

APPENDIX 3

PUBLIC OPEN SPACE DISPOSALS

1.0 Background

1.1 Section 10 of the Open Spaces Act 1906 states:

"A local authority who have acquired any estate or interest or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest or control was acquired:

- (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and
- (b) maintain and keep the open space or burial ground in a good and decent state..."

1.2 The case of *Muir v Wandsworth Borough Council* [2017] EWHC 1947 (Admin) (28 July 2017) provided guidance to local authorities on the scope of the restrictions that apply to disposals of open spaces.

1.3 Further, open space is defined in the Town and Country Planning Act 1990 as any land 'laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground'. It is generally considered to be a valuable community resource, to be enjoyed by the wider community and there will be a general presumption against the disposal of these assets.

1.4 The council will not normally dispose of any core recreational open spaces by way of freehold transfers, but may consider applications for the disposal of 'incidental' open space and areas of landscaping, particularly where it will improve the management of land benefitting the wider public or where a disposal would remedy the anomalies of past land sales, acquisitions and transfers.

1.5 It is anticipated that potential disposals of this 'incidental' land to enquiring parties will generally follow the principles outlined in **Appendix 2** (Enquiries for Minor Land Disposals) with the requirement that any proposed disposal of public open space be adequately advertised.

2.0 Procedure

- 2.1 In the event that a disposal of 'incidental' public space is proposed (typically where the area in question does not provide a valued opportunity for sport, recreation or leisure), there is a legal requirement for the council to give notice of the intention to dispose by placing a notice in a local newspaper for two consecutive weeks and consider any objections that are received as a result.
- 2.2 All costs of advertising the proposed sale must be met by the enquiring party.
- 2.3 Any objections that are received must be adequately considered.
- 2.4 In agreeing to the disposal of such land, the council should consider whether the personal safety for users of any remaining nearby open space will be detrimentally affected (e.g., where a narrow alleyway is created). Furthermore, sales which lead to a loss or destruction of the visual quality of the surrounding area should not be contemplated unless there are covenants imposed on the sale to retain the open nature of the landscaped area and/or to require certain standards of new boundary fencing, walling or delineation are met.