

Report of Director of Environment and Neighbourhoods

Report to Executive Board

Date: 5th September 2012

Subject: Response to the deputation from Sparrow Park Action Group on 11th July.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Headingley	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report provides a response to the deputation received from Sparrow Park Action Group (SPAG) on 11th July 2012.
2. It addresses issues regarding the future ownership, restoration and management of a small triangular piece of green space known locally as Sparrow Park in Headingley.
3. Despite considerable effort it has not been possible to establish the owner of the land. The options to resolve this are either to pursue acquisition of the land by adverse possession, or via a compulsory purchase order (CPO).
4. Adverse possession is not considered a viable option due to the time involved, securing exclusive possession due to the public nature of the land, and difficulties associated with securing public liability insurance.
5. A CPO is considered a viable option subject to developing a scheme with existing funds available that improves the park and demonstrates that it can continue to be managed and maintained.

Recommendations

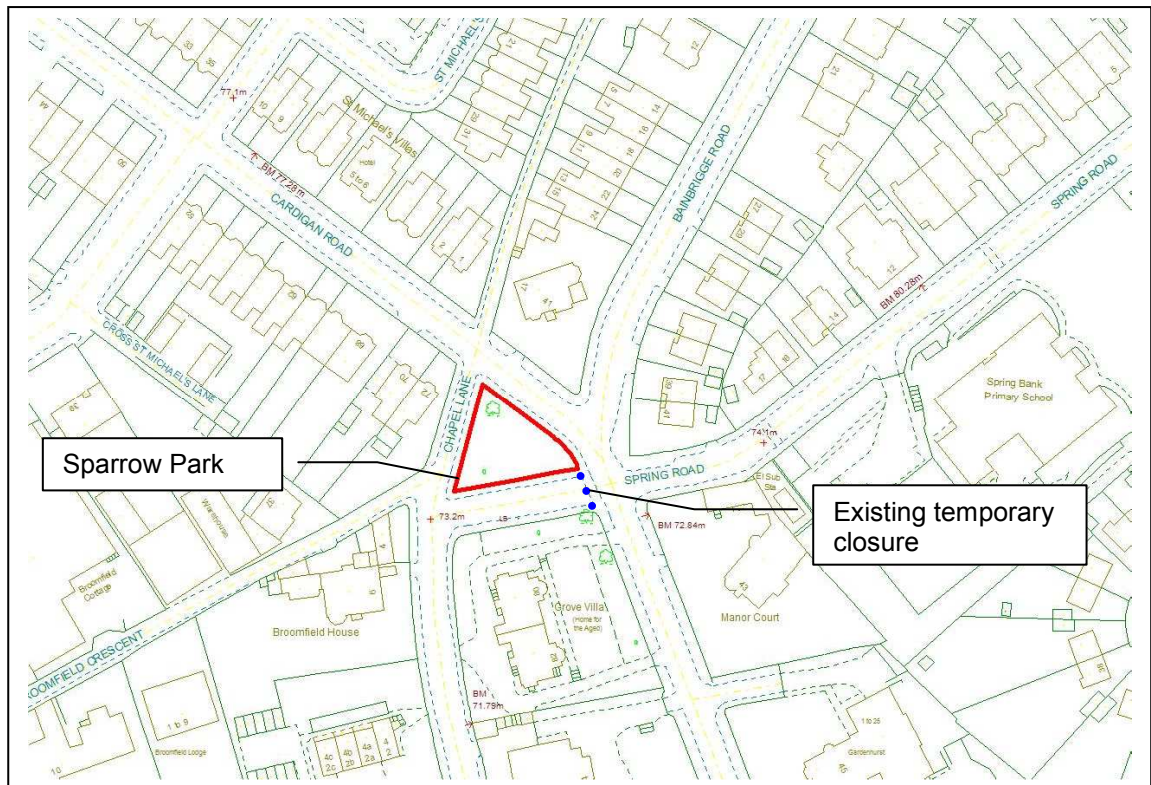
6. That Executive Board note the contents of the report and endorse the case for pursuing a Compulsory Purchase Order under relevant powers subject to clarifications identified in paragraph 3.2.17.

1 Purpose of this report

- 1.1 This report provides a response to the deputation received from Sparrow Park Action Group (SPAG) on 11th July 2012. Specifically it addresses issues regarding the future ownership, restoration and management of a small triangular piece of green space known locally as Sparrow Park in Headingley.

