the site through the provision of new environmentally sound housing on the south site with adjacent fit for purpose and accessible overflow parking for car users in the high season also planned. These along with other measures to be considered including the management of off-street parking and other corporate measures to encourage a reduction in car usage will contribute to the long-term health and wellbeing of residents and visitors. Further, by accelerating development and investment, there will be a better prospect of sustaining jobs and prosperity across the BCP area, improving housing and high-quality open spaces, with well designed, walkable, inclusive neighbourhoods that help promote health and well-being.

### **Summary of equality implications**

54. An Equality Impact Needs Screening Tool is attached at Appendix 7. This considers that:
- (i) The provision of new environmentally sound housing on the south site with adjacent planned fit for purpose accessible overflow parking, along with other planned measures to manage off-street parking will contribute to the long-term health and wellbeing of residents and visitors.
  - (ii) By accelerating development and investment, there will be a better prospect of sustaining jobs and prosperity across the BCP area.
  - (iii) The disposal of the southern section of the site will contribute to BCP Council's housing targets and corporate objectives for sustainable placemaking for the benefit of all residents and visitors.
  - (iv) A subsequent planning application to develop will generate contributions for offsite affordable housing to be developed elsewhere in Poole assisting those on lower incomes as well generating contributions for health and education provision assisting young and old.
  - (v) It will particularly benefit the elderly and older families looking to downsize from a larger family home and during the construction, there will be new job opportunities for those of working age.

- (vi) The proposed improvements to the rear retained car park will address the disproportionate impact on the elderly, disabled and young families of the poor condition of the rear car park.
- (vii) Any reduction in existing useable spaces may negatively impact local residents living in nearby streets through illegal parking and increased congestion. The consideration of a local traffic management scheme, including monitored on street paid bays and measures to encourage more sustainable forms of transport will mitigate against these negative impacts and positively assist in helping the BCP community and its visitors achieve its climate change goals.
- (viii) A reduction in useable spaces is unlikely to cause a reduction in footfall for nearby traders in the high season, and they will benefit from the spend of the new residents.
- (ix) Interference with any evidenced third-party rights claiming the benefit of any subsisting restrictive covenants would be subject to the statutory compensation process.

### **Summary of risk assessment**

- 55. A decision to appropriate land is open to judicial review once made and this would be determined by the high court. The challenge may be brought forward on the grounds of illegality, irrationality/unreasonableness, procedural impropriety and legitimate expectation.
- 56. If a decision is taken not to appropriate the land, then then there is a risk that any future development may be injunctible by those parties claiming to have the legal benefit of restricted covenants (should they still subsist). This would create uncertainty and potentially impact the marketability and price achieved for the disposal of the south car park.
- 57. Other risks associated with the recommendation to dispose of the south site are that the prevailing economic conditions dampen demand, and a disposal is not achieved, or no acceptable bids are received. The council's exposure to risk is limited and if the sale does not complete then it will be able to review its options for the site, including potentially remarketing the site, approaching under-bidders, or developing the site itself.

### **Background papers**

[\(Public Pack\)Agenda Document for Cabinet, 10/01/2024 10:15 \(bcpcouncil.gov.uk\)](#)

### **Appendices**

- Appendix 1 Plan of area of proposed disposal and appropriation for planning purposes
- Appendix 2 Comment on Restrictive Covenants – EXEMPT
- Appendix 3 Evidence of how land is currently held by BCP Council
- Appendix 4 Public Consultation Responses
- Appendix 5 Planning Development Brief dated December 2023
- Appendix 6 Decision Impact Assessment - Sustainability
- Appendix 7 Equalities Impact Assessment