

# Minute Item 45

We understand that when you send the local plan to the Secretary of State, they will assess whether it is effective i.e. deliverable over the plan period, and consistent with national policy i.e. in accordance with policies in the National Framework.

The 2036 plan policy SP32 for the development of Bertie Park states that planning permission for housing will only be granted if our recreation ground, including its Multi Use Games Area, is re-provided on the land behind Wytham Street. You have never suggested complying with this requirement. Your proposals were advertised as a departure from the local plan. It is clear that you do not consider plan policy SP32 to be deliverable over any plan period. So the 2040 local plan states that Bertie Park should be allocated for residential development (or a primary school), but you have scrapped the requirement to reprovide the recreation ground.

Although this makes the policy, in principle, deliverable, it is no longer in accordance with policies 8, 98, 99 and 130 of the National Policy Planning Framework.

The only way that the new Bertie Park policy could pass inspection would be if your proposal to appropriate the land on Bertie Park for planning purposes is successful. (You also state that appropriation is for the regeneration of the park. But this is just silly.) Although you have *started* the process of appropriation, it is difficult to see how you can comply with the conditions set out in section 122 of the 1972 Local Government Act. As a local authority you have a duty to act within the law. Any decision to proceed with appropriation will trigger judicial review, which is unlikely to be completed before the 2040 local plan is submitted to the Secretary of State.

The continued inclusion of the Bertie Park on the local plan is particularly ironic given that you have said that the new Local Plan 2040 aims to "protect existing leisure, community and cultural facilities", whether or not they are in district centres.

We are therefore highlighting the need to remove Bertie Park from the list of development sites for the 2040 local plan.

## **Relevant National Policies/Laws**

**NPPF 8:** "social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations (and) by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being."

**NPPF 98:** "Access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities"

**NPPF 99:** "Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use”

**NPPF 130:** Planning policies and decisions should ensure that developments:

- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

**1972 Local Government Act**

**122 Appropriation of land by principal councils.**

- (1) Subject to the following provisions of this section, a principal council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned.
- (2) A principal council may not appropriate under subsection (1) above any land which they may be authorised to appropriate under **[F1 section 229 of the Town and Country Planning Act 1990]** (land forming part of a common, etc.) unless—
  - (a) the total of the land appropriated in any particular common, . . . **F2** or fuel or field garden allotment (giving those expressions the same meanings as in **[F3 the said section 229]**) does not in the aggregate exceed 250 square yards, and
  - (b) before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them,

**F4** .....

- [F5(2A)** A principal council may not appropriate under subsection (1) above any land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.

- (2B) Where land appropriated by virtue of subsection (2A) above is held—
  - (a) for the purposes of section 164 of the Public Health Act 1875 (pleasure grounds); or
  - (b) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds),

the land shall by virtue of the appropriation be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said section 164 or, as the case may be, the said section 10.]

**F6(3)** .....

- (4) Where land has been acquired under this Act or any other enactment or any statutory order incorporating the Lands Clauses Acts and is subsequently appropriated under this section, any work executed on the land after the appropriation has been effected shall be treated for the purposes of section 68 of the **M1**Lands Clauses Consolidation Act 1845 and section 10 of the **M2**Compulsory Purchase Act 1965 as having been authorised by the enactment or statutory order under which the land was acquired.