2 Background information

- 2.1 Sparrow Park is bordered by Chapel Lane, Spring Road and Cardigan Road and has an area of 477 square metres (0.05 hectares) as illustrated in the following map which identifies the location and curtilage of the park. There is an existing point closure to motor vehicles affecting Spring Road adjacent to the park. This closure has created a cul-de-sac and vehicular access to Cardigan Road is not currently permitted.



- 2.2 The city council does not own the park and the owner of the land is not known. The Parks and Countryside service and Planning have carried out land searches on the site over the last 5 years, which reveal that the land is not registered. Local enquiries and an article in the local newspaper have not revealed any further information as to the legal owner. A plaque adjacent to the entrance to Sparrow Park states that the site was improved by West Yorkshire County Council in 1975 with the support of South Headingley Neighbourhood Association.
- 2.3 The park has fallen into disrepair and is in a neglected condition with damaged and missing fencing, and missing coping stones on the wall. The site is

overgrown and self seeded trees dominate with litter and debris across the park. It appears that the park has therefore not been maintained for many years.

- 2.4 A public consultation and initial feasibility study funded by S106 was carried out in 2008. Based on the outcome of the consultation and feasibility work, ward based initiative funds supported the preparation of detailed design work to create a larger green space incorporating the area of Spring Road currently forming a cul-de-sac to the south of the park. Planning permission for this scheme (reference 10/00731/LA) was approved in April 2012. The capital cost of the scheme was estimated at £110,000, with a commuted sum of £14,000 estimated for ongoing maintenance. Due to the inability to identify land ownership of the park (and indeed to identify ownership of the area in question on the Spring Road cul-de-sac), applications to secure grant funding have been unsuccessful.

3 Main issues

- 3.1 The deputation makes reference to the following issues which are considered in the following section of the report.

- Establishing land ownership and improving the park
- Ongoing management and maintenance

3.2 Establishing Land Ownership and Improving the Park

- 3.2.1 As indicated, despite considerable effort it has not been possible to establish the owner of the land. The options to resolve this are either to pursue acquisition of the land by adverse possession, or via a compulsory purchase order (CPO).

3.2.2 Option 1: Adverse Possession

- 3.2.3 Acquiring land by “adverse possession” is the process by which a person who is not the legal owner of land can become the owner after having occupied it for a specified period of time. For unregistered land you can apply to be the registered owner after 12 years provided an applicant (an individual or group with several persons acting jointly) can prove that they:

- have been squatting without the owner’s consent
- have the necessary intention to possess the property to the exclusion of the owner of the land and any other party
- have factual possession of the land as if they were the owner of the land and no one else is dealing or occupying the land so that possession is exclusive to the applicant. Improvement of the land and placing signs in the park indicating new ownership is good supporting evidence.
- all above apply to the applicant and any predecessors through whom the applicant can claim for at least 12 years prior to the date of the application

- 3.2.4 There are exceptions that apply and an applicant is not able to be registered as the owner if, for example, the property is held in trust, the owner has a disability and cannot communicate them or the applicant has already started a different legal process to become owner of the land.
- 3.2.5 If improvements are carried out on land that a person or group does not have a legal interest in, it may not be possible to claim public liability insurance as insurance companies often require evidence that the land belongs to the applicant to avoid insurance fraud.
- 3.2.6 In order to defeat a claim for adverse possession the owner of the land can end the claim within the 12 year period by getting the squatter to acknowledge the owner's title as the true owner to the property. A squatter that remains in possession of the land after such acknowledgement will start time running again for a claim for adverse possession. An owner must ensure that the squatter is removed from the land in order to ensure that the squatter does not pursue/revive such a claim.
- 3.2.7 Each application for adverse possession is assessed on its own merits and the Land Registry will only register the applicant with absolute title if they are satisfied that their adverse possession has barred the owner's title. In all other cases, they may register with possessory title but they will not do so in cases of real doubt.
- 3.2.8 There is no time limit to the length a time an application for adverse possession can take as any objection by the owner of the land or objectors must be disposed of and/or may then be decided by an Adjudicator of the Land Registry at a hearing. The Adjudicator can set a date for the hearing or direct one of the parties to start court proceedings. It is at this stage that costs may be incurred and they can be quite substantial. In certain circumstances, the applicant squatter may have to pay the owner's costs as a result of making the application. Costs may be liable even if the applicant withdraws their application for a claim.
- 3.2.9 Unless a person or group has a very strong case and evidence to prove a valid claim leading to registration of title then this option is not advisable, particularly given difficulties associated with establishing exclusive possession, the time involved and uncertainty around securing public liability insurance.
- 3.2.10 Option 2: Compulsory Purchase Order (CPO)**
- 3.2.11 With regard to obtaining a successful CPO, the Council possesses a range of compulsory purchase powers. Appropriate powers to acquire non-residential property or vacant lands can be found in section 226 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. There are two powers available.
- 3.2.12 The power in section 226(1)(a) authorises the compulsory acquisition of land where the authority thinks that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility. The power in Section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is

