

Cabinet 9 August 2023

Address by Kaddy Beck, Save Bertie Park Campaign:

“OCC is not above the law. Our email to you reproduce s122 of the 1972 [Local Government] Act in its entirety. We object to your use of this Act to appropriate the land on Bertie Park on the following grounds:

- Part 1 says that the Council may appropriate the land if it is no longer required. But OCC’s planning department have told us that Bertie Park is not defined as surplus.
- It also states that appropriation is subject to the rights of other persons over the land concerned. Our community has by right enjoyed access to Bertie Park for 85 years.
- Part 2(a) states the land appropriated should not exceed 250 square yards. Bertie Park is 7,894 square yards.
- Part 2(b) requires you to advertise for two consecutive weeks in a local newspaper and consider any objections. To avoid legal challenge, you would need to give genuine consideration to all objections and be able to demonstrate that you have considered these with an open mind. But the background information makes it clear that nothing will change your mind. You think that this would be like any other OCC consultation, a formality used to justify what you already intend to do.

Your suggested timescale is therefore unrealistic as you do not take into account the likelihood of our legal challenge.

Perhaps it is worth reminding you:

- That the Local Plan says that planning permission will only be granted...if the existing Bertie Place recreation ground, including a replacement MUGA, is re-provided on land in Plot B.
- You have never suggested doing this.
- You have never explained why.
- Your effort at re-providing our recreation ground cannot reasonably be held to cater for existing residents, let alone new ones.

When summing up their judgement in the case of Day v. Shropshire County Council, Lady Rose explained the determination of the UK Supreme Court to uphold s123 of the 1972 Act:

‘The importance for local communities of having spaces where they can take exercise and play sport and meet each other in the outdoors has long been recognised by Parliament. One way that Parliament has sought to protect green spaces is by passing laws which set conditions and limits on the power of local authorities to sell this type of land’

The same reasoning would also apply to s122 of the same Act.

We therefore think it's too early to grant approval for the build and acquisition of affordable homes on Bertie Park or to enter into a Development Agreement with OX Place.

We would like to know:

Whether you still intend to proceed with the appropriation under s122 and if you do intend to proceed, when will you put the notice in the paper and by which date would you like objections to be submitted.”

Response by Councillor Susan Brown, Leader of the Council

“Thank you very much for coming here today to make your representations. I will respond to you now and the response will also be published alongside the agenda and minutes for this meeting.

This report is not seeking to agree to an appropriation of the land at this stage, but agreeing to start the statutory process, including the opportunity for representations to be made. This will then be considered as part of a final decision report to Cabinet in October. This was set out in the report; however, for clarity, we have this afternoon issued an addendum which I believe has been sent to you which makes this very clear. It can be found on the Council's website with the papers for this meeting.

At the time Cabinet is asked to make a formal decision on appropriation it will be considering all the relevant information being presented to it and, to that end, the approval of the project is clearly conditional upon the approval of appropriation. All the issues, such as the consideration of whether the land is surplus, will be considered and addressed in the subsequent report.”

[Note: The addendum referred to can be found at:
<https://mycouncil.oxford.gov.uk/documents/b23939/Agenda%20Item%208%20-%20Bertie%20Place%20Affordable%20Housing%20Scheme%20Addendum%20Wednesday%2009-Aug-2023%2018.00%20Cabine.pdf?T=9>]