required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme.

- 3.2.13 In either case the Council will need to show that there is a compelling case in the public interest for the acquisition of the land (which would include the park and potentially the subsoil under the adjacent highway). This means that the public benefit associated with the acquisition must outweigh any interference with private rights that will inevitably be associated with the compulsory acquisition. The Secretary of State, in deciding whether to confirm a CPO, will consider how the land acquisition and scheme delivery will be resourced. He will consider whether there are sufficient funds available to acquire property within the CPO within the lifetime of the CPO and whether there is a reasonable prospect of the proposals being delivered within a reasonable timescale.
- 3.2.14 This means that the Council needs to be clear from the outset on the scheme to be pursued and how it is to be funded in order to demonstrate that the council (or those who are to implement the scheme) will be in a position to deliver the proposals on confirmation of the CPO. The nature of the scheme – notably whether it will involve development requiring planning permission, will influence which of the two CPO powers identified should be used.
- 3.2.15 After making and advertising the CPO there is a minimum 28 day period for objections to be lodged. The timetable will vary depending on whether or not objections are made. If no objections are received, the land could become vested into the ownership and control of the council within approximately, six to eight months. In the event of objections and a public inquiry being held and an inspector finding in the council's favour then this could extend to beyond 12 months.
- 3.2.16 In an uncontested CPO, the only costs arising will be those of advertising, notice and legal fees. These are estimated at approximately £8,000 for disbursements and legal fees. In the event that the CPO receives objections, there will be an increased cost in the event of a public inquiry. This would likely be in the region of £5,000 to £10,000. Should an inquiry prove necessary this would normally be funded from the Council's planning appeal's budget within City Development.

Should the CPO be confirmed, and the land become vested with the Council, the land owner has 6 years from the date they become aware of the vesting to have the issue of compensation referred to the lands tribunal for determination in the event of the compensation being disputed. Asset Management have undertaken an appraisal of the site based on its existing use and stated that the non residential open market value is in the range of £1,000 to £2,000. It should be noted that a potential owner may not agree to this level of compensation and claim a higher amount. If a figure can not be settled and is disputed, the Lands Tribunal will make an informed determination of the compensation payable taking into consideration the information and land use planning policies applicable at the time of vesting. If there is a dispute this would incur additional costs resulting from a referral to the Lands Tribunal.

3.2.17 The preliminary view of officers is that there is a prima facie case for pursuing a CPO under the powers contained in Section 226 of the 1990 Act. Should Executive Board endorse the recommendation then further work needs to be done on the issues that will need to be addressed in order to establish the case for a CPO including:-

- Clarification on the scope of the scheme to be pursued. This will in turn clarify the appropriate power to be utilised and also the CPO boundary (which may or may not incorporate the subsoil of the highway);
- Clarification on the funding for the scheme;
- Clarification on the mechanism for the delivery and future maintenance of the scheme to be delivered so it can be demonstrated that the scheme will continue to deliver public benefits.

3.2.18 Assuming that these issues can be resolved and the issue of ownership continues to remain unclear then officers propose to seek a further resolution authorising the commencement of CPO action.

3.2.19 Funding Available to Deliver Improvements

3.2.20 Whilst grant funding applications have been unsuccessful, SPAG have been able to secure funding to undertake consultation, design, land searches and a planning application. The following funds remain available to be spent on the scheme:

S106	£18,000 (Approx)
North West Inner Area Committee	£10,814
Total	£28,964

3.2.21 As indicated above, the cost of pursuing a CPO given that it was uncontested should cost £8k. This would leave around £21k which could be utilised to develop a modest scheme that would focus on key landscape improvements within the curtilage of the site as well as ongoing maintenance of the park.

3.3 Ongoing Management and Maintenance of the Site

3.3.1 In the unlikely event that the group pursued a claim for adverse possession, then the ownership of the land would be outside the Council and responsibility for the ongoing management and maintenance would lie with SPAG.

3.3.2 SPAG have stated they would wish to undertake management and maintenance of the site. In the event of a successful CPO, then land ownership would remain with the Council, and given the nature of the site, be vested with Parks and Countryside. Parks and Countryside could then choose to establish an agreement with SPAG for the ongoing management and maintenance, either formally via a lease agreement, or a suitable stewardship agreement. Depending

on the nature of the scheme, it is estimated that a commuted sum over a 10 year period of around £14k would be required for the ongoing maintenance of the site.

- 3.3.3 Subject to a successful CPO and clarification of land ownership, then SPAG could then potentially access grant funding (with the support of the Parks and Countryside service) to undertake further development work on the site.
Considerations

3.1 Consultation and Engagement

- 3.1.4 Headingley ward members have been campaigning for improvements to Sparrow Park for a considerable time. There has been community consultation undertaken as part of the original improvement scheme. Headingley News ran a story entitled 'Who owns Sparrow Park?' This news story sought the local community's assistance in tracing the land owner of the site. The story did not produce any useful ownership information.
- 3.1.5 In order to develop an alternative scheme to improve the park it would be necessary to conduct consultation with local residents.
- 3.1.6 A report has been considered by the Asset Management Board that has supported the proposed use of CPO powers for the Council to secure the ownership of this area of land

3.2 Equality and Diversity / Cohesion and Integration

- 3.2.1 At this stage this report is seeking approval in principle to pursue a compulsory purchase order (CPO) for the land in question in order to clarify land ownership. It will therefore be necessary, subject to approval, for equality, diversity, cohesion and integration issues to be considered during the design of an appropriate scheme to support the case for a CPO in order that Sparrow Park can become an accessible and well managed pocket park for the local community to visit.

3.3 Council policies and City Priorities

- 3.3.1 The report is in response to a deputation to full Council from the Sparrow Park Action Group.

3.4 Resources and value for money

- 3.4.1 Planning permission for a £110,000 scheme was granted in April 2012, with a commuted sum of £14,000 estimated for ongoing maintenance. Due to the inability to identify land ownership of the park (and indeed to identify ownership of the area in question on the Spring Road cul-de-sac), applications to secure grant funding have been unsuccessful.
- 3.4.2 An uncontested CPO is estimated to cost £8,000 for disbursements and legal fees. There is approximately £29k funding from North West Inner Area Committee (£10,814) and S106 (£18,000) to undertake a CPO and for the Parks and Countryside service to work in partnership with SPAG to develop and manage a suitable improvement scheme.

3.5 Legal Implications, Access to Information and Call In

- 3.5.1 The report outlines options associated with establish land ownership, namely adverse possession and the implications of pursuing a compulsory purchase order (CPO).

3.6 Risk Management

- 3.6.1 In the event that a CPO receives objections, there would be an increased cost in the event of a public inquiry. This would likely be in the region of £5,000 to £10,000. Should an inquiry prove necessary this would normally be funded from the council's planning appeal's budget within City Development.
- 3.6.2 Should the CPO be confirmed, and the land become vested with the Council, the land owner has 6 years from the date they become aware of the vesting to have the issue of compensation referred to the lands tribunal for determination in the event of the compensation being disputed. Asset Management have undertaken an appraisal of the site based on its existing use and stated that the non residential open market value is in the range of £1,000 to £2,000.

4 Conclusions

- 4.1 The city council does not own the park and the owner of the land is not known. The park has fallen into disrepair and has not been maintained for many years. A £110k scheme to improve the park was unsuccessful due to the inability to secure grant funding as land ownership is not known. Adverse possession is not considered a viable option due to the time involved, securing exclusive possession due to the public nature of the land, and difficulties associated with securing public liability insurance. A compulsory purchase order (CPO) can only be secured if the council can demonstrate that funds are available to deliver and sustain an improvement scheme for the park. There are sufficient funds available to deliver a modest scheme that should satisfy CPO criteria.

5 Recommendations

- 5.1 That Executive Board note the contents of the report and endorse the case for pursuing a Compulsory Purchase Order under relevant powers subject to clarifications identified in paragraph 3.2.17.

6 Background documents¹

- 6.1 Deputation speech to full Council 11th July 2012.

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.